

Our Ref: RHW: 285342

28 October 2014

Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email

Dear Mr Chadwick

Board of Airline Representatives of Australia - applications for authorisation

We act for the Board of Airline Representatives of Australia (**BARA**)

BARA is currently authorised to collectively negotiation of the terms of acquisition of certain aviation services on behalf of its members. That authorisation (ACCC authorisation A91200) will expire on 5 June 2015. On behalf of itself and its members, BARA wishes to apply for revocation of the existing authorisation and substitution with a new authorisation for a seven year term to June 2022.

Accordingly, we enclose the following:

- (a) Application for revocation and substitution in Form FC;
- (b) a confidential version of the submission supporting the above application (**Confidential Submission**); and
- (c) a non-confidential version of the supporting submission;

Our client is paying the applicable application fee of \$2,500 by electronic transfer.

The information redacted from the Confidential Submission is confidential to the Applicant. Disclosure of this information could result in material prejudice to BARA and its members. Accordingly, BARA requests pursuant to section 89(5) of the CCA that this information be kept confidential.

Please contact us if you would like any further information in relation to the enclosed applications and submission.

Yours sincerely
HWL Ebsworth



Richard Westmoreland
Partner

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Adelaide
Brisbane
Canberra
Melbourne
Norwest
Perth
Sydney

Form FC

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) **Name of applicant:**
(Refer to direction 2)

A91466

Board of Airline Representatives of Australia Inc (BARA) on behalf of itself and its members from time to time.

- (b) **Description of business carried on by applicant:**
(Refer to direction 3)

The applicant is an industry organisation representing international airlines in Australia.

- (c) **Address in Australia for service of documents on the applicant:**

HWL Ebsworth
Level 14, 264-278 George Street
Sydney NSW 2000
Attention: Richard Westmoreland

Ph. (02) 9334 8717
email: rwestmoreland@hwle.com.au

2. Revocation of authorisation

- (a) **Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:**

ACCC authorisation A91200, which authorised BARA to negotiate and bargain collectively on behalf of BARA's member airlines from time to time with airport operators and other providers of essential airport services, and agree on terms and conditions of acquisition of such services, including prices, on an airport by airport basis (**Current Authorisation**).

(b) Provide details of the basis upon which revocation is sought:

The Current Authorisation will expire on 5 June 2015. On that basis, revocation of the Current Authorisation and substitution of a new authorisation is now sought.

3. Substitution of authorisation

(a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

(Refer to direction 4)

On behalf of itself and its current and future members, BARA seeks authorisation to collectively negotiate and give effect to arrangements for the acquisition of Essential Aviation Services from:

- (a) the operators of Designated International Airports;
- (b) Airservices Australia;
- (c) Bureau of Meteorology;
- (d) Unisys Australia;
- (e) any other supplier that is the sole provider of those services at the relevant Designated International Airport; and
- (f) suppliers or potential suppliers of Australian Government-mandated security services that exhibit natural monopoly characteristics, where:
 - (i) the supplier or potential supplier requests or consents in writing to negotiate collectively with BARA members through BARA; and
 - (ii) prior to commencing negotiations, BARA provides the ACCC with:
 - A. a description of the Australian Government mandated security requirement proposed to be negotiated; and
 - B. a copy of the supplier's written request or consent to negotiate collectively with BARA pursuant to the terms of this authorisation,

including making and giving effect to arrangements or understandings in relation to the terms and conditions (including price) for the acquisition of those services.

Authorisation shall be subject to the conditions that:

- (a) no party shall be compelled to engage in collective negotiations; and
- (b) BARA shall not bind any members to any terms or conditions negotiated by BARA – each member must make its own decision whether to accept the terms and conditions offered by a supplier as a result of BARA's negotiations.

The definitions of Essential Aviation Services and Designated International Airports are set out in Annexure A to the supporting submissions filed with this application (**Supporting Submissions**).

- (b) **Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:**

Essential Aviation Services, more particularly described in Annexure A to the supporting submissions filed with this application.

- (c) **The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:**

BARA has now been authorised by the ACCC to engage in collective negotiation on behalf of its members for almost ten year. In that time, the authorised conduct has delivered substantial benefits, no relevant suppliers have elected not to participate in BARA's collective negotiation processes, and there have been no public detriments of which BARA is aware. Given this established track record, BARA now seeks authorisation for a seven year term.

4. **Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought**

- (a) **Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:**

Current and future members of BARA. All members are international airlines. The current members of BARA are set out below:

| | |
|--|---|
| AIR CALIN Level 2, 177 York St SYDNEY NSW 2060 | AIR CANADA 25 Blich St SYDNEY NSW 2000 |
| AIR INDIA Level 15, 31 Market St SYDNEY NSW 1230 | AIR MAURITIUS Level 7, 246 Bourke St MELBOURNE VIC 3000 |
| AIR NEW ZEALAND LIMITED GPO Box 3923 SYDNEY NSW 2001 | AIR VANUATU Suite W2E, 75-85 O'Riordon St ALEXANDRIA NSW 2015 |
| ASIANA AIRLINES Level 13, 31 Market St SYDNEY NSW 2000 | CATHAY PACIFIC AIRWAYS LTD GPO Box 4996 SYDNEY NSW 1042 |
| CHINA SOUTHERN AIRLINES 120 Clarence St SYDNEY NSW 2000 | DELTA AIRLINES Level 12, 403 George St SYDNEY NSW 2000 |
| EMIRATES Level 17, 1 York Street SYDNEY NSW 2000 | ETIHAD AIRWAYS Level 26, 1 O'Connell St SYDNEY NSW 2000 |
| EVA AIRWAYS CORPORATION PO Box 8, Brisbane International Airport EAGLE FARM QLD 4007 | FIJI AIRWAYS Level 5, 280 Pitt St SYDNEY NSW 2000 |

| | |
|--|--|
| GARUDA INDONESIAN AIRWAYS GPO Box 3836 SYDNEY NSW 2001 | JAPAN AIRLINES Level 2, 22 Market St SYDNEY NSW 2000 |
| KOREAN AIR Level 4, 309 George Street SYDNEY NSW 2000 | MALAYSIA AIRLINES Level 7, 16 Spring Street SYDNEY NSW 2000 |
| PHILIPPINE AIRLINES 49-51 York SYDNEY NSW 2000 | QANTAS AIRWAYS LIMITED 10 Bourke Rd (SYDQCA1) MASCOT NSW 2020 |
| QATAR AIRWAYS Level 3, 350 Collins Street MELBOURNE VIC 3000 | ROYAL BRUNEI Level 10, 45 William St MELBOURNE VIC 3000 |
| SINGAPORE AIRLINES Locked Bag A3008 SYDNEY SOUTH NSW 1235 | SOUTH AFRICAN AIRWAYS Level 1, 117 York Street SYDNEY NSW 2000 |
| THAI AIRWAYS GPO Box 7077 SYDNEY NSW 2001 | TURKISH AIRLINES Suite 2601, Level 26 201 Kent Street SYDNEY NSW 2000 |
| UNITED AIRLINES Level 14, 31 Market St SYDNEY NSW 2000 | VIETNAM AIRLINES Level 25, 31 Market Street SYDNEY NSW 2000 |
| VIRGIN AUSTRALIA PO Box 1034 SPRING HILL QLD 4004 | |

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

See above.

(c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not Applicable.

5. Public benefit claims

(a) Arguments in support of application for substitution of authorisation:

Please refer to the Supporting Submissions.
(See Direction 6 of this Form)

(b) Facts and evidence relied upon in support of these claims:

Please refer to the Supporting Submissions.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets

including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(See Direction 7 of this Form)

Please refer to the Supporting Submissions.

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:**

(See Direction 8 of this Form)

Please refer to the Supporting Submissions.

- (b) Facts and evidence relevant to these detriments:**

Please refer to the Supporting Submissions.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?**

All contracts, arrangements or understandings in respect of which authorisation is sought are described in item 3 above.

- (b) If so, the following information is to be furnished:**

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

(See Direction 9 of this Form)

Not applicable.

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:**

(See Direction 5 of this Form)

Not applicable.

- (iii) **Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:**

Not applicable.

