

Non-Confidential Version

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Response to Cairns Airport Pty Ltd (CAPL)'s submission on Application for Authorisation (AA1000460-1)

1. Background

- 1.1 This submission is made for the purpose of providing the ACCC with additional information as part of the ACCC's consideration of the application for Authorisation.
- 1.2 As foreshadowed in the Applicants' response to CAPL's submission on Interim Authorisation lodged with the ACCC on 16 January 2020, this submission focuses on the substantive application for Authorisation.
- 1.3 In light of the significant 'cross overs' between the ACCC's information request sent to the Applicants on 22 January 2020 and the Applicants' response to CAPL's submission, the Applicants adopt a holistic, integrated approach and address both aspects in this submission.
- 1.4 For ease of reference, where references are made to:
 - the Application for Authorisation lodged by the Applicants on 28 November 2019 are made, it will be referred to as **Authorisation Application**;
 - the Confidential Annexure A to the Application for Authorisation is referred to, it will be denoted as **Confidential Annexure A (Authorisation Application)**;
 - **Confidential Annexure A**, they refer to the relevant attachment to this submission; and
 - the Applicants' response to CAPL's submission on Interim Authorisation, they will be referred to as the **Applicants' Interim Authorisation Response**.
- 1.5 The Applicants submit that the ACCC should grant Authorisation for the Proposed Conduct for the following reasons:
 - The Applicants reiterate that although they are each significant commercial entities, in the context of re-negotiating new agreements with CAPL, there remains a very large imbalance of bargaining power between the parties. This power imbalance stems from the dependence of each Applicant on CAPL to provide their car rental services at Cairns Airport, in contrast to CAPL's freedom to choose car rental operators (not necessarily the Applicants) to be a fully functional airport.
 - In light of the above, a core aim of the Proposed Conduct is to equalise the negotiating position, to an extent, between the Applicants and CAPL. However, there are other equally important outcomes that the Proposed Conduct aims to achieve, including the mutually beneficial outcomes that can be achieved between the negotiating parties and the substantial flow on benefits to consumers.

- In its submission, CAPL appears to adopt a position that it would not collectively negotiate with the Applicants, as a part of exercising its commercial discretion. However, the Applicants submit that the significant efficiencies that may be achieved from the Proposed Conduct, contrasted with the inefficient outcomes of bilateral or Request for Proposal (RFP) negotiations (as argued in this submission), will, as a matter of commercial reality, result in CAPL engaging in collective negotiations. Further, there are benefits to CAPL in having a number of car rental companies that have visible brand recognition and commercial relationships, such as with airlines, to assist with attracting passenger volumes.
- A significant efficiency generated by the Proposed Conduct is the transaction cost savings for the Applicants and CAPL. As foreshadowed in section 2.10 of the Applicants' Interim Authorisation Response, this includes enabling the Applicants and CAPL to identify common contractual problems in a streamlined manner, and in the case of the Applicants, to enable them to share the cost of obtaining professional advice in negotiating and finalising agreements with CAPL.
- It is important to note that the Applicants are, and will remain, vigorous competitors with each other if the Proposed Conduct was allowed. There are both internal and external competitive constraints incentivising the Applicants to pass on benefits to consumers, whether in the form of cost savings, improved quality or innovation in the services provided at Cairns Airport. This sustainable improvement in consumer welfare contributes to outweighing any public detriments arising from the Proposed Conduct (which the Applicants assert to be minimal, if any).
- In addition, there are strong information sharing protocols and confidentiality barriers in place to prevent the sharing of competitively sensitive information between the Applicants both leading up to, and for the duration of, the Proposed Conduct (if authorised).

The Applicants' Response on Authorisation

2. Methodology in asserting CAPL is a higher cost airport is not flawed

2.1 In sections 2.19 - 2.28 of CAPL's submission, CAPL stated the Applicants' contention that Cairns Airport is a higher cost airport based on cost per transaction comparisons across national airport sites, is flawed on the basis that the comparisons do not account for the value of each transaction which CAPL argues is higher at Cairns Airport, due to the following factors:

- higher costs resulting from higher rental operator revenues;
- Cairns Airport offering more extensive facilities than other airports which has cost implications; and
- comparisons with off-airport operators are misplaced.

