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Claimed under section 89 of the *Trade Practices Act 1974* and regulation 24 of the  
*Trade Practices Regulations 1974*



7 January 2010

Ms Teresa Nowak  
Acting Director Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Your reference: A91200

Our reference: M2009/02181

Dear Ms Nowak,

## **BARA application for revocation and substitution of an authorisation A91200**

Thank you for your letter of 11 December 2009. Sydney Airport Corporation Ltd ("**SACL**") welcomes the opportunity to comment on the Board of Airline Representatives of Australia's ("**BARA**") application for reauthorisation of BARA's proposal to negotiate and bargain collectively, on behalf of BARA's member airlines from time to time, with airport operators and providers of other essential airport services at international airports, and agree on terms and conditions of acquisition of such services, including prices, on an airport by airport basis.

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SACL does not object to BARA's application for reauthorisation. In SACL's view the likelihood of anticompetitive detriment arising is low and would be outweighed by public benefits for the following key reasons:

- cost savings follow from collective negotiation that may be passed on to end users;
- SACL negotiates terms of access to Sydney Airport collectively and on an individual airline basis. BARA member airlines are not bound by BARA negotiated outcomes and may individually seek alternative arrangements;
- reauthorisation would not diminish the significant competitive tensions currently facing SACL in negotiations with airlines;
- an appreciable increase in competition between airlines would be unlikely if the application for reauthorisation were declined; and

M2010/00699

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- reauthorisation would simply maintain the status quo.

Our more detailed reasoning is set out below.

**1. Cost savings follow from collective negotiation that may be passed on to end users**

SACL negotiates terms of access to Sydney Airport collectively and on an individual airline basis. BARA member airlines are not bound by BARA negotiated outcomes and may individually seek alternative arrangements.

Over the years, collective negotiations with BARA have eliminated the need for us to be extensively engaged in separate negotiations with individual airlines. This structure generates cost savings in diverted staff time and other ancillary costs such as legal and consultancy fees.

Further, where airlines do not have a significant management presence in Australia savings can be made that are associated with cross border (and cross cultural) negotiations.

If BARA were to cease operation then the costs described above would become part of SACL's cost base and may ultimately result in higher user charges. By permitting BARA to negotiate collectively on behalf of airlines, member airlines have the opportunity to offer their customers lower prices and compete against each other more effectively.

**2. Reauthorisation would not diminish the significant competitive tensions between airports in negotiations with airlines**

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Competition between airports is alive and well notwithstanding BARA's involvement in airline negotiations. In our view, competition between airports would not be diminished by authorising the conduct proposed. On the other hand, if the Commission were not to authorise the conduct proposed airport charges may well increase for the reasons outlined above.

In addition, airlines are able to credibly exercise countervailing power. This in turn puts pressure on airports to put forward the best deal they can in an effort to avoid airlines diverting business away to another airport provider, even if only for a limited time period.

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To a certain degree BARA's involvement aids competition between airports because the cost savings generated provide airports with an increased ability to offer "a better deal". This, in combination with airlines' countervailing

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power means that the competitive tensions felt between airports is very real and would remain unaffected by reauthorisation.

### 3. **Reauthorisation would simply result in maintenance of the status quo**

Competition between airlines would not be affected by reauthorisation. In contrast, if the conduct were not reauthorised we do not consider that competition between airlines would be increased. This is partly because the nature of aviation is that planes simply must land at airports; airport charges must form part of all airlines' cost structure.

In our view, the likelihood that airlines compete on the basis of an airport charge is very low. Rather, our experience is that airlines compete on the basis of price and service to win passengers. Airport charges are simply a necessary component of participation in the aviation industry. Our experience is that obtaining the lowest possible airport charges would be relevant to airlines' downstream pricing but they do not compete on this basis.

If an airline perceives that it will be able to realise cost savings by negotiating terms via BARA then it may elect to do so. However, airlines are not obliged to accept the terms negotiated by BARA. From our perspective, BARA's involvement is simply one way an airline can better its offering to prospective passengers.

If you have any further queries please do not hesitate to contact me or Elizabeth Henderson on [elizabeth.henderson@syd.com.au](mailto:elizabeth.henderson@syd.com.au) or (02) 9296 6458.

Once again, thank you for the opportunity to provide our views to you.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Russell Balding", with a long, sweeping underline.

**Russell Balding, AO**  
Chief Executive Officer