

19 May 2010

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## 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 Interim response to Draft Objection Notice**

We acknowledge receipt of the Commission's Draft Objection Notice issued on 13 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**).

We intend in due course to lodge a written submission in response to the Draft Objection Notice. In the meantime, we wish to make the following interim submissions.

#### **1. Request for Proposal (RFP) process**

WAC submits that *'since March 2010, WAC has gone to substantial lengths to consult and negotiate with rental car companies to ensure that the Terminal Space Allocation process is fair, timely and transparent.'* This is reflected in the Commission's observation in the Draft Objection Notice that collective bargaining may undermine the integrity of the *'competitive tender process'* (paragraph 6.44).

It is Hertz's strong submission that the RFP process promulgated by WAC has not been conducted in a manner that would be analogous to the behaviour of a supplier in a competitive market that exhibits allocative efficiencies. Rather, WAC has exhibited behaviours consistent with its bargaining power as a monopolist supplier, and has sought to impose a 'negotiation' process that is the opposite to 'fair, timely and transparent'. WAC is now pressuring the parties to accept the uncommercial terms demanded in the RFP (including 'minimum' fees that are in some cases very significantly higher than fees currently payable for its airport facility services) by engaging in a deliberate campaign to 'divide and conquer', and to stymie the

applicant's legitimate exercise of their legal right to lodge a collective bargaining notification and to seek to initiate a collective bargaining process.

We note the following facts that support this view:

- While WAC first called for registrations of interest in March 2010, the RFP document was not sent out until 7.57pm AEDT on Thursday 1 April 2010 (Easter Thursday). The first business day for review was therefore 6 April 2010. Following this, there was a Q&A process that was only completed on 20 April 2010, while WAC still expected a full response from the parties by 28 April 2010 in relation to a proposed 5 year licence term.
- **[Confidential – Restriction of Publication Claimed]**
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- In Hertz's view, WAC is, through its conduct, unreasonably and unconscionably seeking to stymie any process of legal collective bargaining proposed by the applicants.

## 2. Redspot

As the Commission is aware, our client was surprised at the objection lodged by Redspot to the proposed collective bargaining arrangements. We sought to respond to Redspot's misunderstandings in relation to both the proposed process, and its implications for Redspot, in our submission to the Commission dated 12 May 2010.

We have subsequently been instructed by each party to the Notification to write to Redspot to invite them to participate in the proposed collective bargaining group, subject to the Commission's approval. We have **attached** a copy of this

correspondence as Confidential Annexure C. [**Confidential – Restriction of Publication Claimed**]

We have **attached** a copy of the response received on behalf of Redspot as Confidential Annexure D.

**3. 'Overarching arrangement' for multiple collective bargaining arrangements**

The Commission in its Draft Objection Notice (paragraph 6.51) notes WAC's claim that *'there is evidence if an overarching arrangement to make collective bargaining notifications to more than one Australian airport (evidenced by the Mackay and Perth airport notifications)'*.

As set out in our letter of 11 May 2010, Hertz rejects this claim. The parties to the Notification individually assess their dealings with various airports. There is simply no overarching arrangement between them to collectively negotiate with any particular airports. This is evidenced, inter alia, by the fact that various of the parties have recently entered into, or are in the process of negotiating, independent agreements with various airports, including Cairns, Darwin, Alice Springs and Launceston.

**4. Process**

We note our client's ability to request a pre-decision conference under section 93A of the Act prior to the Commission's final decision in this matter. Hertz would in ordinary circumstances welcome the opportunity to express its position directly to a Commissioner. However, in the context of WAC's ongoing conduct in 'negotiating' access to its facilities, the parties are of the view that there is insufficient time to do so. We are therefore instructed that the parties wish to proceed with written submissions, with a view to an expedited decision by the Commission.

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

Yours faithfully  
**MINTER ELLISON**



Geoff Carter  
Partner

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enclosures

## **Restriction of Publication Claimed**

**Confidential annexures to the letter from Hertz to the Commission dated 18 May 2010. These annexures are confidential and must not be placed on the Commission's public register.**

**Restriction of Publication Claimed**

**CONFIDENTIAL ANNEXURE A**  
**Letter from WAC to Hertz dated 6 May 2010**

**Restriction of Publication Claimed**

**CONFIDENTIAL ANNEXURE B**  
**Letter from Hertz to WAC dated 17 May 2010**

**Restriction of Publication Claimed**

**CONFIDENTIAL ANNEXURE C**  
**Letter from Hertz to Redspot dated 14 May 2010**

**Restriction of Publication Claimed**

**CONFIDENTIAL ANNEXURE D**  
**Letter from Redspot to Hertz dated 19 May 2010**