2.2 However, the Applicants' analysis indicates that CAPL is a higher cost airport as a result of CAPL's commercial conduct, as discussed below.

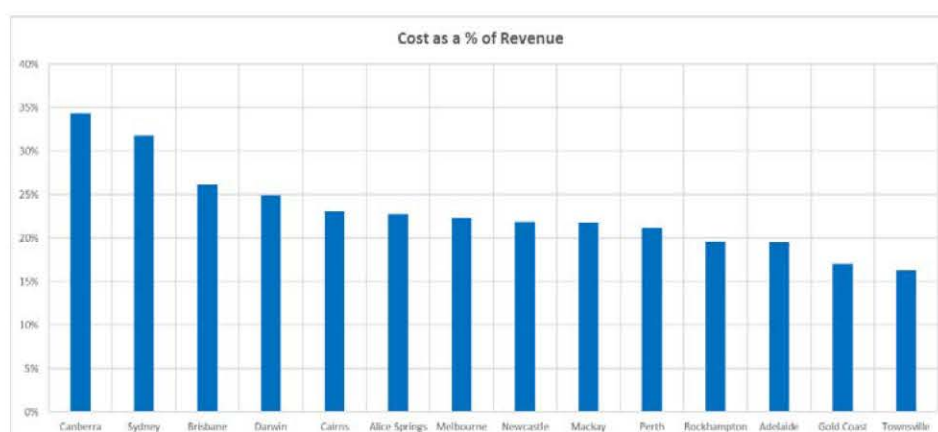
Cost/transaction comparisons is common industry practice

- 2.3 The Applicants' experiences are that defining their total costs attributed to operating on-airport (i.e. the sum of all airport charges to the Applicants such as for terminal kiosks, car park booths and rental ready bays) and dividing that by the number of transactions completed on-airport is standard industry practice. Hence, the use of the comparative benchmark of cost/transaction in section 2.4 of the Authorisation Application demonstrating Cairns Airport being the second highest cost airport operator nationally is grounded on an established and widely used methodology.

Cost/revenue comparisons indicating Cairns Airport as a higher cost airport operator

- 2.4 In section 2.22 of its submission, CAPL asserts that "a benchmark based on cost per transaction ignores the value of the services provided by Cairns Airport to the rental operators and the revenue they derive from operating at the airport."
- 2.5 However, even if an alternative comparator is adopted that takes into account the Applicants' revenue, the Applicants' analysis indicates that Cairns Airport remains a higher cost operator nationally as demonstrated in Figure 1 below:

Figure 1: Comparison of costs per Applicants' revenue at national airport locations (based on data from each Applicant)



- 2.6 Figure 1 is collated from aggregated 2017 cost/revenue data from all Applicants. Although the data is somewhat dated, it demonstrates that Cairns Airport is the fifth highest operator on a cost/revenue basis nationally, ahead of other major airports such as Melbourne Airport and Perth Airport (despite being the seventh busiest airport in Australia in terms of passenger volume¹).

Cairns Airport does not offer more extensive facilities than other airports

- 2.7 Contrary to CAPL's assertion that its more extensive facilities have associated cost implications in sections 2.24 - 2.26 of its submission, the Applicants' perceive no material differences between the range of facilities offered at Cairns Airport as compared with other airports, and some Applicants have experienced CAPL imposing infrastructure changes while disregarding their commercial needs.

¹ North Queensland Airport Submission, *Productivity Commission Inquiry into Economic Regulation of Airports* (7 September 2018) (Page 9) <https://www.pc.gov.au/data/assets/pdf_file/0018/231426/sub049-airports.pdf>.

- 2.8 All major airports offer front-of-house and back-of-house facilities, overflow parking spaces and ready bays, and some major airports (such as Melbourne, Sydney and Brisbane), also have additional facilities to what Cairns Airport offers, such as quick turnaround facilities. It is therefore misleading for CAPL to suggest that the scale or range of its facilities justify the significant fees it charges to the Applicants.
- 2.9 In its recent individual negotiations with the Applicants,² CAPL has proposed infrastructure changes and cost increases which, in the views of some of the Applicants, disregards the commercial needs of, and requests by, the Applicants and are disproportionate to any limited benefits that the Applicants could derive from the proposed changes. By way of an example, in section 2.9 of CAPL's submission, CAPL indicates that in response to customer feedback for recreational meeting spaces, a new café will be built requiring the relocation of indoor car rental counters.

