



Car rental operators at Cairns Airport – Application for authorisation AA1000460 Decision to revoke interim authorisation 8 May 2020

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has revoked the interim authorisation granted on 13 February 2020 in respect of the application for authorisation AA1000460, lodged by a group of car rental operators (the **Applicants**) on 28 November 2019.
2. The ACCC granted interim authorisation to enable the Applicants to prepare for negotiations, and negotiate with, Cairns Airport Pty Ltd (**Cairns Airport**) in relation to the acquisition of space associated with the provision of car rental services at Cairns Airport, including in relation to the continuation of existing agreements on the basis of existing terms. Interim authorisation did not extend to entering into collectively negotiated agreements.
3. The interim authorisation is revoked and ceases to be in effect from 8 May 2020.

The application for authorisation

4. The Applicants are:
 - WTH Pty Ltd trading as Avis Australia
 - Budget Rent a Car Australia Pty Ltd
 - Hertz Australia Pty Limited
 - CLA Trading Pty Ltd trading as Europcar
 - Kingmill Pty Ltd trading as Thrifty Car Rental and Dollar Car Rental.
5. Redspot Head Office Pty Ltd (trading as Enterprise, Alamo, National and Redspot), previously part of the Applicant group, has withdrawn its request for authorisation. A letter advising of this withdrawal is available on the ACCC's public register.
6. The Applicants seek authorisation for 10 years to enable them to collectively bargain with Cairns Airport in relation to the acquisition of space associated with the provision of car rental services at Cairns Airport (including counter space, car parking bays and shared facilities), including the terms and conditions of the Licence Agreement and Lease Agreements (the **Proposed Conduct**). The Applicants are also seeking authorisation on behalf of future car rental companies that commence operating at Cairns Airport during the term of the authorisation.

7. The Applicants seek authorisation to collectively negotiate all terms and conditions (both price and non-price) related to the acquisition of airport space and services from Cairns Airport. In particular, they wish to collectively negotiate:
 - the amount and annual increases for key payment terms in Licence and Lease Agreements, such as the Minimum Guaranteed Payment, the Turnover Percentage Payment, Car Parking Fees and rent
 - terms relating to the operation of the above key payment terms and other payments such as a security bond or bank guarantees, and
 - the breadth and scope of definitions such as 'operator's turnover' for the purposes of calculating various concession payments.

The authorisation process

8. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Change of circumstances as a result of COVID-19

9. On 29 April 2020, the Applicants requested that the ACCC extend the period for considering the application for final authorisation due to the significant impact of the COVID-19 pandemic on their respective businesses. The Applicants submitted they are not in a position to engage with the authorisation process, including responding to a submission provided by Cairns Airport in response to the Draft Determination dated 15 April 2020, and the ACCC's information request dated 23 April 2020.
10. On 30 April 2020, the ACCC opened the pre-decision conference and the conference was adjourned on the basis of the exceptional circumstances relating to the COVID-19 pandemic and the Applicants not being in a position to properly participate in the conference.
11. On 6 May 2020, the Applicants submitted that the extraordinary circumstances of COVID-19 required an extension to the statutory timeframe and that such an extension would not materially impact Cairns Airport, as the Applicants are willing to temporarily suspend engaging in the conduct the subject of the interim authorisation during the deferral period.
12. On 8 May 2020, the ACCC decided to extend the period for the application for authorisation by a six month period.

Interim authorisation

13. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. Interim authorisation allows the parties to engage in the authorised conduct while the ACCC is considering the substantive application.
14. The ACCC can revoke interim authorisation at any time.

Consultation

15. The ACCC invited submissions about the proposal to revoke interim authorisation from the Applicants and Cairns Airport.
16. The Applicants submitted that revoking interim authorisation:

- would be unnecessary, given the Applicants' proposal not to engage in the conduct and to notify the ACCC before recommencement, and
- would hamper the incentive and opportunity for the Applicants and Cairns Airport to re-enter collective discussions if the appropriate circumstances arose to address the business viability challenges caused by COVID-19.

17. Cairns Airport submitted that:

- as the Applicants have advised that they propose to voluntarily refrain from engaging in the conduct which is subject to the interim authorisation, there is no valid case for the interim authorisation and the ACCC should revoke it immediately, and
- the ACCC can reinstate the interim authorisation in the unlikely scenario that it becomes appropriate, but it should not be left to the Applicants' discretion.

18. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website: www.accc.gov.au/authorisations.

Reasons for decision

19. The ACCC considers that it is appropriate to revoke the interim authorisation as a result of the change in circumstances for the Applicants resulting from COVID-19. In particular:

- There is no longer any urgency or need for interim authorisation. The Applicants are currently dealing with a number of issues relating to the operation of their businesses in response to the COVID-19 pandemic. The Applicants have advised that given the urgent need to prioritise business continuity during the COVID-19 pandemic, and the immediate need to renegotiate and finalise interim COVID-19 arrangements with all landlords (including Cairns Airport), it is highly unlikely that they would want to or need to recommence joint negotiations without some degree of input from Cairns Airport.
- It would not be appropriate for the interim to remain in place while the Applicants have themselves offered not to engage in the conduct the subject of the interim authorisation without further notice.
- Revocation is appropriate to avoid any detriment to Cairns Airport during the ACCC's extended review timetable, noting the request from the Applicants to extend the timeframe for the application for authorisation because of the extraordinary circumstances of the COVID-19 pandemic.

20. The ACCC notes that the Applicants can re-apply for interim authorisation at any stage during the process should they need to do so.