



# Draft Determination

**Application for revocation of A91466 and the substitution of  
authorisation AA1000682**

**lodged by**

**The Board of Airline Representatives of Australia Inc**

**in respect of**

**Collective bargaining on behalf of its members with providers of  
Essential Aviation Services**

**Authorisation number: AA1000682**

12 February 2025

Commissioners: Keogh  
Ridgeway  
Williams

## Summary

The ACCC proposes to grant authorisation to the Board of Airline Representatives of Australia Inc to enable it to continue to collectively bargain on behalf of its current and future members and to make and give effect to arrangements for the acquisition of 'Essential Aviation Services' from operators of international airports and other particular service providers.

The ACCC previously granted authorisation to BARA in 2015 for the same conduct. This authorisation is due to expire on 16 April 2025.

The ACCC proposes to grant authorisation for 10 years.

The ACCC considers the conduct will continue to result in public benefits, primarily in the form of transaction cost savings and greater input into contracts. The ACCC considers the conduct is likely to result in minimal, if any, public detriment.

The ACCC invites submissions in relation to this draft determination before making its final decision.

## 1. The application for authorisation revocation and substitution

- 1.1. On 28 October 2024, the Board of Airline Representatives of Australia Inc (**BARA**) lodged an application to revoke authorisation A91466 and substitute authorisation AA1000682 for the one revoked with the Australian Competition and Consumer Commission (the **ACCC**). BARA is seeking authorisation to enable it to continue to collectively bargain on behalf of its members (international airlines) and to make and give effect to arrangements for the acquisition of 'Essential Aviation Services' from operators of international airports and other particular service providers.
- 1.2. This application for revocation and substitution was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would result, or be likely to result, in a benefit to the public and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct (ss 90(7) and 90(8) of the Act (the **authorisation test**)).

## Background

- 1.3. BARA is an incorporated association and is the peak industry representative organisation for international airlines in Australia. There are currently 38 member airlines,<sup>1</sup> which collectively account for 60% of all international capacity operated to Australia. However, the size of BARA's member airlines in Australia varies with some

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<sup>1</sup> A current list of BARA's members is available on the ACCC's [public register](#) for this matter.

offering multiple daily services from a number of airports, while others operate one flight per day from a particular airport.

- 1.4. BARA's members' share of international aviation compared to 2015 has reduced (formerly at around 90%) which is a result of Qantas electing to cease BARA membership. However, BARA submits that Qantas had historically removed itself from these collective bargaining agreements conducted by BARA on the basis that as the de-facto home carrier in Australia and with a substantial domestic footprint, Qantas preferred to negotiate its own outcomes with the same providers as BARA.
- 1.5. BARA submits that there have been no material changes in the market structure over the provision and pricing of Essential Aviation Services since the ACCC's 2015 authorisation.
- 1.6. BARA submits that its role is to provide a collective voice on issues that affect international aviation including economic policy, legislative and regulatory arrangements. BARA further submits that a core service it provides to its members is to conduct collective negotiations for the acquisition of Essential Aviation Services to enable its member airlines to obtain these services on more cost-effective terms, allowing members to focus their efforts on operating and growing their respective businesses in Australia.
- 1.7. While BARA collectively negotiates on behalf of its members, it does not have any actual or ostensible authority to enter into any agreements so as to bind its members.

## The Conduct

- 1.8. BARA is seeking authorisation as revised and updated on 24 January 2025, on behalf of itself and its current and future members, to collectively negotiate, make and give effect to arrangements for the acquisition of Essential Aviation Services (defined below) from:
  - (a) the operators of all Designated International Airports as defined below and updated by the Department of Infrastructure, Transport, Regional Development, Communication and the Arts, or its successor Government Department
  - (b) Airservices Australia
  - (c) Bureau of Meteorology
  - (d) Unisys Australia or other providers of IT services required to meet mandatory regulatory or security operational requirements
  - (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:
    - a. the supplier or potential supplier requests or consents in writing to negotiate collectively with BARA members through BARA; and
    - b. prior to commencing negotiations, BARA provides the ACCC with:
      - i. a description of the Australian Government mandated security requirement service to be negotiated; and

- ii. 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.

1.9. BARA submits 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.

1.10. "Designated International Airports"<sup>2</sup> in this application means the international airports as currently listed by the Department of Infrastructure, Transport, Regional Development, Communication and the Arts, and future updates by the Department to this list – <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/international-aviation/multilateral-forums/icao/international-airports>.

1.11. "Essential Aviation Services"<sup>3</sup> in this application means:

- Aeronautical services has the meaning set out in Part 7.02A of the Airports Regulations 1997.
- Essential office and operational accommodation - Accommodation at airports for operational and clerical/customer service staff.
- 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.
- 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.
- Air traffic control services - These services include: Terminal navigation services; En-route navigation services.
- Aviation rescue and firefighting services.
- Aviation weather services.