Higher costs result from unfair operation of key contractual terms

- 2.10 In addition to the above factors, CAPL is also a higher cost operator as a result of its imposition of unfair payment terms in its agreements with the Applicants which feeds into the calculation of each Applicants' on-airport 'costs'. This approach both contributes to the higher on-airport operation costs of the Applicants and also necessitates the need for the Applicants to pass on these costs to customers to achieve a 'fair and reasonable' recovery of CAPL's concession fees.
- 2.11 The Applicants have previously discussed examples of such contractual terms, particularly what may be included within terms such as "revenue" or "turnover" in the Authorisation Application.³ Such contractual terms are defined in a circular fashion to include additional cost recovery fees that are not genuinely a part of each Applicants' revenue



3. Significant efficiencies may result from the Proposed Conduct

- 3.1 As discussed in the Authorisation Application and the Applicants' Interim Authorisation Response,⁴ the Proposed Conduct, if allowed, has the scope to generate significant efficiencies to the mutual benefit of both the Applicants and CAPL. This differentiates the Applicants' circumstances from that of the ACCC's Perth Airport decision where the applicants did not raise any mutually beneficial outcomes compelling the target to engage with the collective bargaining group.⁵

² Refer to section 6 of Confidential Annexure A to the Authorisation Application and in section 4.3 of this submission.

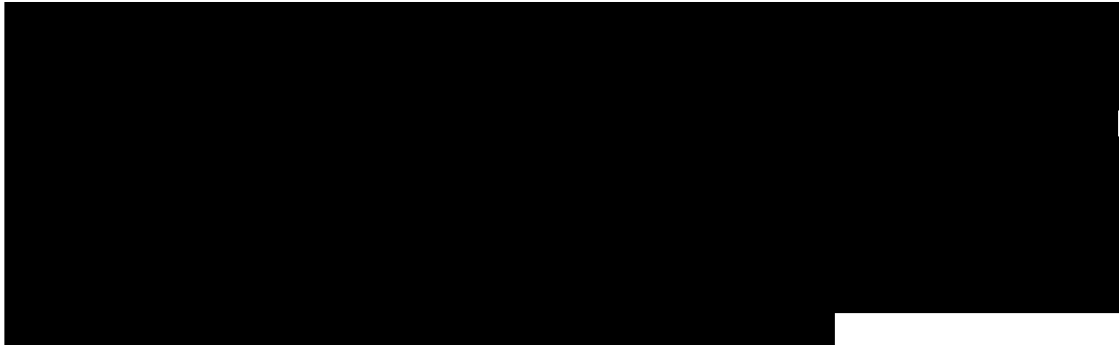
³ Refer to section 7.2 and Confidential Annexure A to the Authorisation Application.

⁴ Refer to section 7.4 of the Authorisation Application and sections 2.9 - 2.11 of the Applicants' Interim Authorisation Response.

⁵ ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Perth Airport (16 July 2010), at 5.52.

3.2 The Proposed Conduct is capable of generating significant efficiencies through redressing the significant information asymmetry resulting from the imbalance in bargaining power between CAPL and the Applicants which allows CAPL to blunt price signals, leading to price distortions and economic detriment to customers. This economic detriment occurs as a result of CAPL being able to set contractual terms and conditions without being accountable to the Applicants as to the reason for or the manner in which such terms and conditions are imposed.

3.3



3.4 The key efficiencies which are likely to be generated from the Proposed Conduct are the following, being:

- lowering the cost (or cost increases) to the Applicants through finding fairer methods to redefine payment terms and other contractual conditions;
- transaction cost savings for both CAPL and the Applicants through streamlining the identification of common contractual problems; and
- increased allocative efficiencies arising from the optimal reconfiguration of scarce airport space, both as between on-airport car rental operators and as compared to other airport land users.