9. Joint Ventures

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

No.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Not applicable.

- (c) **If so, by whom or on whose behalf are those other applications being made?**

Not applicable.

10. Further information

- (a) **Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:**

HWL Ebsworth
Level 14, 264-278 George Street
Sydney NSW 2000
Attention: Richard Westmoreland

Ph. (02) 9334 8717
email: rwestmoreland@hwle.com.au

Dated.....*28 October 2014*.....

Signed on behalf of the applicant



Richard Westmoreland
Partner
HWL Ebsworth

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



BARA

Board of Airline
Representatives
of Australia Inc



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BARA Authorisation submission Public register version

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Executive Summary

Australia's international aviation has experienced tremendous growth over the last decade, almost doubling from 16 million passengers to over 30 million per year. Over the next 20 years, there is the potential for international passenger numbers reach more than 60 million per year. This growth will create thousands of new jobs across Australia by boosting employment in the aviation and tourism industries.

Australia must compete globally for its share of international tourism and growth in passenger numbers. The Board of Airline Representatives of Australia (**BARA**) supports the competitiveness of its member airlines by facilitating safe and efficient international aviation in Australia. Critical to this function is BARA's ability to conduct collective negotiations on behalf of its member airlines with the suppliers of Essential Aviation Services.

In 2010, the Australian Competition and Consumer Commission (**ACCC**) granted BARA authorisation to conduct collective negotiations with the major international airports, Airservices Australia, Unisys Australia and other sole providers subject to certain conditions. Under this authorisation, BARA's open and non-binding collective negotiation activities have delivered significant public benefits, including:

- generating substantial cost savings for all parties from a streamlined, more effective negotiations process;
- assisting to negotiate contracts that better address the needs of both suppliers and BARA's member airlines; and
- negotiating material improvements for its members in both price and non price terms for Essential Aviation Services, in part addressing the market power of sole suppliers and making those terms more consistent with outcomes expected in competitive markets.

BARA seeks authorisation to continue its currently authorised conduct. In addition BARA seeks authorisation to negotiate collectively with suppliers and potential suppliers of Australian Government-mandated security services that exhibit natural monopoly characteristics. This will enable BARA to assist with the implementation of important security measures, and will enable BARA to facilitate competition in markets for provision of these services where effective competition may otherwise not exist.

BARA has now been authorised by the ACCC to engage in collective negotiation on behalf of its members for almost ten years. In that time, the authorised conduct has delivered substantial benefits, no relevant suppliers have elected not to participate in BARA's collective negotiation processes, and there have been no public detriments of which BARA is aware. Given this established track record, BARA seeks revocation of the existing authorisation that expires on 5 June 2015 and a new authorisation for a seven year term to enable BARA to continue to support the competitiveness of Australia's international aviation.

1. Introduction

1.1 The Board of Airline Representatives of Australia Inc

The Board of Airline Representatives of Australia (**BARA**) is the industry body promoting the safe and efficient operations of international airlines serving Australia for the benefit of consumers, businesses and tourism.

BARA's members provide 90 per cent of all international passenger flights to and from Australia. Currently there are 29 members of BARA, as set out in Annexure B to this application.

The sustainable growth and potential of Australia's international aviation industry depends on the right economic policy framework and legislative and regulatory arrangements. BARA's role is to provide a collective voice on these and other issues that affect international aviation.

A core service BARA provides to its members is to conduct collective negotiations for the provision of Essential Aviation Services¹ under its authorisation from the ACCC. This enables its member airlines to more cost-effectively obtain Essential Aviation Services, allowing them to focus their efforts on operating and growing their business activities in Australia.

At an operational level, BARA engages with airport operators, border agencies and other industry stakeholders to improve the experience, efficiency and safety outcomes for international passengers. BARA considers it is well positioned as an industry body to seek changes to economic and regulatory frameworks that benefit a wide range of stakeholders, including airlines, service providers and the travelling public.

1.2 Application for Authorisation

Authorisation A91200, granted by the ACCC in 2010, will expire on 5 June 2015. BARA is applying for revocation of the existing authorisation and substitution with a new authorisation for a seven year term to June 2022. This will allow BARA to continue to support a more productive and cost efficient international aviation industry in Australia.

On behalf of itself and its current and future members, BARA seeks authorisation to collectively negotiate and give effect to arrangements for the acquisition of Essential Aviation Services from:

- (a) the operators of Designated International Airports;
- (b) Airservices Australia;
- (c) Bureau of Meteorology;
- (d) Unisys Australia;
- (e) any other supplier that is the sole provider of those services at the relevant Designated International Airport; and

¹ See definition in Annexure A. In this submission, BARA refers to 'essential aviation services' rather than 'essential airport services'. This more accurately reflects the position that some of the services are not provided at the airport (eg en-route navigation services by Airservices Australia).

- (f) suppliers or potential suppliers of Australian Government-mandated security services that exhibit natural monopoly characteristics, where:
 - (i) the supplier or potential supplier requests or consents in writing to negotiate collectively with BARA members through BARA; and
 - (ii) prior to commencing negotiations, BARA provides the ACCC with:
 - A. a description of the Australian Government mandated security requirement service to be negotiated; and
 - B. a copy of the supplier's written request or consent to negotiate collectively with BARA pursuant to the terms of this authorisation,

including making and giving effect to arrangements or understandings in relation to the terms and conditions (including price) for the acquisition of those services.

Authorisation shall be subject to the conditions that:

- (a) no party shall be compelled to engage in collective negotiations; and
- (b) BARA shall not bind any members to any terms or conditions negotiated by BARA – each member must make its own decision whether to accept the terms and conditions offered by a supplier as a result of BARA's negotiations.

The definitions of Essential Aviation Services and Designated International Airports are provided in Annexure A to this submission.

1.3 Counterfactual

BARA has now been authorised by the ACCC to engage in collective negotiation of Essential Aviation Services on behalf of its members for almost ten years. In that time, BARA's collective negotiations have delivered considerable efficiencies and other benefits for all parties involved, with no relevant suppliers choosing not to negotiate collectively with BARA or public detriments of which BARA is aware.

BARA's members have stringent competition law compliance policies. This would prohibit BARA's members from engaging in collective negotiation processes unless explicit competition law exemptions are in place. As a result, if BARA's existing authorisation were not to be renewed, BARA would cease all collective negotiation activities from June 2015. This also reflects BARA's conservative approach to ensuring it remains compliant with Australia's competition laws.

In this counterfactual scenario, airports and other suppliers of Essential Aviation Services would negotiate with airlines individually, to the extent that this is possible. As a result, many airlines would be forced to accept standard terms and conditions imposed by the supplier with no input to or opportunity to negotiate those terms. It would also mean that all of the efficiencies and other benefits currently generated by BARA's collective negotiation processes would be lost.

In addition to collective negotiation with sole suppliers of Essential Aviation Services, BARA now also seeks authorisation to engage in collective negotiation with suppliers and potential suppliers of Australian Government-mandated security services provided by airlines that exhibit natural monopoly characteristics. BARA has sought this extension for two reasons.

Firstly, the current form of authorisation prevents BARA from working with potential suppliers of these services. Where a service exhibits natural monopoly characteristics, a new supplier is only likely to be able to compete effectively for the relevant market and displace an existing supplier if a mechanism exists that can enable the new supplier to contract with a majority of customers at the same time. If authorised to do so, BARA can provide such a mechanism.

For example, Unisys' contracts for the provision of the account for and authorise baggage reconciliation systems (**AAA BRS**) will be likely to expire during the term of the authorisation currently being sought by BARA. These services exhibit natural monopoly characteristics. If BARA is able to run a competitive tender process in which all of its members participate, it is likely that multiple potential suppliers will compete to provide these services. On the other hand, if BARA's authorisation is not extended, BARA will be unable to run a competitive tender process or effectively canvas proposals from other potential suppliers of AAA BRS services. BARA does not believe any other organisation will be able to run such a process either. The likely result is therefore that competition to supply AAA BRS services will not be possible.

Somewhat ironically, therefore, the likely counterfactual to BARA's requested authorisation is that no effective competition for the supply of Australian Government mandated security services such as the AAA BRS will be possible, and the existing suppliers will instead become entrenched as monopoly providers of those services.

