



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

In respect of a notification lodged by
Redcliffe Aerodrome Chamber of Commerce Inc.

in respect of
collective bargaining with Moreton Bay Regional
Council

Date: 28 August 2020

Notification number: CB10000474

Commissioners:
Ridgeway
Rickard
Court
Keogh

Summary

The ACCC does not object to the notification lodged by the Redcliffe Aerodrome Chamber of Commerce Inc (**RACCI**) to enable the RACCI to collectively negotiate on behalf of current and future tenants at the Redcliffe Aerodrome (the **RAH Tenants**) with Moreton Bay Regional Council, the owner of the Redcliffe Aerodrome, on the terms and conditions of Redcliffe Aerodrome Hangar leases.

The ACCC considers the notified conduct is likely to result in public benefits in the form of transaction cost savings and better input into contracts, and minimal, if any, public detriments.

The notification was lodged on 13 July 2020 and the ACCC has decided to allow it to remain in force for a period of ten years from that date. Accordingly, the notification came into force on 27 July 2020 and will remain in force until 12 July 2030, unless it is withdrawn or revoked.

The notification

1. On 13 July 2020, RACCI lodged a collective bargaining notification¹ to enable it to collectively bargain on behalf of the RAH Tenants with the Moreton Bay Regional Council (the **Council**) for the renegotiation of tenants' lease terms for premises at the Redcliffe Aerodrome to be entered into between the RAH Tenants and the Council (the **Notified Conduct**). The Redcliffe Aerodrome is located in Redcliffe, in the Moreton Bay Region, north of Brisbane, Queensland.
2. Specifically, RACCI submits it expects to collectively negotiate lease terms with the Council including:
 - rent applicable for hangars at the Redcliffe Aerodrome, and
 - the term and common expiry of leases at the Redcliffe Aerodrome.
3. RACCI submits that the Notified Conduct is necessary to enable efficient negotiation of complex lease terms and conditions for leases at the Redcliffe Aerodrome, so as not to duplicate efforts and spending on legal advice. Further RACCI submits that tenants at the Redcliffe Aerodrome are mostly captive tenants who absent the Notified Conduct would have limited bargaining power.
4. RACCI submits that participation in collective bargaining is voluntary for the Redcliffe Aerodrome tenants and the Council, and each party may independently determine whether or not to enter into a lease on the terms negotiated.

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining, which can include associated collective boycotts, by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining which does not involve a collective boycott will generally commence 14 days after the collective bargaining notification is lodged.

5. RACCI initially requested that the notification be in force for three years, however on 12 August 2020 amended that position to request that the notification be in force for ten years.²

Background

6. RACCI is a registered association and is a representative group of the RAH Tenants. The Redcliffe Aerodrome is owned and operated by Moreton Bay Regional Council.
7. The RAH Tenants are a diverse group of aviation businesses, emergency services organisations, and supporting businesses using the Redcliffe Aerodrome located in the Moreton Bay region north of Brisbane. The RAH Tenants offer services including charter flight services, emergency services, pilot training, scenic flights, aircraft maintenance and refurbishment and clubs for students and pilots.
8. The RAH Tenants lease the ground that their hangars are on from the Council. The RAH Tenants ordinarily erect their own hangars on the sites, at their own cost. The RAH Tenants also acquire associated use of the Redcliffe Aerodrome from the Council.

Consultation

9. The ACCC invited submissions from each of the RAH Tenants and the Council. A copy of the public submissions are available on the [ACCC's public register](#).
10. The ACCC received two submissions. The ACCC received a submission from Ian Silvester, one of the RAH Tenants, supportive of the notification.
11. The ACCC also received a submission from the Council. The Council's submission is not supportive of the notification. The Council's submission:
 - notes that the tenant mix of the RAH Tenants is diverse, and submits that this diversity would not enable helpful consistency between the RAH Tenants in negotiating outcomes regarding rental arrangements and lease terms and conditions
 - notes that the Council, as a local government entity, is unable to collectively negotiate to lease government assets at a value less than market price. The Council further asserts that the attainment of market value requires independent bidding by the RAH Tenants to maximise return to ratepayers, and
 - considers that RACCI's authority to represent the RAH Tenants is unsupported by evidence.