Redefinition of contractual terms in a fairer manner to reduce the Applicants' contractual cost obligations

3.5 The Proposed Conduct provides the Applicants with a key opportunity to redress the imbalance in bargaining power between the Applicants and CAPL through negotiating fairer contractual terms and conditions.

3.6 By way of an example of how fairer contractual terms can reduce the Applicants' financial obligations to CAPL,



- 3.7 The manner through which cost savings could be incurred from redefining contractual terms demonstrated in the example above can be similarly extrapolated to other contractual terms that the Applicants are seeking to collectively negotiate. These include, but are not limited to, Bank Guarantees, Minimum Guarantee Payments, Car Parking Fees and Rent for various facilities outlined in section 2.5 of the Application Authorisation.

Transaction cost savings

- 3.8 In sections 5.27 - 5.30 of its submission, CAPL asserts in its submission that no material transaction cost savings will arise from CAPL negotiating with the Applicants collectively as its RFP process will have similar transaction costs as compared to collective negotiations.
- 3.9 As a starting point, the transaction cost involved in CAPL's RFP process should not be considered in isolation. CAPL has apparently incurred significant costs in its individual consultations with the Applicants in late 2019, including having engaged a planning consultant and quantity surveyor to map out its expansion plans. These costs should be taken into account when assessing the overall transaction cost of CAPL's RFP process as it is in the same course of conduct with the same objective - to determine on-airport car rental operators' requirements and secure a favourable commercial return for CAPL's additional investments.
- 3.10 The key source of transaction cost savings will be based on enabling the Applicants and CAPL to identify common contractual problems which could include unfair contractual terms (examples identified in sections 3.5 - 3.7 of this submission) or a collective change in requirements for access to CAPL facilities in a streamlined manner. This is an area where neither an RFP nor individual negotiation process can achieve (or achieve as well as illustrated below) as compared to the Proposed Conduct by virtue of the bilateral nature of such processes which do not facilitate collaboration.
- 3.11 There are also possible time and cost savings to the Applicants and CAPL negotiating collectively. As discussed in section 7.4 of the Authorisation Application, a collective negotiation process will allow the Applicants to share the costs of preparing for, and negotiating with CAPL, resulting in reduced transaction costs. Similarly, CAPL can incur cost savings through being able to negotiate with the independent negotiator representing the Applicants, rather than with five sets of Applicants individually.

3.12



3.13



3.14

Before its recently proposed RFP process, CAPL engaged in individual negotiations with the Applicants and proposed significant fee increases with limited increases in facilities. Some of the Applicants have already provided details to the ACCC of their recent interactions with CAPL in section 6 of Confidential Annexure A (Authorisation Application). The Applicants attach **Confidential Annexures A, B, C and D** being CAPL's operator consultation documents for various Applicants. The Applicants summarise some of their individual consultation experience with CAPL in late 2019 in the table below.



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<div data-bbox="277 1626 363 1666"></div>	<div data-bbox="472 1626 1369 1729"></div>
<div data-bbox="277 1760 399 1800"></div>	<div data-bbox="472 1760 1369 1868"></div> <div data-bbox="472 1877 1369 2020"></div>

- [REDACTED]
- 3.15 The ACCC acknowledged in its Perth Airport decision that Perth Airport will only engage in collective bargaining if it would achieve a no less favourable outcome than it would achieve in individual negotiation, the same principle applies here. Cairns Airport is likely to seek a no less favourable outcome through its RFP process than it would through individual negotiations with the Applicants. Despite the Applicants having received very limited communication from CAPL regarding its RFP process, the significant cost increases that CAPL has proposed to each Applicant in consultations in late 2019 is likely, as a matter of commercial rationality, going to be reflected in the minimum terms and conditions of the Request for Tender (RFT) stage of the RFP process.
- 3.16 The Proposed Conduct may also lead to enhanced competitive constraint on other airports. There is a potential for the above transaction cost savings to be replicated as other airport operators may be encouraged to approach similar negotiations with on-airport car rental operators in a manner more reflective of the potential competitive restraint.⁶