1.12. Together, paragraphs 1.8 to 1.11 form the **Conduct** for authorisation.

## 2. Consultation

2.1. The ACCC invited submissions from a range of potentially interested parties including Australian international airports, Essential Aviation Service providers, state and federal government and relevant regulatory bodies.

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<sup>2</sup> See [BARA's submission in support](#) lodged on 28 October 2024, Annexure B.

<sup>3</sup> See [BARA's submission in support](#) lodged on 28 October 2024, Annexure B.

- 2.2. The ACCC received 21 submissions from BARA members, Australian international airports, Unisys Australia, Airservices Australia and the Bureau of Meteorology, all of which support the application.
- 2.3. Submissions from the service providers and international airlines generally noted the key benefits as reduced transaction costs and improved commercial outcomes. These submissions did not raise concerns about any likely detriments to arise from authorisation.
- 2.4. Public submissions by interested parties are on the [public register](#) for this matter.

### 3. ACCC assessment

- 3.1. BARA has sought authorisation for the Conduct in relation to Division 1 of Part IV of the Act (cartel conduct) and section 45 of the Act (contracts, arrangements or understandings that restrict dealings or affect competition). Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting authorisation unless it is satisfied, in all the circumstances, that the conduct would result, or be likely to result, in a benefit to the public and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct.
- 3.2. To assist with the assessment of the Conduct, the ACCC considers:
  - The relevant areas of competition likely to be affected by the Conduct, particularly competition for the acquisition of Essential Aviation Services and the supply of international air transport including passenger and freight transport and the sale of air travel. This is consistent with the ACCC's consideration of BARA's previous applications for authorisation and remains relevant.
  - The likely future without the Conduct is that BARA's members would no longer collectively negotiate with airports and other providers of Essential Aviation Services, and that as a result, many of BARA's members may be provided with standard terms and conditions imposed by the suppliers with limited opportunity for negotiation.

### Public benefits

- 3.3. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>4</sup>

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<sup>4</sup> Re Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores Pty Limited (1994) ATPR 41-357 at 42,677.

3.4. BARA submits that the Conduct has delivered, and will continue to deliver, the following public benefits:<sup>5</sup>

- more cost-efficient and equitable airport charges for international airlines to support the ongoing growth of international services to Australia
- significant transactional efficiencies, both for BARA members and for suppliers of Essential Aviation Services
- continuation of the opportunity for BARA members to have meaningful input into negotiations with suppliers
- promotion of more efficient aviation infrastructure investment by more accurately coordinating airline customers' collective service requirements
- provision of improved information to members about services to be negotiated and the contractual supply terms being offered
- ongoing opportunity for BARA to contribute to the growth, efficiency and competitiveness of Australia's international aviation industry
- permitting BARA to assist with the efficient and effective implementation of any future security requirements
- facilitating market entry and providing competition in markets in which competition otherwise would not be possible by enabling BARA to conduct industry-wide tenders

3.5. In its 2015 Determination, the ACCC accepted that authorisation for BARA to continue to collectively bargain would result in public benefits including improved bargaining power and input into contracts, transaction cost savings and a small benefit through more efficient infrastructure investment.

#### **Improved bargaining power and input into contracts**

3.6. As noted previously, the ACCC considers that in the absence of the collective bargaining conduct, BARA members would be required to negotiate individually with airports and other providers of Essential Aviation Services.

3.7. Each individual airline will incur resource costs to negotiate with airports and other providers of Essential Aviation Services, including time spent by staff and executives to prepare for and attend negotiations as well as legal and expert advisor costs. Similarly, each airport and other providers of Essential Aviation Services would incur resource costs to negotiate with individual airlines. In bilateral negotiations between airlines and service providers, each will weigh these costs against the expected benefits from continued negotiation and will cease negotiations when they consider that the costs are likely to outweigh the benefits. This may mean that negotiations cease even when further benefits are attainable. Where the resource costs to negotiate are considerable, there may be little or no bilateral negotiation and airlines may be provided with a standard form contract prepared by an airport or another service

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<sup>5</sup> See [BARA's submission in support](#) lodged on 28 October 2024, pages 18-30.

provider. This is more likely to be the case for airlines with a relatively small Australian presence.