² The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

12. In response to the Council's submission, RACCI submits that:

- The diversity of the RAH Tenants is not relevant to the vast proportion of matters to be collectively negotiated. Specifically, the overall way the RAH Tenants use the leased premises is similar, and the rules for the use of the aerodrome itself are the same across the RAH Tenants. RACCI notes that tailoring of each lease to each RAH Tenant will be required, but submits that these will be minor divergences from mostly common terms. On that basis, RACCI considers that a centralised negotiation process, including through a single legal representative, will create efficiencies, including through avoided transaction costs,
- The Notified Conduct does not prevent the Council from complying with its regulatory obligations, and RACCI is not seeking to obtain rental rates below market value. Each RAH Tenant will ultimately agree their own rent with the Council,
- It intends to negotiate for the termination of all existing leases and migration to new leases over the coming months, proposing a common expiry date for all RAH Leases. RACCI suggests that this would give RAH Tenants certainty of tenure, and allow the Council to masterplan the Redcliffe Aerodrome in the future, and
- RACCI was granted express consent by each RAH Tenant listed in Attachment 1 of the Notification to be listed as seeking to be involved in the Notified Conduct, and each had consented to be represented by a single law firm.

ACCC's assessment

13. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

14. In doing so, the ACCC has taken into account:

- The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each RAH Tenant is likely to continue to individually negotiate and contract lease terms with the Council.
- The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition is the acquisition of leases and associated services from the Council by various tenants located in the Moreton Bay region, north of Brisbane. The ACCC considers that there may be other potential acquirers of these leases, and to that extent, there may be competition for the acquisition of leases, however this competition is limited by the individual erection of hangars by the RAH Tenants, making each site uniquely customised for each occupant.

Public benefits are likely to arise

15. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:

- Transaction cost savings – such as reduced negotiation and drafting costs, associated with collectively negotiating leases between RACCI and the Council, compared to the cost of each of the RAH Tenants negotiating their contracts individually with the Council.

- Better input into contracts – collective negotiations may enable individual RAH Tenants to achieve greater input and representation of their views about the terms and conditions of their contracts than what they could achieve through individual negotiations with the Council, this is particularly true for smaller unrepresented tenants.

Minimal public detriment

16. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between the RAH Tenants for the acquisition leases from the Council, because:

- participation in the Notified Conduct is voluntary for both Council and the RAH Tenants; if parties wish to negotiate individually, they remain free to do so;
- competition in the downstream markets in which RAH Tenants may compete is unlikely to be affected because the RAH Tenants engage in a diverse range of primary activities in downstream markets.

Period for which the Notification will be in force

17. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.

18. In this case, RACCI asked that the notification remain in place for ten years.

19. The ACCC considers that it is appropriate for the notification to remain in force until 12 July 2030, for the following reasons:

- The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
- The extended notification period is unlikely to change the minimal public detriment which is likely to result from the Notified Conduct.
- The leases to be negotiated and entered into as a result of the Notified Conduct may be expected to be long term, and continue for a period up to and potentially beyond the extended notification period. RACCI submits that, at the conclusion of the ten year period, RAH Tenants may seek further immunity to see out the duration of the relevant leases.
- The ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment³.

Decision

20. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.

21. Accordingly, the ACCC does not object to the notification at this time.

³ Section 93AC of the CCA

22. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 19, in accordance with s 93AD(5), the ACCC is satisfied that a ten year period is appropriate in all the circumstances, being the period ending on 12 July 2030.⁴
23. Accordingly, the protection provided by notification CB10000474 commenced on 27 July 2020 and will continue until 12 July 2030, unless the notification is withdrawn or revoked.
24. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

⁴ As required by s 93AD(5)(b), this period will end no later than the end of the period of 10 years beginning on the day that the applicant gave the collective bargaining notice.