

12 May 2010

RIALTO TOWERS 525 COLLINS STREET MELBOURNE  
GPO BOX 769G MELBOURNE VIC 3001 AUSTRALIA  
DX 204 MELBOURNE www.minterellison.com  
TELEPHONE +61 3 8608 2000 FACSIMILE +61 3 8608 1000

## BY EMAIL

Ms Tess Macrae  
Adjudication Branch  
Australian Competition & Consumer Commission  
Level 35 - The Tower - Melbourne Central  
360 Elizabeth Street  
MELBOURNE VIC 3000

Dear Ms Macrae

### **Collective bargaining conduct notification CB00143 Response to objections raised by Westralia Airports Corporation and Redspot**

We refer to the objections raised by the Westralia Airports Corporation (**WAC**) on 7 May 2010 to the collective bargaining notification CB00143 lodged by our client, Hertz Australia Pty Ltd (**Hertz**) on behalf of itself and Avis, Budget, Thrifty and Europcar (**Notification**) and our letter to you on 11 May 2010.

After receiving some further instructions from the parties to the Notification, we set out below some further relevant information in response to WAC's objections.

#### **1. \$3m transactional limit**

WAC has asserted that the Notification is invalid as *'Avis and Hertz do not qualify for the protection of collective bargaining notification because they will each acquire services in excess of \$3m pa in any 12 month period of the 5 year terms of the new Car Rental Licence.'* They assert that *'this is the case on a standalone basis for Hertz and Avis but is abundantly clear when the value of contracts for Avis/Budget and Hertz/Thrifty are combined (subsection 93AB(a)(b)) to reflect the corporate group ownership structures'*.

In Confidential Annexures A & B respectively we set out the basis on which each of Hertz and Avis have instructed us that they each had (and continue to have) a reasonable expectation, at the time of giving the collective bargaining notice that the price for the acquisition of the relevant services from WAC will not exceed \$3m in any 12 month period.

We are also in the process of obtaining further instructions with a view to providing the Commission with further details in relation to the basis of Budget and Thrifty each having a reasonable expectation, at the time of giving the collective bargaining notice that the price for the acquisition of the relevant services from WAC will not exceed \$3m in any 12 month period. We will respond with this further information immediately when it is available.

In addition to the matters set out in our previous response, Hertz also rejects the suggested aggregation of Avis/Budget and Hertz/Thrifty for the reasons set out in section 2 below.

## **2. Aggregation of acquisitions by related bodies corporate**

WAC has asserted that, *for the purposes of s93AB(4) the Commission must aggregate the sum of the prices for the supply of services to:*

- (a) *AVIS and Budget as they are wholly owned subsidiaries of the same ultimate parent company; and*
- (b) *Hertz and Thrifty as they will shortly be wholly owned subsidiaries of the same ultimate parent company.'*

For the reasons set out in our letter of 11 May 2010, WAC's assertion on this point has no legal basis.

Even if aggregation were to properly be applied to related bodies corporate (an interpretation which Hertz rejects), it could not be applicable to the AVIS/Budget or Hertz/Thrifty in this context for the following reasons.

### Avis/Budget

Budget Rent a Car Australia and Avis Australia have the same ultimate US holding company. However, at Perth airport an independent Budget franchisee, Busby Investments Pty Ltd Budget, operates the local Budget rental car operation. This has been the case for the past 20 years and the current franchise agreement runs until 2019.

We are instructed that WAC is fully aware of this arrangement as they required this information to be provided in their original registration of interest document and it was also set out in the RFP documents submitted to WAC on 28 April 2010. WAC also receives payments directly from Busby Investments Pty Ltd and has regular meetings with John Busby, the Managing Director of Busby Investments. It is concerning that WAC has provided obviously misleading information to the ACCC in relation to this point.

We are instructed that the Avis business at Perth Airport is a company owned operation that is distinctly separate to Busby Investments Pty Ltd.

### Hertz/Dollar Thrifty Automotive Group

Hertz's parent company has announced a transaction pursuant to which it would acquire the Dollar Thrifty Automotive Group globally. This acquisition has not been completed and is subject to regulatory and other approval.

In Australia, we understand that the Thrifty brand is licensed to the NRMA Motoring and Services Group, a wholly subsidiary of the NRMA (not the Dollar Thrifty Automotive Group). Accordingly, even if the global acquisition were to complete, the relevant Hertz entity (Hertz Australia Pty Ltd) and Thrifty Car Rental entity (Kingmill Pty Ltd) that are the applicants to the collective bargaining notification at Perth airport would not as a result become related bodies corporate.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact Celesti Hodgman of our office.

Yours faithfully  
**MINTER ELLISON**

Geoff Carter  
Partner

Australian Competition & Consumer Commission  
12 May 2010

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Contact: Celesti Hodgman Direct phone: +61 3 8608 2474 Direct fax: +61 3 8608 1257  
Email: celesti.hodgman@minterellison.com  
Partner responsible: Richard Murphy/Geoff Carter Direct phone: +61 3 8608 2075  
Our reference: CH RDM 30-6477567

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