Second, Australia's aviation security requirements will continue to adapt as security issues change and technologies evolve. As such, the Australian Government may mandate changed or additional security requirements for international aviation. Should there be multiple potential providers of a new security requirement, without the proposed extension to BARA's authorisation, BARA would be unable to play any part in assisting its members to negotiate the acquisition of relevant new security services or assisting the government to implement those requirements.

1.4 This submission

This submission is in support of BARA's application for authorisation on behalf of BARA and its members, pursuant to subsections 88(1A) and 88(1) of the *Competition and Consumer Act 2010* (**CC Act**).

Structure

The structure of this submission is as follows:

- Section 2 provides background on BARA, including its role and objectives as an industry body seeking to support safe and efficient international aviation in Australia;
- Section 3 describes Australia's international aviation industry, noting that few changes have occurred since granting of the existing authorisation in 2010. This section considers the challenges facing the industry and notes some observations from some recent relevant regulatory reviews;
- Section 4 describes the public benefits arising from BARA's negotiation processes; and
- Section 5 considers the effects on competition.

A formal definition of the conduct to be authorised is set out in Annexure A, and a list of BARA's current members is set out in Annexure B.

1.5 Confidentiality

The information set out in table 1 in these submissions contains information that is confidential as it details specific commercial negotiations between BARA and suppliers. Consistent with its 2010 application for authorisation, BARA requests pursuant to section 89(5) of the CC Act that this table be kept confidential by the ACCC. In the public version of this submission this information has been deleted and replaced with "[CONFIDENTIAL INFORMATION DELETED].

2. BARA's role and objectives

BARA is incorporated under the *Associations Incorporation Act 2009* (NSW). Its membership comprises airlines that operate scheduled international air services to and from Australia ('on-line' carriers). Members can also be 'off-line' carriers that conduct business in Australia but do not presently operate scheduled international air services to and from Australia.

The size of operations of BARA's member airlines in Australia varies greatly. Some airlines offer multiple daily services from a number of airports, while others operate one flight per day from a particular airport.

2.1 Vision and outcomes

BARA has published a *Vision and Outcomes for International Aviation in Australia*. BARA's vision is for 'High quality, adaptive and efficient' international aviation.

Underpinning this vision, BARA has identified the following four key outcomes necessary to boost competitiveness and productivity of industry participants:

Outcome 1: Timely and reasonably priced airport infrastructure

Outcome 2: Competitive supply of jet fuel

Outcome 3: Safe and efficient air navigation

Outcome 4: Environmentally sustainable growth

In April 2014, BARA published its policy paper on the need for *Timely and Reasonably Priced Airport Infrastructure*, which is available on BARA's website.

2.2 Objectives

BARA's primary objective, as set out in its Constitution, is to promote commercially viable operations and a safe and efficient international aviation in Australia.

BARA's operational objectives under its Constitution include:

- (a) providing a forum for members to discuss and agree its position on non-competitive matters relevant to scheduled international air services;
- (b) advocating and discussing members' interests with a wide range of stakeholders including governments, regulatory bodies, statutory authorities, industry associations, media and industry service providers;
- (c) negotiating terms of access (including pricing and non-pricing terms) for Essential Aviation Services consistent with its authorisation from the ACCC; and
- (d) disseminating relevant information to members including on matters of safety, security and the provision of aviation infrastructure necessary to conduct international aviation operations in Australia.

Under its Constitution, BARA's activities specifically exclude:

- (a) purporting to bind members to any arrangements with service providers or other industry stakeholders;
- (b) the sharing of commercially sensitive information among members; and
- (c) any other activities inconsistent with provisions of the CC Act and any other relevant legislation.

BARA's sole purpose is to promote the interests of its members in line with the objectives set out in its Constitution. As a non-profit association, BARA does not seek pecuniary gain for its members (within the meaning of the *Incorporated Associations Act 2009*). BARA does not represent the interests of Australian domestic carriers.

2.3 BARA's structure

BARA currently has 29 member airlines. Members have equal voting rights within the 'on-line' and 'off-line' issues considered by BARA. Members convene at least three times a year for general meetings and also for the annual general meeting.

An Executive Committee is elected at the annual general meeting in accordance with the requirements of the constitution. The 13 member committee represents a broad range of BARA's membership, and controls and manages BARA's affairs.

BARA employs a full-time Executive Director who is responsible for day to day operations and reports to the Executive Committee.

Members establish committees for the purpose of giving specialist advice or assistance. These committees can be permanent or ad hoc. There are three permanent committees that deal with issues relating to airport and government charges, security and passenger facilitation, and industrial relations.

2.4 Membership

BARA currently has 29 Member airlines, including many of the world's largest airlines. As noted earlier, the size of operations of BARA's member airlines in Australia varies greatly.

Qantas Airways and Virgin Australia maintain dedicated planning and pricing teams in undertaking negotiations over the provision and pricing of Essential Aviation Services. Both Qantas Airways and Virgin Australia undertake their own separate negotiations with suppliers in addition to participating in BARA's collective negotiations. This in part reflects their domestic operations, with which BARA has no involvement.

BARA is unaware of any other member airline that devotes dedicated resources to the provision and planning of Essential Aviation Services in Australia. Instead, the member airlines rely on BARA to lead the negotiations, and provide input into the process through BARA as required. This allows them to effectively participate in the provision and pricing of Essential Aviation Services without the need for dedicated resources in Australia.

2.5 Open, non-binding processes

A critical element of BARA's activities is to conduct open processes that involve and inform all members. BARA actively engages members during negotiations with suppliers, giving members equal opportunity to contribute to the negotiations. Members are also represented on the Executive Committee and on the specialist committees. This ensures that members have the opportunity to contribute to BARA's work across all of its activities.

Consistent with its constitution, BARA does not hold commercially sensitive or confidential information about its individual members. This allows BARA to maintain transparency in its dealings with members and suppliers. Where individual members have specific service requirements; for example, for airport lounge facilities, these services are negotiated directly between the airline and the airport.

As set out in its constitution and consistent with its authorisation, BARA does not bind its members to any of the outcomes reached with the suppliers of Essential Aviation Services. Each member airline can seek to separately negotiate price and non-price terms directly with suppliers. Details of BARA's collective negotiations and outcomes are described in section 4.

