



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

Notification CB10000493

lodged by

Toowoomba City Community Aerodrome Inc on behalf of
tenants of Toowoomba City Aerodrome

in respect of

collective bargaining with Toowoomba Regional Council
in relation to terms of aerodrome hangar lease agreements

Date: 30 January 2025

Commissioners:

Keogh

Ridgeway

Williams

Summary

The Australian Competition and Consumer Commission (**ACCC**) does not object to the collective bargaining notification CB10000493 lodged by Toowoomba City Community Aerodrome Inc (**TCCAI**) on 8 October 2024. TCCAI is a representative group of the tenants at Toowoomba City Aerodrome and seeks to collectively bargain with Toowoomba Regional Council who owns and operates the Toowoomba City Aerodrome.

The ACCC is satisfied that the notified collective negotiations are likely to result in public benefits in the form of reduced overall transaction costs for tenants as well as the negotiation of more efficient terms and conditions. There is likely to be minimal, if any, public detriment noting that the conduct is voluntary for all parties and does not propose a collective boycott. The ACCC is satisfied that the likely public benefits will outweigh the likely public detriments.

The ACCC has decided to allow the notification to remain in force for a period of 10 years, as requested by TCCAI. The notification was lodged on 8 October 2024 and the legal protection commenced on 22 October 2024. It will remain in force until 8 October 2034, unless or until the ACCC ends the protection provided by the notification or the notification is withdrawn by TCCAI.

The ACCC may revisit this assessment at any time and take steps to remove the protection provided by the notification.

1. The notification

- 1.1 On 8 October 2024, Toowoomba City Community Aerodrome Inc (**TCCAI**) lodged a notification to enable it to negotiate on behalf of current and future tenants of Toowoomba City Aerodrome (as listed in Schedule 1 of the Notification) (the **TCA Tenants**), with Toowoomba Regional Council (the **Council**) on terms for aerodrome hangar lease agreements.
- 1.2 TCCAI is a registered association and a representative group of the tenants at the Toowoomba City Aerodrome (the **Aerodrome**). The Aerodrome is located in Toowoomba City and is owned and operated by the Council.
- 1.3 The TCA Tenants currently include a number of small and medium sized businesses who work in aircraft maintenance, restoration, pilot training, avionics, charter services and other aviation services.
- 1.4 As notified, TCCAI proposes to negotiate on behalf of the TCA Tenants with the Council in relation to the terms of the Aerodrome Hangar lease agreements which are to be entered into between the Council and each of the TCA Tenants (the **Notified Conduct**).
- 1.5 The Notified Conduct does not include a collective boycott and is voluntary and each party may independently determine whether or not to enter into a lease on the terms negotiated.

- 1.6 TCCAI has requested that the notification remain in force for 10 years to ensure the prospect of longevity of term for leaseholders and business owners at the Aerodrome.
- 1.7 Businesses which meet certain criteria may lodge notifications to gain protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.

Rationale for the Notified Conduct

- 1.8 TCCAI submits each of the TCA Tenants lease the ground that their hangars are on and most of the tenants have erected their own hangars at their own cost and upon vacating must remove all of their improvements.
- 1.9 TCCAI submits that the Council has delayed the renewal of leases for use of the Aerodrome for a period of almost 2 years. TCCAI submits that the Council has now placed a hold on leases being renewed, due to their ongoing review of leases, rent and other charges to determine if these are commercially competitive and in line with similar aerodromes.
- 1.10 TCA Tenants would like to negotiate collectively with the Council to participate in the review of the terms of the standard aerodrome lease.
- 1.11 TCCAI submits that the tenants are small to medium-sized businesses who are “captive tenants” of the Target and have limited bargaining power without engaging in collective negotiating.
- 1.12 TCCAI further submits that a number of leaseholders are currently operating on month-to-month lease arrangements which creates uncertainty for business owners and de-values their business due to a lack of certainty.
- 1.13 By negotiating collectively, TCCAI expects to negotiate better terms and conditions, assist tenants to ensure they can operate on a long-term basis at the Aerodrome and create efficiencies that could not be achieved individually.

2. Background

- 2.1 The Aerodrome is used for a number of purposes by businesses and members of the Toowoomba community, who negotiate leases with the Council for hangar space and other associated use of the Aerodrome.
- 2.2 The Aerodrome is a hub for multiple aviation operations in Toowoomba and the surrounding region, and is used for services such as pilot training, charter flights, an aeroclub for students and pilots, emergency services (including Life Flight, the Royal Flying Doctors Service and the Queensland Fire Department) and other specialist aviation services. Tenants at the Aerodrome serve the Toowoomba region and surrounding communities in western Queensland.

3. Consultation

- 3.1 The ACCC conducted a public consultation process regarding the notification and received 47 submissions from interested parties in relation to the

notification. The majority of interested party submissions were provided by current tenants of the Aerodrome.