### **Transaction cost savings**

- 3.8. BARA submits bargaining is likely to result in public benefits from resource cost savings associated with the pooling and sharing of resources. By reducing the resource cost of negotiating for all parties, it is likely that more contractual issues will be able to be addressed, because each party can obtain the benefit from negotiating these issues at less cost to themselves, resulting in more comprehensive and efficient contracts of greater benefit to all parties.
- 3.9. BARA has provided confidential information (summarising substantial negotiations between 2015-24) which it submits provides evidence of the magnitude of savings achievable particularly by small carriers under the Conduct.
- 3.10. BARA estimates that it generates around \$2-3 million in transaction cost savings for its member airlines for every agreement negotiated with the major international airports.<sup>6</sup> However this analysis assumes that BARA's members would each invest considerable time and resources in individual negotiations with service providers.
- 3.11. The ACCC considers that many airlines would be unlikely to devote significant resources to individual negotiation given their limited scale in Australia, so this estimate may overstate potential cost savings. Nonetheless, the ACCC considers that the Conduct is likely to confer public benefits by facilitating cost savings through the pooling and sharing of resources and, potentially, more mutually beneficial contract outcomes. The ACCC also recognises that to the extent these cost savings are passed on to airline customers, there is likely to be some public benefits through more cost-efficient and equitable airport and/or airline charges.

### **Efficient infrastructure investment**

- 3.12. BARA submits the Conduct has resulted and will continue to result in public benefits in the form of efficient infrastructure investment due to service providers being able to more effectively plan the delivery of necessary aviation infrastructure capacity, and in turn, collectively work on infrastructure development plans.
- 3.13. The ACCC accepts that there may be some public benefits in the form of promoting more efficient infrastructure investment and reducing information asymmetries. Further, the ACCC accepts that to the extent the Australian Government mandates new security requirements, the Conduct may assist with its implementation including through enabling BARA to conduct industry-wide tender processes.

### **Facilitation of new market entry**

- 3.14. The ACCC has consulted further with BARA to assist in assessing whether the Conduct is likely to result in a public benefit through the facilitation of new market entry.
- 3.15. In response to the ACCC's request for further information, BARA submits its relationship with Unisys Australia is an example of BARA's facilitation of a new market entrant. Unisys Australia is an IT services supplier with which BARA has engaged in collective bargaining to meet mandatory regulatory and security operational

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<sup>6</sup> See [BARA's submission in support](#) lodged on 28 October 2024, page 19.

requirements, such as the Aviation Security Act's AAA regulations, under the existing authorisation. BARA submits this service has been specified, re-contracted and extended by BARA since 2005 on several occasions to ensure it remains a fit for purpose and cost effective delivery solution.<sup>7</sup>

- 3.16. BARA also submits that in a future without the Conduct, it is unlikely that any new entrant will be able to negotiate with international airlines simultaneously in the way necessary to be able to effectively compete with the incumbent supplier in this market.
- 3.17. BARA also submits there may be future circumstances where it will be best placed to lead processes with potential suppliers to help deliver new services and market entrants. BARA submits these circumstances may eventuate as a result of the Government's 2024 Aviation White Paper 'Towards 2050' which contains policies and actions that are already flowing through to the practical operation of international aviation. For example, BARA submits the required reforms to the Disability Standards for Accessible Public Transport 2002 may create circumstances similar to the bespoke specification of the Unisys Australia system that may see BARA as best placed to lead the process to help deliver new services to meet these obligations.
- 3.18. BARA also notes that whilst its Conduct alone has not facilitated new market entry of international air services, it can provide assistance in negotiating arrangements with Australian monopoly aviation service providers.
- 3.19. The ACCC considers the Conduct may result in a public benefit in the form of facilitation of new market entry. The ACCC accepts that BARA has facilitated the entry and effective competition for Unisys Australia services and notes similar circumstances may arise in the future. The ACCC is interested in obtaining the views of interested parties on this public benefit.

## ACCC conclusion on public benefits

- 3.20. The ACCC is satisfied based on the information before it that the Conduct, which is the same conduct previously authorised by the ACCC has resulted and will be likely to continue to result in public benefits, primarily in the form of transaction cost savings and greater input into contracts.

## Public detriments

- 3.21. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*<sup>8</sup>

- 3.22. BARA submits that there is no evidence that BARA's activities have impacted the competitive supply of Essential Aviation Services or international air services. Rather, BARA submits that its collective negotiations are pro-competitive because:<sup>9</sup>

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<sup>7</sup> See BARA's response to the ACCC's request for information available on the [public register](#), dated 24 January 2025.

<sup>8</sup> *Re 7-Eleven Stores Pty Limited* (1994) ATPR 41-357 at 42,683.

<sup>9</sup> See [BARA's submission in support](#) lodged on 28 October 2024, pages 31-32.



- Collective bargaining helps to address the imbalance likely to exist between international airlines and sole suppliers of Essential Aviation Services.
- BARA facilitates the orderly and timely rollout of infrastructure necessary for international airlines to compete in Australia.
- BARA facilitates new market entry by reducing the operating costs of its members, thereby promoting increased competition for international air services.
- The level of competition between BARA member airlines for Essential Aviation Services is low.
- There is no inappropriate sharing of information by BARA or between its members. BARA notes that it does not hold commercially sensitive information about its individual members<sup>10</sup> and that its constitution makes explicit reference to compliance with the Act. BARA also notes that each of its members have stringent competition law compliance policies in place.