2.6 BARA's collective negotiation process

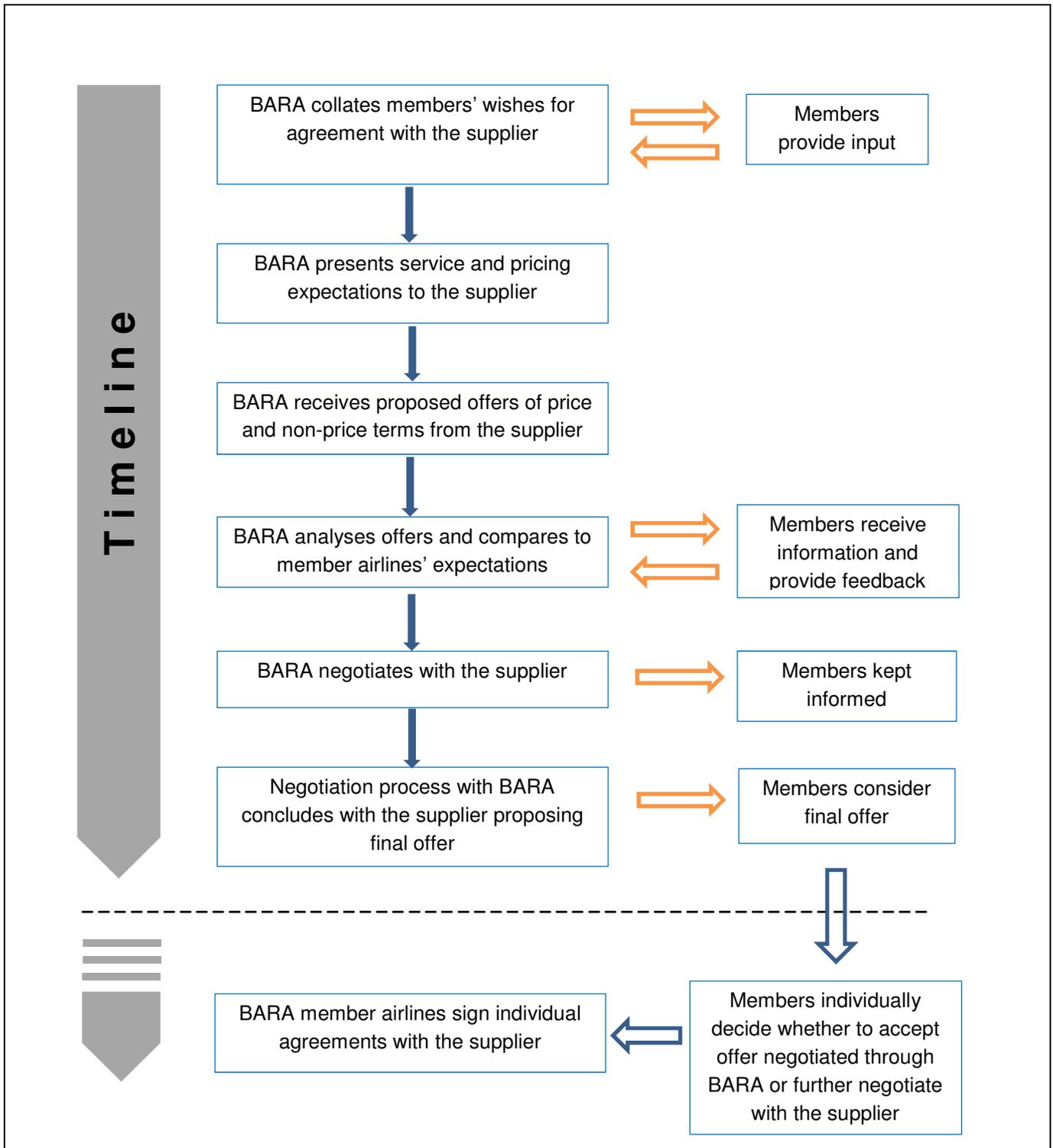
BARA actively represents the interests of its member airlines in negotiations with suppliers, negotiating services and service standards, pricing and non-price terms and conditions. These activities extend to both the negotiation of new agreements and the ongoing monitoring of outcomes under existing supplier agreements.

BARA conducts an open process of collective negotiations with suppliers that enables its members to contribute to BARA's negotiations. Figure 1 on the following page is a stylised view of the negotiation process that BARA is seeking to apply consistently with suppliers. It shows the process by which BARA contributes to a more efficient international aviation industry and delivers net public benefits. Actual processes differ depending on the supplier. In particular, the processes followed in negotiating with the international airports is different to that followed with Airservices, which is subject to prices notification by the ACCC.

Of benefit to both BARA and suppliers is for negotiations to commence with a well-defined position of the airlines' aggregate requirements. BARA is developing comprehensive documents that clearly articulate members' desires prior to the commencement of detailed negotiations. This improves the quality of the commercial negotiations for both BARA and suppliers. Suppliers can withdraw at any stage during the process and negotiate directly with BARA's individual member airlines. Similarly, individual BARA members can choose at any time to deal directly with the supplier.

At the conclusion of negotiations, BARA informs its members of the final price and non-price terms offered by the supplier. BARA may also highlight any issues that members may wish to take into account as they progress to sign (or not sign) individual agreements. Ultimately, each member airline must make its own decision whether to accept the terms and conditions negotiated through BARA. Members can choose to negotiate separate or amended terms directly with the supplier.

Figure 1. BARA collective negotiations with a supplier – activity and information flow



3. Industry overview

BARA does not consider that there have been any material changes in the market conditions over the provision and pricing of Essential Aviation Services since the ACCC's 2010 authorisation. The international airports are the sole providers of airport services in their respective markets and remain subject to 'light-handed' economic regulation. Airservices Australia (**Airservices**) is the monopoly provider of air navigation services and aviation rescue and fire fighting services. Airservices is subject to the prices notification provisions contained in the CC Act.

Since 2010, however, it has become clear that Australia's international aviation industry faces increasing capacity and price challenges. There are projected capacity issues with most suppliers of Essential Aviation Services. This includes airfields, international terminals and air navigation infrastructure.

The timely delivery of new capacity at reasonable prices to airlines will be critical in maintaining the competitiveness of Australia's international aviation industry. BARA's collective negotiation activities support the timely delivery of new capacity necessary to enable the continued growth.

The following section describes key industry trends and challenges, together with a brief summary of the recent reviews by the Productivity Commission (**PC**) and the Competition Policy Review.

3.1 Industry growth

Consistent with worldwide trends, Australia's international air travel has experienced tremendous growth over the last decade. Aviation travel has almost doubled from 16 million passengers to over 30 million per year over the last 10 years. The 'big four' airports in Sydney, Melbourne, Brisbane and Perth accounted for over 90% of these passengers.

The benefits of this growth to Australia are substantial. International experience indicates about 1,000 local jobs are generated for every million airline passengers.² International tourism contributes about \$25 billion annual to Australia's economy. More than one-fifth of Australia's trade, worth over \$100 billion annually, is carried by international aviation.³ A large proportion of this trade is carried on passenger flights in addition to dedicated freight aircraft.

A key industry growth driver has been the sustained improvement in the industry's productivity, reducing real airfares. In 1994 the cost of a one way economy flight from Sydney to Singapore was about \$2,100 in today's terms⁴. Now the same flight ranges from \$350 to \$850.

Many industry observers are forecasting continued strong growth in Australia's international aviation over the coming decades. Based on current trends, the Bureau of Infrastructure, Transport and Regional Economics has forecast that international passenger numbers will more than double to over 60 million over the next 20 years. This growth will create thousands of new jobs across Australia by boosting employment in the aviation and tourism industries.

Australia must be globally competitive to obtain this growth. To be successful, Australia's aviation infrastructure capacity will need to double and industry productivity will need to improve. BARA

² Joint Study on Aviation Capacity in the Sydney Region (March 2012), Report to the Commonwealth and NSW governments, p.iv

³ National Aviation Policy White Paper, pp. 31-32

⁴ Data provided by Qantas Airways and Australian Bureau of Statistics, 6401.0 - Consumer Price Index, Australia

has a key role to play in achieving this outcome through its collective negotiation and industry representation activities.

3.2 Increasing cost pressures

Billions of dollars of investment in new aircraft, airports and air navigation technologies will be necessary to maintain and grow the industry. A significant challenge is that providers of Essential Aviation Services have market power in setting the prices paid by international airlines. Combined, airports' investment needs and supplier market power will place upward pressure on the industry's cost base over time.

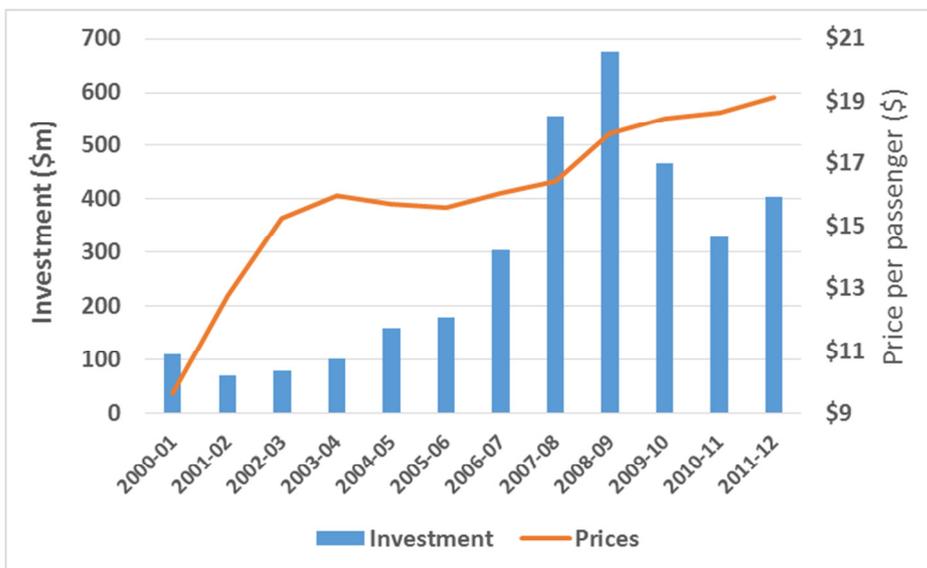
Airport charges, air navigation and security services fees are major cost drivers for international airlines operating to and from Australia. They are therefore focuses of BARA's collective negotiation activities.