- 3.2 The majority of submissions received supported the notification for collective bargaining on the grounds that:
- Collective bargaining will reduce the costs for users of the Aerodrome as compared to doing so on an individual basis.
 - Users will be more likely to secure reduced rents and longer leases, which would enable small business growth and security.
 - The Aerodrome is an important regional hub for aviation professionals, student pilots and leisure flying, and collective bargaining would aid in reducing the costs for those in the aviation community to use the aerodrome for training, leisure and business purposes.
- 3.3 The Target, **Toowoomba Regional Council (the Council)**, submitted that it neither supports nor opposes the Notification.
- 3.4 The Council stated its expectation that the TCA Tenants would engage in a narrow form of the conduct which does not extend to “any other commercial matters” as specified in the Notification. In particular, the Council submitted that there is no scope for the Tenants to participate in the ongoing market rent review which is being undertaken by an independent third party.
- 3.5 The Council submitted that the Aerodrome’s current revenue from leases and landing fees fails to cover operational costs. Given that a market rent review has not been completed in the last 18 years, the Council submitted that it will be best placed to begin discussions regarding leases for tenants following the ongoing independent review, which is expected to be completed in February 2025.
- 3.6 The Council submitted that Toowoomba Wellcamp Airport (**Wellcamp**) is likely a close competitor of the Aerodrome which restrains the Council from increasing rents or offering unattractive lease terms. The Council submitted that this is because Wellcamp is located less than 20km from the Aerodrome and has the capacity and desire to offer equivalent hangar leases to the Tenants in future.
- 3.7 Finally, the Council submitted that it does not support the proposed 10-year term of the Notification as negotiations for the relevant leases are expected to conclude by the end of 2025. Rather, it supports a notification period of no more than 2 years to cover the rolling over of any current tenant leases to those negotiated.
- 3.8 In its response to interested party submissions, **TCCAI** submitted that the scope of negotiations must include “other commercial matters”, as transparent and inclusive negotiations will address longstanding operational challenges whilst ensuring fairness for all parties. TCCAI submitted that other commercial terms such as charges for landing fees and operational costs directly affect the sustainability of the TCA Tenants.
- 3.9 TCCAI also submitted that Wellcamp operates under a commercial model and does not cater to the same tenant profile or community-focused operations as the Aerodrome. TCCAI noted that an Aerodrome Deed obligates the Council to operate and maintain the Aerodrome for public use, making comparisons to Wellcamp irrelevant.

3.10 Public submissions by TCCAI and interested parties are on the [Public Register](#) for this matter.

4. ACCC's Assessment

4.1 TCCAI has Notified Conduct that would or might constitute collective bargaining within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ACCC has considered the Notified Conduct in accordance with section 93AC of the Act.

4.2 To assist with the assessment of the Notified Conduct, the ACCC considers:

- The relevant area of competition likely to be affected by the Notified Conduct is the market for general aviation services in Toowoomba and the surrounding region, and
- that the likely future without the Proposed Conduct is that the TCA Tenants would only be able to negotiate with the Council on an individual basis for hangar leases and associated use of the Aerodrome.

Public Benefit

4.3 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 the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*¹

4.4 TCCAI submitted that the Notified Conduct is likely to facilitate more favourable lease terms and therefore the viability of the TCA Tenants. The TCA Tenants businesses service provide a number of benefits to the public. These include supporting emergency services, offering local employment and supporting tourism and local businesses that use the Aerodrome to transport personnel and products. TCCAI also submitted that the Notified Conduct is likely to support the longevity of the Aerodrome and provide greater certainty to the business community locally and across the Darling Downs and Western Queensland.

4.5 Interested party submissions broadly supported the proposition that the notification is likely to facilitate fairer lease terms, greater business certainty and viability for leaseholders and reduce the individual transaction costs for the TCA Tenants that would be associated with bilateral negotiations.

4.6 An interested party submission from Alan Carlisle also cited a similar collective bargaining notification lodged by Redcliffe Aerodrome Chamber of Commerce Inc² in 2020 as the most efficient method for reviewing similar aerodrome

¹ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

² Available on the [ACCC's public register](#).

leases. Alan Carlisle stated that the ability to collectively bargain enabled leases to be renewed on common terms including expiry dates, dollar rates and the use of a common lease template. Alan Carlisle further submitted that collective bargaining on this matter resulted in efficiencies in human resources, time and money for the leaseholders and relevant council. This notification was allowed to stand by the ACCC for a period of 10 years.