3.23. The ACCC notes that collective negotiations by BARA have been in effect for over 20 years. The ACCC has not received any complaints relating to BARA's conduct since authorisation was initially granted in 2005.

3.24. Consistent with its assessment in 2015, the ACCC considers that the Conduct is likely to result in minimal, if any, public detriment because:

- The proposed collective bargaining arrangements are voluntary for all parties. In particular, BARA shall not bind any members to any terms or conditions it negotiates - 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 level of competition or rivalry between BARA's members in their acquisition of Essential Aviation Services is likely to remain low.
- The Conduct does not involve any collective boycott activity.
- The composition of the bargaining group and targets are adequately defined by the Conduct. That is, authorisation would enable BARA to collectively bargain on behalf of its membership with providers of Essential Aviation Services that meet particular criteria as described in paragraph 1.11.

## Balance of public benefit and detriment

3.25. For the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.

## Length of authorisation

3.26. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>11</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to

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<sup>10</sup> Where individual members have specific commercial service requirements, for example airport lounge facilities, these services are negotiated directly between the airline and the airport. BARA's negotiations are for the provision of Essential Aviation Service only. See [BARA's submission in support](#) lodged on 28 October 2024, pages 9, 32.

<sup>11</sup> Subsection 91(1).

review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

3.27. In this instance, the BARA seeks authorisation for 10 years.

3.28. The ACCC notes the widespread support for authorisation of BARA's application for authorisation to collectively bargain on behalf of its members from providers of Essential Aviation Services and BARA's members in particular. Further, the ACCC notes the absence of any complaints against BARA's conduct under the previous authorisations. In these circumstances, the ACCC proposes to grant authorisation for a further 10 years.

## 4. Draft determination

### The application

4.1. On 28 October 2024, BARA lodged an application to revoke authorisation A91466 and substitute authorisation AA1000682 for the one revoked. This application for authorisation AA1000682 was made under subsection 91C(1) of the Act.

4.2. BARA is seeking authorisation on behalf of itself and its current and future members, to collectively negotiate, make and give effect to arrangements for the acquisition of Essential Aviation Services (defined below) from:

- (a) the operators of all Designated International Airports as defined below and updated by the Department of Infrastructure, Transport, Regional Development, Communication and the Arts, or its successor Government Department
- (b) Airservices Australia
- (c) Bureau of Meteorology
- (d) Unisys Australia or other providers of IT services required to meet mandatory regulatory or security operational requirements
- (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:
  - a. the supplier or potential supplier requests or consents in writing to negotiate collectively with BARA members through BARA; and
  - b. prior to commencing negotiations, BARA provides the ACCC with:
    - i. a description of the Australian Government mandated security requirement service to be negotiated; and
    - ii. 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.

4.3. BARA submits 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.

4.4. “Designated International Airports” in this application means the international airports as currently listed by the Department of Infrastructure, Transport, Regional Development, Communication and the Arts, and future updates by the Department to this list – <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/international-aviation/multilateral-forums/icao/international-airports>.

4.5. “Essential Aviation Services” in this application means:

- Aeronautical services has the meaning set out in Part 7.02A of the Airports Regulations 1997.
- Essential office and operational accommodation - Accommodation at airports for operational and clerical/customer service staff.
- 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.
- 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.
- Air traffic control services - These services include: Terminal navigation services; En-route navigation services.
- Aviation rescue and firefighting services.
- Aviation weather services.

4.6. Together, paragraphs 4.2 to 4.5 form the **Conduct** for authorisation.

4.7. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

## The authorisation test

4.8. Under subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting an authorisation unless it is satisfied in all the circumstances that the Conduct would result or be likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would result, or be likely to result, from the Conduct.

4.9. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.

4.10. Accordingly, the ACCC proposes to grant authorisation.

## Conduct which the ACCC proposes to authorise

- 4.11. The ACCC proposes to revoke authorisation A91466 and grant authorisation AA1000682 in substitution.
- 4.12. The ACCC proposes to grant authorisation AA1000682 to BARA to collectively negotiate, make and give effect to arrangements for the acquisition of Essential Aviation Services as defined above at paragraphs 4.2 to 4.5 of this draft determination.
- 4.13. The ACCC proposes to grant authorisation in relation to Division 1 of Part IV of the Act, and section 45 of the Act.
- 4.14. The ACCC proposes to grant authorisation AA1000682 for 10 years.
- 4.15. This draft determination is made on 12 February 2025.

## 5. Next steps

- 5.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.