International airports

Australia's major international airports are crucial assets in providing safe and efficient international aviation. The way in which they are managed influences safety, costs, productivity and the passenger experience. International airlines pay the major international airports over \$650 million annually in aeronautical landing and terminal charges.

As shown in Figure 2, prices per passenger paid to airports by international airlines in Australia have doubled in real terms over 12 years. The ACCC's *Airport Monitoring Report 2012-13* found that growth in passenger numbers and prices charged had provided the airport operators with increased revenues and margins, while service quality outcomes remained flat or declined.

Figure 2. Airport investment levels and average prices per passenger, 2000/1 to 2011/12^(a)



Notes: (a) Investment levels and average international prices for Sydney, Melbourne, Brisbane and Perth Airports
Source: Airport operators; ACCC prices monitoring reports

The costs of Australian Government-mandated security services provided at the major international airports have also increased substantially. As an example, at Sydney Airport, security costs have increased from about \$9 million in 2001-02 to over \$76 million in 2011-12. It

can be expected that some airline and airport security requirements will increase in response to emerging technologies and reviews of appropriate security measures.

Air navigation

Air navigation is critical to safe and efficient airline operations. Air navigation services in Australia's flight information region are provided by the Australian Government-owned Airservices Australia.

Airservices Australia is a substantial cost component of Australia's aviation, requiring over a billion dollars in annual funding.⁵ Equally important, the investments Airservices Australia makes in its air navigation technologies directly impact on the efficiency of airline operations, especially flight times and fuel burn. Improvements in Airservices Australia's efficiency and service quality can therefore translate into meaningful reductions in both the prices paid by airlines, and total airline operating costs.

Airservices Australia's pricing is subject to the prices notification provisions contained in the CC Act. BARA remains actively involved in monitoring and contributing to both the delivery of capital projects under the existing pricing agreement and the development of the next pricing agreement from 1 July 2016.

3.3 Recent regulatory reviews

Two recent regulatory reviews were undertaken by the Productivity Commission (**PC**) and the Competition Policy Review. These reviews highlight that there have been no fundamental changes to the provision and pricing of Essential Aviation Services since 2010.

Productivity Commission Review 2011

In 2011, the Australian Government directed the PC to report on the effectiveness of the economic regulatory regime for airport related services. The PC's final report was released in 2012.

As background, Melbourne, Brisbane and Perth airports were privatised in 1997 through long-term leases. At the time, it was recognised that these airports had significant freedom from constraint in the prices they could charge airlines. As such, the prices levied by airport operators were subject to price controls, known as 'CPI-X price caps', which were administered by the ACCC.

Following a PC inquiry in 2002, the Australian Government removed the CPI-X price caps and replaced them with 'light-handed' economic regulation. Under this policy, airlines and airport operators are required to commercially negotiate the provision and pricing of airport services. The regime is underpinned by annual monitoring of airport prices, profits and service quality outcomes by the ACCC.

Sydney Airport was privatised through a long term lease in June 2002, and is subject to the same light-handed economic regulation as the other airports.

⁵ Airservices Australia, 2011 Draft Prices Notification.

The focus of the PC's 2011 inquiry included:

- aeronautical services and facilities provided by airport operators;
- land transport facilities providing access to the airports; and
- the effectiveness of remedies in dealing with potential abuses of market power.

The inquiry found that aeronautical investment had increased markedly under the light-handed monitoring regime for airports that replaced price cap regulation. The PC concluded that charges did not indicate inappropriate exercise of market power and generally service quality outcomes were deemed to be reasonable. However, it was noted that Sydney and Perth airports were rated as 'poor' by some respondents.

The PC inquiry also noted that the ACCC, in its monitoring role, had reported that some airports may have earned monopoly rents. Despite the threat of regulatory intervention for airports that abuse their market power, none has occurred. The PC suggested that some strengthening of the regulatory framework is needed to monitor price setting. Specifically, the PC proposed that an airport should be required to 'show cause' why its conduct should not be subject to a formal price inquiry.

The PC's recent findings serve to confirm the importance of BARA's role in representing international airlines in negotiations with the major international airports. As described in Section 4, BARA's collective negotiation activities have delivered meaningful improvements in price and non-price terms to its member airlines. BARA's collective negotiation activities have also enabled it to provide in-depth and informed input into reviews of airport regulation by the PC.

Competition Policy Review

In early 2014, the Australian Government commissioned an independent review of Australia's competition laws and policy. The broad scope of the review includes identifying regulatory and other barriers that restrict competition and reduce productivity. An *Issues Paper* was released in April 2014.

BARA responded with a submission to the Competition Policy Review in June 2014. BARA's submission detailed the cost pressures facing the international aviation industry in relation to infrastructure for jet fuel supply, airports, air traffic management and aviation rescue and fire fighting services. BARA outlined reforms that it considers are needed in these three key cost areas, including:

- giving competing providers of jet fuel the necessary access to the jet fuel supply chain;
- ensuring the Australian Government is prepared to change the regulatory requirement if there is an individual airport operator not acting in accordance with the intent of the light-handed economic regulatory regime; and
- giving the PC the task of developing a set of principles that Airservices will use to price its services.

Together, these reforms would significantly improve the efficiency and competitiveness of international airlines operating to and from Australia. They would enable Australia to obtain a greater share of international tourism and trade, ultimately increasing employment and income across a number of sectors of the Australian economy.

In its draft report, the Review Panel's position on the issues raised by BARA were that:

1. if the prices charged by the major international airports continue to increase as fast as they have been, this would raise concerns that may warrant a move away from light-handed regulation for individual airports; and
2. the competition in jet fuel supply and the pricing structure for services provided by Airservices should be a focus of further reform efforts in the sector.

BARA welcomes these draft findings as a basis for encouraging ongoing reform. Again, BARA's collective negotiation activities provides it with the in-depth knowledge to effectively input into such reviews to effect meaningful changes to the economic and regulatory frameworks as applied to international aviation.

4. Benefits of authorisation

BARA's collective negotiation process has delivered, and will continue to deliver, considerable public benefits, including:

- substantial transactional efficiencies, both for BARA members and for suppliers of Essential Aviation Services;
- a greatly improved ability for BARA members to have meaningful input into negotiations with suppliers where the outcomes of negotiations might otherwise not be reflective of the outcomes expected in a workably competitive market;
- promotion of efficient infrastructure investment through the provision to suppliers of more accurate data on members' collective service;
- provision of improved information to members about Essential Aviation Services and the contractual supply terms being offered; and
- an enhanced ability for BARA to contribute to the safety and competitiveness of Australia's international aviation industry.

In addition, authorising BARA to negotiate with potential suppliers of Australian Government-mandated security services will provide the following further benefits:

- permit BARA to assist with the efficient and effective implementation of any future requirements specified by the Australian Government to enhance the security of Australian international aviation; and
- facilitate market entry and provide competition in markets in which competition otherwise wouldn't be possible by enabling BARA to conduct industry-wide tenders.

Each of these public benefits is described in more detail below.

4.1 Transaction cost savings

BARA estimates that it generates in the order of \$2 million in transaction cost savings for its member airlines for every agreement negotiated with the major international airports. This estimate is based on BARA's own costs of about \$200,000 to both negotiate a new agreement and then monitor outcomes over the term of that agreement. This is explained in greater detail below.

BARA invests at least \$150,000 in negotiating each new agreement, which generally takes about 12 months. This includes:

- direct staff costs associated with analysing, preparing positions and negotiating key commercial terms, including services, service standards, expenditures and price paths, and
- engaging specialist economic and legal advice for the review of agreement terms and conditions.