- 4.7 The Council submitted that there are potential public benefits arising from collective negotiations (e.g. efficiencies and reduced legal costs). However, the Council considered that other public benefits claimed by TCCAI may be overstated, as with or without the ability to collectively bargain, the Tenants may continue to provide services said to be of benefit to the community if parties can agree to terms.
- 4.8 If the Tenants are not able to collectively bargain, the Council submitted that other prospective tenants may enter into leases and provide the services said to be of benefit to the public.
- 4.9 The Council also made submissions to the effect that, if collective negotiations were to result in lease terms that threatened the ongoing viability of the Aerodrome, this would undermine the likely public benefits claimed by TCCAI.
- 4.10 The ACCC also notes TCCAI's response to interested party submissions, in which it submitted that essential services provided by TCA Tenants, including LifeFlight, RFDS, and Angel Flight, depend on the ability to operate at the Aerodrome under sustainable lease conditions. TCCAI also submitted that tenants' contributions to the community outweigh any potential hypothetical benefits from prospective tenants who lack a proven track record.
- 4.11 TCCAI also submitted that the ability to collectively bargain will ensure the long-term viability of existing tenants, foster regional stability and attract new tenants willing to operate in a cooperative, community-focused framework.
- 4.12 TCCAI also considered that the Councils assertion that collective bargaining may undermine the Aerodrome's financial viability is unfounded and stated that the financial burden of operational losses should not fall disproportionately on tenants through increased rents and charges. TCCAI stated that the TCA Tenants have made significant investments in hangars and infrastructure, bolstering the Aerodrome's value.
- 4.13 The ACCC considers that the Notified Conduct is likely to result in public benefits from:
 - reducing transaction costs for TCA Tenants and the Council when negotiating terms and conditions of aerodrome hangar lease agreements
 - increasing the likelihood that TCA Tenants negotiate lease terms with Council that are more favourable than the likely terms that would be agreed without collective negotiations, and also reflect the Aerodromes operating costs.

Public Detriment

- 4.14 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.³

- 4.15 TCCA submitted that it does not anticipate any public detriments to arise from the Notified Conduct given the diverse markets in which the TCA Tenants operate and the discrete scope of coordination contemplated by the Notified Conduct.
- 4.16 Interested party submissions broadly supported the proposition that it is unlikely public detriments will arise from the Notified Conduct.
- 4.17 The Council submitted that the Notified Conduct may result in public detriment, as it may preclude other prospective tenants from accessing hangar space at the Aerodrome and providing their service to the community (and any public benefit that may be associated with those services). This is because, in the Council's view, existing tenants may become entrenched compared to bilateral negotiations.
- 4.18 The ACCC considers that the Notified Conduct is likely to result in minimal public detriment arising from a reduction in competition between TCA Tenants for aviation services in Toowoomba and the surrounding region.
- 4.19 The ACCC considers that any such detriment is likely to be minimal because:
- Participation in the Notified Conduct is not limited to current TCA Tenants. It is open to potential or future tenants of the Aerodrome to Participate in the Notified Conduct, should they seek to do so.
 - Participation in the Notified Conduct is voluntary for all parties. If any of the TCA Tenants wish to negotiate directly with the Council, they remain free to do so.
 - The Council already exercises a degree of power in negotiations due to its relative size as compared to the TCA Tenants, who are small to medium sized businesses who are largely dependent on access to the Aerodrome in order to ensure the viability of their businesses. As such, the impact of the Notified Conduct on the level of competition is low.
 - Participation in the Notified Conduct does not involve a collective boycott.
- 4.20 Therefore, for the reasons outlined in this Statement of Reasons, the ACCC is satisfied that the Notified Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Notified Conduct.

Period for which the notification will be in force

- 4.21 A collective bargaining notification (and therefore the protection it confers) will be in force for a period of 3 years from the date it is lodged unless the ACCC

³ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

determines that another period is appropriate or the notification is withdrawn or revoked.

- 4.22 In this case, TCCAI requests the notification to be in force for a period of 10 years due to the importance of long-term leases and viability for tenants at the Aerodrome.
- 4.23 The ACCC notes the submission by the Council that the notification should be in place for a period of 2 years, as opposed to the 10-year period requested by TCCAI. The Council submitted that 2 years would be a sufficient period for negotiations to occur and the negotiated leases to commence.
- 4.24 The ACCC also notes the submission by TCCAI that a 10-year notification period is necessary to ensure lease stability, fairness, address historical delays in lease negotiations, and ensure comprehensive resolution of lease-related issues for current and future tenants.
- 4.25 The ACCC considers that it is appropriate for the notification to remain in force until 8 October 2034 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. A period of 10 years will provide adequate time for the parties to give effect to the leases negotiated and to negotiate new leases in the medium to long term without TCCAI having to lodge another application.
 - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.
 - 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 detriment.⁴
 - Participation in the Notified Conduct is voluntary for all parties, including the Council.

5. Decision

- 5.1 Based on the information before it, the ACCC considers that the Notified Conduct is likely to result in public benefits that will outweigh the likely public detriment.
- 5.2 With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 4.25 in accordance with s 93AD(5), the ACCC is satisfied that a 10 year notification period is appropriate in all the circumstances, being the period ending on 8 October 2034.
- 5.3 Accordingly, the ACCC does not object to the notification at this time. The protection provided by notification CB10000493 commenced on 22 October 2024 and will continue until 8 October 2034. However, the ACCC may revoke the

⁴ Section 93AC of the Act.

notification at any time if it forms the view that the public benefits do not outweigh the public detriments.

- 5.4 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 Act.