Increased allocative efficiency of Cairns Airport space

- 3.17 Increased allocative efficiencies for the collective benefit of CAPL and the Applicants can be generated within the allocation of spaces for on-airport car rental operators, and as between such operators with other potential airport land users.
- 3.18 Under the Proposed Conduct, the Applicants are open to considering any opportunities that could lead to an increase in their operating efficiencies and those of CAPL at Cairns Airport. This includes considering facility sharing arrangements provided commercial cost implications and compatibility with the Applicants' existing business models are met.
- 3.19 The Applicants illustrate below, by way of examples, potential sources of allocative inefficiencies, and space reconfiguration opportunities which could lead to an improvement of allocative efficiencies in the two aspects described previously. Under the Proposed Conduct, the Applicants have greater scope to collectively reconsider their need for certain facilities (including any 'essential' facilities which CAPL puts forward) and pursue more efficient space utilisation solutions, which could include pursuing other shared facility arrangements that could reduce operational costs, improve security and convenience for the Applicants' customers.

3.20

[REDACTED]

3.21

[REDACTED]

⁶ ACCC assessment of collective bargaining notification lodged by Hertz Australia Pty Limited on behalf of car rental operators at Mackay Airport (7 December 2009) at 3.19 - 3.20.

Cost savings may be passed on to customers as a part of the Applicants' pricing models

- 4.5 As the Applicants have submitted in section 2.7 of the Authorisation Application, car rental rates are made up of various components, including a 'base rate' calculated on a time or kilometre basis together with additional charges (which includes non-rental service recovery charges such as cleaning fees and location fees).
- 4.6 Although location fees may not be the primary factor affecting car rental charges, nevertheless, location fees remain a significant component of determining car rental charges for some Applicants (refer to Schedule 1 of Confidential Annexure A (Authorisation Application) for an illustration of the significant portion that location fees play as a part of the Applicants' overall on-airport costs). Consequently, decreases in location fees negotiated between the Applicants and CAPL will flow through to customers, directly or indirectly due to various Applicants' pricing models.
- 4.7 The Applicants illustrate below, by way of some examples the manner in which the Applicants may be able to pass on cost savings to customers under the Proposed Conduct.

4.8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.9

[REDACTED]

[REDACTED]

4.10

[REDACTED]

Cost savings may be passed on to customers as part of competitive market dynamics

- 4.11 The Applicants are highly responsive to local market conditions and vigorously compete both on and off-airport through price and non-price strategies. As a part of this competitive landscape, the Applicants have different business models, pricing models and an array of commercial partnerships (including associations with airlines, sporting organisations, various reward schemes) to seek to attract customers. In light of this, to the extent that any Applicants' pricing model may not be designed to directly pass on cost savings to customers, as a matter of commercial reality, they are likely to do so as a part of competing with other Applicants' pricing models.

5. Why CAPL may be willing to collectively negotiate with the Applicants

- 5.1 Despite CAPL's apparent resolute position of no collective negotiation espoused in its submission, CAPL has strong commercial incentives to engage in collective bargaining with the Applicants, as discussed below.

It is desirable for CAPL to have at least some of the Applicants on-airport

- 5.2 Notwithstanding their lack of bargaining power in bilateral commercial negotiations with CAPL, the Applicants are established national car rental operators and have built up substantial brand recognition and valuable partnerships with airlines and participants in the leisure and tourism industry and other commercial entities. As such, although CAPL may not necessarily require all Applicants to have a functional on-airport car rental operators, it would be compelled to include at least some of the Applicants for their established brand recognition and commercial alliances which can help CAPL to attract passenger volumes. As a part of fulfilling this proposition, it is likely that CAPL be willing to negotiate collectively with the Applicants, including for more equitable contractual terms and conditions.