This level of investment is considered modest given that, in aggregate, international airline charges payable to the larger airports can amount to many hundreds of millions of dollars each year. In addition, BARA invests at least \$50,000 per year in the ongoing monitoring of individual

agreements. This includes attending meetings, analysing expenditures and service level outcomes, and negotiating specifically identified projects in agreements (eg, major terminal expansions).

Usually, over 20 of BARA's members operate flights to each of the major international airports. If each were to engage in separate negotiations and ongoing monitoring of agreement outcomes, the total transaction costs of BARA members alone could amount to \$4 million per airport agreement. In practice, given their limited scale of operations in Australia, many airlines could not justify devoting the resources to properly negotiate agreements individually. Without authorisation for BARA to negotiate collectively on their behalf, these airlines would be likely to be forced to simply accept the terms and conditions offered by the airport operators. Nevertheless, BARA expects that, if BARA could not engage in collective negotiation on behalf of its members, about half of those member airlines would likely conduct full negotiations of most major agreements on their own.

Based on this assumption, BARA's collective negotiations save its members an estimated \$2 million per agreement in collective transaction costs. As markets for international air transportation are highly competitive, it is likely that most or all of these savings will ultimately be passed through to consumers. In addition, each supplier with which BARA negotiates is likely to realise its own substantial savings as a result of being able to conduct each negotiation once with BARA and administer just one form of agreement rather than be forced to conduct separate negotiations with multiple airlines, resulting in separate forms of agreement with each.

While BARA has not undertaken collective negotiations with the operator of Gold Coast Airport, opportunities for productive engagement may occur in the future. As such, BARA considers it appropriate to maintain Gold Coast Airport as a Designated International Airport.

4.2 Increased input for members into contract negotiations

As the Commission has noted in its determination of previous BARA authorisation applications, Designated International Airports generally operate as monopoly providers in geographically and functionally distinct markets. Similarly:

- Airservices Australia and the Bureau of Meteorology are monopoly suppliers of relevant Essential Aviation Services; and
- once established as the incumbent supplier, Unisys or any other supplier of Australian Government-mandated security requirements that exhibits natural monopoly characteristics is also likely to enjoy a significant degree of freedom from normal competitive constraints when negotiating with airlines.

As a result, if BARA were not able to negotiate collectively on behalf of its members, many members would have little ability to have meaningful input into the terms on which they must acquire Essential Aviation Services. This would be likely to result in the imposition by suppliers of supply terms that would not reflect of the outcomes expected in a workably competitive market; in turn, giving rise to likely allocative inefficiencies. While BARA's collective negotiations do not mean that it has significant countervailing market power, it does provide the ability for its member airlines to effectively input into negotiation processes and negotiate meaningful improvements in price and non-price terms.

By combining technical expertise within BARA with member input, BARA can:

- Clearly articulate its members' needs and expectations in the course of negotiations with suppliers,
- critique the fairness and appropriateness of proposed supply terms; and
- robustly assess the efficiency of proposed expenditure and pricing by suppliers.

Through its collective negotiation processes, BARA has been able to negotiate better, more balanced contracts and achieve material improvements in the price and non-price terms and conditions with suppliers. The following provides a brief description of BARA's more substantive negotiations with the suppliers of Essential Aviation Services.

International airports

BARA is in regular negotiations with the four largest international airports (Sydney, Melbourne, Brisbane and Perth) to either negotiate new agreements or monitor the implementation of existing agreements. BARA has also discussed future infrastructure needs with Adelaide Airport. BARA's members have not requested that it represent them in negotiations with the operator of Gold Coast Airport since 2010.

A summary of the more substantial negotiations is provided in Confidential Table 1. The information provided in this table clearly demonstrates that BARA's collective negotiation arrangements are delivering meaningful improvements in both price and non-price terms for acquisition of Essential Aviation Services.

Airservices Australia

BARA's negotiations with Airservices Australia differ from those with airports because Airservices' prices are subject to the prices notification provisions contained in the CC Act. BARA is an active member of Airservices' Pricing Consultative Committee. Through its member meetings, BARA provides its members with the opportunity to discuss the quality of navigation services and to identify areas of potential improvement.

As explained in BARA's submission to the Competition Policy Review, BARA considers that there is more to be done to achieve efficient investment and price outcomes by Airservices. BARA continues to raise its concerns over Airservices investments and pricing structures directly with Airservices and in relevant industry reviews and inquiries.

Bureau of Meteorology

BARA's discussions and meetings with the Bureau of Meteorology (**BoM**) for aviation-related weather services have led to improvements over time in the transparency of BoM's costs and charges. The BoM is now providing more data to justify its charges and is prepared to engage in fuller discussions over the pricing of its services.

Confidential Table 1 - [Confidential information deleted]

Other suppliers of Essential Aviation Services

BARA has continued to negotiate with Unisys over the ongoing provision of a government-mandated security service on behalf of its member airlines. BARA has negotiated ongoing improvements in the cost and quality of the service provided.

4.3 Overcoming information asymmetries

BARA's collective negotiations ensure that one set of consistent information is provided to international airlines. This ensures that suppliers cannot be selective in the information provided to individual airlines over issues such as services, service standards and planned capital projects.

Without authorisation and instead relying on separate negotiations, it would be difficult for individual airlines to be assured that information provided to them was complete and consistent with that provided to other airlines.

4.4 Efficient infrastructure investment

By providing a collective view of members' service requirements, BARA enables service providers to more effectively plan the delivery of necessary aviation infrastructure capacity. This input to planning is critical to ensuring there is sufficient capacity to enable the forecast growth in international passenger numbers. Examples include BARA's submissions on airport draft master plans and detailed negotiations with suppliers as documented in Table 2.

Outcomes would be less efficient if suppliers had to negotiate separately with individual airlines. Individual airlines would need to prepare submissions on airport master plans or, more likely, not provide a position in many instances. This outcome is likely because, even for large global airlines, their scope and level of operations in Australia may not justify the costs associated with engaging with suppliers over services, service standards and capital projects.

4.5 Industry representation and input

BARA's activities include advocating and discussing members' interests with a wide range of stakeholders including governments, regulatory bodies, statutory authorities, industry associations, media and industry service providers. BARA's effectiveness in this role is greatly increased by the insights and in-depth knowledge gained through representing its members in collective negotiations. Examples include submissions to the PC and Competition Policy Review as described in section 3. In addition, BARA represents international airlines in numerous aviation security and passenger facilitation forums.

BARA's authorisation allows for more effective input by international airlines into public policy issues. By providing effective input, BARA better equips regulatory bodies to make sound policy decisions, which ultimately contribute to the safety and efficiency of Australia's international aviation industry.

If BARA were to cease collective negotiations it could still represent its members on a range of issues, but its effectiveness would be diminished. As a consequence, international airlines could not contribute as effectively to the review of the economic and regulatory frameworks as applied to international aviation in Australia.

Table 2 - BARA member input into improved infrastructure investment

| Supplier | Issue | Outcomes/status |
|-----------------------|--|---|
| Perth Airport | Infrastructure planning | <p>BARA sought input from its members on Perth Airport's <i>2014 Draft Master Plan</i>, which covered potential investment in an additional new runway and new international terminal pier.</p> <p>By engaging members, BARA was able to respond to Perth Airport with consolidated views from its members on the international passenger forecasts and the relative merits of the two major investment projects.</p> <p>BARA submitted that the benefits from investing in a new international pier are likely to be greater than those gained from an additional runway. BARA has stated that the new pier will deliver increased capacity and much needed improvements in service quality to international aviation at Perth Airport. However, BARA recommended that Perth Airport consider deferring the construction of the additional runway. BARA sees that the benefits of an additional runway would be largely confined to domestic aviation, which faces some uncertainty in respect to demand from WA's resources sector.</p> |
| Perth Airport | Unplanned capital expenditure | <p>Perth Airport canvassed input from BARA on three projects: rapid exit taxiway, low visibility infrastructure and fuel hydrants. With feedback from its members, BARA was able to give a comprehensive response on the relative merit of the projects to international airlines. In particular, BARA noted issues relating to:</p> <ul style="list-style-type: none"> • the need for better cost benefit analysis to demonstrate the net benefits that would accrue to the airlines from the infrastructure investment • Perth JUHI seeking to shift infrastructure costs on the airport operator, giving the airlines no or limited visibility over the reasonableness of costs passed through to international aviation. |
| Sydney Airport | Sydney Airport 2013 <i>Preliminary Draft Master Plan</i> | <p>BARA engaged its members to provide feedback on Sydney Airport Corporation Limited's (SACL's) <i>Draft Master Plan</i>. BARA subsequently provided a comprehensive response covering the potential of Sydney Airport to Australia's aviation industry, planned increases in capacity and airport efficiencies. Other points raised included:</p> <ul style="list-style-type: none"> • the need for extensive engagement with individual airlines on certain proposed initiatives • provision of more detailed information on the capital investment required to support the <i>Draft Master Plan</i> • the criticality of some assumptions used, such as forecast passenger numbers per aircraft |
| Sydney Airport | Infrastructure upgrade to permit Cat II/IIA operations on Rwy. 16R | <p>BARA actively participated in discussions with Airservices and SACL, which facilitated the introduction of Cat II/IIA services being available by June 2013. The benefits of this project include reduced incidence of diversions due to low visibility conditions and associated cost savings.</p> |

4.6 Assisting implementation of international aviation security measures

From time to time, the Australian Government will need to mandate changed or additional security measures. It is important that Australia's aviation industry is able to implement such security measures quickly and efficiently.

Where security measures require security related services to be acquired by airlines, suppliers of the relevant services need to be selected by all of the various international airlines operating in Australia and terms of supply negotiated. However, since there can be no existing 'sole provider' of a new security service, without an extension to BARA's current terms of authorisation, BARA would be unable to play any part in assisting with the implementation of those measures. This would be likely to have at least the following effects:

- it would extend the time required to put new security measures in place, as any potential provider of relevant services will need to negotiate with every international airline separately; and
- the cost of implementing the new security service would likely be higher, as it will be more difficult for potential suppliers to gain a proper understanding of the needs of all international airlines if BARA is not able to assist with this process.

By contrast, authorising BARA to negotiate with potential suppliers of Australian Government-mandated security services would enable BARA to facilitate the timely and efficient delivery of such services when the need next arises. An illustration of the significant public benefit this may deliver is provided by the example of the implementation in 2001 of an account for and authorise baggage reconciliation system (**AAA BRS**) service. The objective of the AAA BRS Service is to ensure that all:

1. checked bags that are loaded on an aircraft have been assigned to that flight,
2. checked bags which are loaded are accounted for, and
3. unaccompanied bags are identified and subject to extra security controls.

Prior to the terrorist attacks of 11 September 2001, the then Department of Transport and Regional Services (**DoTaRS**, now the Department of Infrastructure and Regional Development) had been considering options for a AAA BRS system for international flights in Australia. However, no decision had been made on how international airlines would procure this service from potential providers.

After the terrorist attacks of September 11, 2001, implementing the AAA BRS service became a matter of urgency for the Australian Government. Unlike many other Australian Government-mandated services that are provided by the airport operators (eg international passenger screening), the AAA BRS service was to be provided by the international airlines. It was, however, recognised that it would be difficult from a technical and commercial perspective for each airline to implement its own AAA BRS Service. Without a co-ordinated approach by the airlines, implementation of a AAA BRS service would have been delayed, which BARA considers would have been unacceptable to the Australian Government.

BARA was able to facilitate the process by engaging in a collective negotiation of the AAA BRS service. Recognising the broader public benefits of the system, BARA also invited non-BARA international airlines to participate in these negotiations. This ensured that the need for a AAA

BRS service did not act as a barrier to non-BARA member airlines operating to Australia if they did not have the ability to cost-effectively implement their own system.

Due to the urgency of the situation, BARA engaged in these collective negotiations without formal authorisation from the ACCC. BARA does not consider that it breached any competition laws in the way in which it conducted this process, which was necessary to deliver a vital security service to Australia's international aviation⁶. Nevertheless, given the strict and conservative competition law compliance processes introduced by many of BARA's members, it is unlikely that BARA would be able to facilitate the urgent implementation of such services again without authorisation to do so from the ACCC.

BARA's proposed extension to its existing authorisation would allow it to again assist in the implementation of security measures in a timely and efficient manner when the need next arises, providing benefits for the safety of all Australian travellers. As with AAA BRS, BARA would expect that relevant Australian Government departments and agencies would be closely involved with the delivery of any new mandated security service.

4.7 Facilitation of competition in natural monopoly markets

Australian Government-mandated security services, such as the AAA BRS service, will in practice often only be able to be supplied by a single supplier at each airport, or will be most efficiently supplied by a single supplier to the majority of airlines; ie, they will exhibit natural monopoly characteristics. This means that, once a provider has been appointed to provide such services, that supplier's position may be difficult for any new entrant to challenge.

As an example, Unisys' contracts for supply of AAA BRS services to BARA members will expire in the next term of BARA's authorisation. BARA wishes to run a competitive tender process to enable other potential suppliers of this service an opportunity to compete to supply these services. BARA will be unable to run such a process or effectively canvas proposals from other potential suppliers of AAA BRS services without an extension of its authorisation to enable this. If BARA's authorisation is not extended in this way, it is unlikely that any new entrant will be able to negotiate with all international airlines simultaneously in the way necessary to be able to effectively compete with the incumbent supplier in this market.

Somewhat ironically, the likely effect is therefore that, without the proposed extension to BARA's authorisation, the terms of the current authorisation are likely to inhibit competition and entrench Unisys' position as a monopoly provider of AAA BRS services. A similar position is likely to arise with any future Australian Government-mandated security services that exhibit natural monopoly characteristics. By contrast, if BARA is authorised to run competitive tender process and negotiate collectively with 'potential' suppliers of Australian Government-mandated security services, it can lower barriers to entry and facilitate effective competition for these services. The result will be likely increases in efficiency through the periodic application of competitive pressures to incumbent suppliers, and cost savings for the industry that are likely to ultimately be passed through to consumers.

⁶ The process was voluntary and BARA did not purport to bind any of its members in negotiations to any aspects of the AAA BRS Service. Each individual airline entered into its own agreement with the service provider.

5. Effects on competition

5.1 Affected markets

BARA's activities are relevant to two separate but related markets (or groups of markets) – markets for relevant Essential Aviation Services and the downstream markets for international air services. These have been previously defined in its applications for authorisation and have been accepted by the ACCC in subsequent determinations. BARA considers the previously accepted market definitions are suitable in assessing its 2015 authorisation.

The two groups of markets are summarised below.

- **The primary markets – markets for Essential Aviation Services**

Essential Aviation Services are defined in Annexure A, but comprise the services and facilities purchased by international airlines that are necessary for the operation and maintenance of civil aviation (defined in Annexure A). The suppliers of these Essential Aviation Services to international airlines include the major international airports, Airservices and BoM. Many of these suppliers are recognised as having significant market power in setting price and non-price terms and conditions.

- **Downstream markets – the markets for international air services**

As per BARA's previous authorisations, it is generally agreed that there are three broad markets: passenger freight; freight transport; and the sale of air travel. BARA's proposed authorisation does not extend to the sale of air travel. Whilst competitive intensity varies, international passenger and freight markets are generally competitive.

5.2 No lessening of competition

There is no evidence that BARA's activities have impacted the competitive supply of Essential Aviation Services or international air services. On the contrary, BARA's collective negotiations are pro-competitive in each of these markets delivering value to the industry. There is a range of reasons for this:

- **Suppliers must be sole suppliers, or request or consent to participate in BARA's collective negotiation process.**

In all instances in which BARA currently engages in collective negotiation on behalf of its members, the suppliers are monopoly suppliers of the services in question. As a result, the authorised conduct does not create any imbalance in bargaining power but, rather, merely helps to address the imbalance that is otherwise likely to exist. In circumstances where BARA may seek to negotiate with a potential supplier of Australian Government-mandated security services, collective negotiation will only occur where the potential supplier requests or consents in writing to that process. Any potential supplier that fears that the collective negotiation process may create an imbalance in bargaining power or in any other way inhibit competition is free to decline to participate in the process.

- **Promotion of investment.**

BARA facilitates the orderly and timely rollout of infrastructure necessary for international airlines to compete in Australia.

- **Cost reduction and facilitation of new market entry.**

By reducing the operating costs of its members, BARA enhances the ability of individual airlines to provide commercially viable services and compete in Australia. Further, by reducing the cost of operating in Australia, BARA's collective negotiation processes are likely to facilitate new entry and thereby promote increased competition in the markets for international air services.

- **Competition between members for Essential Aviation Services is low.**

The level of competition between member airlines for Essential Aviation Services is low, even when there are capacity issues to be addressed. Emerging or acute capacity issues at the major international airports are in the first instance addressed through the introduction of slot management schemes, as has occurred at Brisbane and Perth Airports (Sydney Airport has a legislated slot management scheme). In the medium to long term, airport master planning processes and ongoing capital investment programs are designed to ensure there is sufficient capacity to meet the needs of all airlines operating to the airport.

- **No inappropriate sharing of information.**

As noted in section 2, BARA does not obtain from or share commercially sensitive information between members. BARA's constitution also makes explicit reference to excluded activities and compliance with the CC Act and other relevant legislation.

Combined with the low competition between members for Essential Aviation Services, BARA does not consider that there are any anti-competitive deterrents associated with its authorisation and collective negotiation activities.

5.3 Promotion of potential competition

As described in section 4.7 above, Australian Government-mandated security services such as the AAA BRS service are likely to exhibit natural monopoly characteristics. This means that, once a provider has been appointed to provide such services, that supplier's position is likely to become difficult or impossible for a new entrant to challenge.

Any potential competitor would be unable to compete effectively in or for such a market by seeking to win the business of customers individually. Instead, to successfully enter such a market, a new entrant would need to enter with a critical mass of customers from inception. This is likely to be very difficult for a new entrant to achieve on its own. However, BARA could facilitate this by running competitive tenders and, in this way, lower barriers to entry and facilitate competition for markets in which the position of the incumbent would otherwise be entrenched.

5.4 Conclusion

BARA considers that its collective negotiation activities deliver benefits to its members, suppliers, international passengers and customers of international freight services. There is no evidence to indicate actual, or potential, anti-competitive detriment from BARA's collective negotiations.

For these reasons, BARA submits that there are net public benefits from continuing authorisation to collectively negotiate on behalf of its members with suppliers of Essential Aviation Services.

Annexure A: Description of conduct to be authorised

On behalf of itself and its current and future members, BARA seeks authorisation to collectively negotiate and give effect to arrangements for the acquisition of Essential Aviation Services at Designated International Airports from:

- (a) the operators of those Designated International Airports;
- (b) Airservices Australia;
- (c) Bureau of Meteorology;
- (d) Unisys Australia;
- (e) any other supplier that is the sole providers of those services at the relevant Designated International Airport; and
- (f) suppliers or potential suppliers of Australian Government-mandated security services that exhibit natural monopoly characteristics, where:
 - (i) the supplier or potential supplier requests or consents in writing to negotiate collectively with BARA members through BARA; and
 - (ii) prior to commencing negotiations, BARA provides the ACCC with:
 1. a description of the Essential Aviation Service proposed to be negotiated; and
 2. a copy of the supplier's written request or consent,

including making and giving effect to arrangements or understandings in relation to the terms and conditions (including price) for the acquisition of those services.

Authorisation shall be subject to the conditions that:

- (a) no party shall be compelled to engage in collective negotiations; and
- (b) BARA shall not bind any members to any terms or conditions negotiated by BARA – each member must make its own decision whether to accept the terms and conditions offered by a supplier as a result of BARA's negotiations.

Designated international airports

In this application, Designated International Airports means the following international airports:

- Adelaide Airport
- Brisbane Airport
- Cairns Airport
- Darwin Airport
- Melbourne Airport
- Perth Airport
- Sydney Airport
- Gold Coast Airport

Essential aviation services

In this application, Essential Aviation Services means: aeronautical services, staff-related access services, essential office and operational accommodation, airline communication systems, common user terminal equipment, air traffic control services, aviation rescue and fire fighting services and aviation weather services as further defined below:

Aeronautical services has the meaning set out in Part 7.02A of the *Airports Regulations 1997*. As at the date of this authorisation, that definition provided that aeronautical services mean the following.

Aircraft-related services and facilities

- Runways, taxiways, aprons, airside roads and airside grounds
- Airfield and airside lighting
- Aircraft parking sites
- Ground handling (including equipment storage and refuelling)
- Aircraft refuelling (including a system of fixed storage tanks, pipelines and hydrant distribution equipment known as a Joint User Hydrant Installation or JUHI)
- Airside freight handling and staging areas essential for aircraft loading and unloading
- Navigation on an airfield (including nose-in guidance systems and other visual navigation aids)
- Airside safety and security services and facilities (including rescue and fire-fighting services and perimeter fencing)
- Environmental hazard control
- Services and facilities to ensure compliance with environmental laws
- Sites and buildings used for light or emergency aircraft maintenance

Passenger-related services and facilities

- Public areas in terminals, public amenities, lifts, escalators and moving walkways
- Necessary departure and holding lounges, and related facilities
- Aerobridges and buses used in airside areas
- Flight information and public-address systems
- Facilities to enable the processing of passengers through customs, immigration and quarantine
- Check-in counters and related facilities (including any associated queuing areas)
- Terminal access roads and facilities in landside areas (including lighting and covered walkways)
- Security systems and services (including closed circuit surveillance systems)
- Baggage make-up, handling and reclaiming facilities
- Space and facilities, whether in landside or airside areas, that are necessary for the efficient handling of arriving and departing aircraft (eg airline crew-rooms and airline operations centres)

Staff-related access services

Charges in relation to staff access to the airport, including:

- Aviation Security Identity Cards;
- Airside drivers licences and training;
- Training staff to use airport equipment (particularly aerobridges); and
- Staff car parking

Essential office and operational accommodation

Accommodation at airports for operational and clerical/customer service staff. These areas are relatively small but need to be close to passenger processing areas. These accommodation services tend to be provided under standard leasing arrangements and, whilst they are negotiated directly between the airport operator and airlines, BARA has on occasion been requested by members to become involved with airports in a general approach to setting rents and non-price terms.

Airline communications systems

Access to on-airport radio communication systems in order to facilitate the operational activities of customer service staff involved with ensuring the on time movement of passengers and aircraft. These systems often involve the airport operator in the provision of dedicated equipment for a RF network for a particular airline for the terminal and apron precincts or access to the wider RF network(s). The airport operator generally charges airlines for these facilities separately to general aeronautical charges. The charges can take the form of a licence, lease or rental payment. As with rents/lease payments for essential office and operational accommodation, BARA members from time to time have requested that BARA become involved with the pricing of airline communication systems.

Common user terminal equipment (CUTE)

Information and telecommunications services that link common user check-in desks to individual airline booking systems and airport baggage handling control systems. At the major international airports CUTE services are provided by the airport operator.

Air traffic control services

These services are currently provided by Airservices and include:

- Terminal navigation services
- En-route navigation services

Aviation rescue and fire fighting services

These services are currently provided by Airservices Australia.

Aviation weather services

These services are currently provided by BoM, but potentially by others.

Annexure B - BARA members

AIRCALIN

AIR CANADA

AIR INDIA

AIR MAURITIUS

AIR NEW ZEALAND

AIR VANUATU

ASIANA AIRLINES

CATHAY PACIFIC AIRWAYS

CHINA SOUTHERN AIRLINES

DELTA AIR LINES

EMIRATES

ETIHAD AIRWAYS

EVA AIR

FIJI AIRWAYS

GARUDA INDONESIA

JAPAN AIRLINES

KOREAN AIR

MALAYSIA AIRLINES

PHILIPPINE AIRLINES

QANTAS AIRWAYS

QATAR AIRWAYS

ROYAL BRUNEI AIRLINES

SINGAPORE AIRLINES

SOUTH AFRICAN AIRWAYS

THAI AIRWAYS

TURKISH AIRLINES

UNITED AIRLINES

VIETNAM AIRLINES

VIRGIN AUSTRALIA