The Proposed Conduct can effectively facilitate CAPL's expansion plans

- 5.3 In sections 2.9 - 2.14 of CAPL's submission, CAPL indicated that it is in the process of redeveloping the airport's domestic terminal precinct as a part of its 'T2 Car Rental Enhancement Development Project'.
- 5.4 As discussed in sections 3.17 - 3.22 of this submission, there are significant scope for CAPL to identify and seize opportunities for increased allocative efficiencies within its limited on-airport space through collective negotiation. Regardless of whether the space utilisation solution generated relates to efficiencies between the allocation of spaces between each on-airport car rental operator, or as between these operators and other alternative land users, such as café (as an identified need for CAPL), CAPL can more easily identify any potential reconfiguration issues and inefficiencies and maximise its land utility as part of a collective negotiation with the Applicants.
- 5.5 The above process is significantly more time consuming and difficult through an RFP or bilateral negotiation process (as common infrastructure inefficiencies can only be identified through collective discussion between all Applicants). Further, as the Applicants' business models are consumer-orientated, their demands are likely to be driven by key considerations of consumer convenience, in addition to their individual commercial needs.
- 5.6 Through engaging with the Applicants as a collective group, CAPL can incur significant time and cost savings in seeking to accurately and being able to explore potential opportunities (some of which may not be available otherwise) to increase its value propositions for all relevant stakeholders.

Transaction cost savings

- 5.7 As discussed in 3.8 - 3.16 of this submission, there is potential for CAPL to incur transaction cost savings through streamlining the process for identifying common contractual problems amongst the Applicants. In addition, transaction cost savings may also be incurred through enabling CAPL to mainly negotiate key terms with the collective negotiator (rather than with five different Applicants). To the extent there are items remaining for individual negotiation, these are likely to be minor in the overall negotiation process.

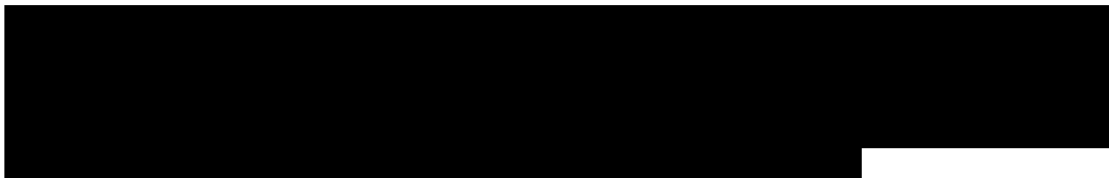
Continuity and certainty of on-airport car rental operations at Cairns Airport

- 5.8 As foreshadowed in sections 2.5 - 2.8 of the Applicants' Interim Authorisation Response, if the Proposed Conduct were allowed, it would buffer customers against the possibility of delays in the completion of CAPL's recently initiated RFP process or delays in new car rental operators establishing an on-airport presence.

5.9



5.10



6. Adequate information sharing protocols in place

- 6.1 CAPL's submission reflects a lack of confidence and understanding of the information sharing protocols and confidentiality barriers in place to prevent the Applicants from sharing any competitively sensitive information directly with each other. Details regarding the information sharing arrangements has been previously discussed in the Authorisation Application and the Applicants' Interim Authorisation Response.⁷ In addition, more granular details of the manner in which the Applicants have applied the information sharing protocols are provided below, and will apply if Interim Authorisation or Final Authorisation.

Information sharing approach overview

- 6.2 The information protocols in place between the Applicants are attached as Confidential Annexures to this submission, being:
- **Confidential Annexure G - Briefing Document for the Collective Negotiator** - this includes the information sharing protocol for the collective negotiator (to follow if Interim/Final Authorisation is granted) and the information sharing protocol for the proposed collective bargaining process; and
 - **Confidential Annexure H - Australian Finance Industry Association (AFIA) Updated Information Sharing Protocol** - As all Applicants are AFIA members, their interactions are also governed by this protocol.
- 6.3 We also provide, by way of examples, guidance on the type of information which would be shared and would not be shared in practice. For example, non-competitively sensitive information which has been shared between the Applicants include:
- the types of contractual terms they want to negotiate as a part of the Proposed Conduct (without sharing granular details about the current terms in any existing agreement or values of payments to CAPL etc. between the Applicants);
 - the nature of the collective bargaining group - i.e. to whom is the group 'open' to; and
 - the duration of Interim and Final Authorisation which the Applicants wants to apply for.

⁷ Refer to section 8.3 of the Authorisation Application and sections 2.1 - 2.4 of the Applicants' Interim Authorisation Response.

- 6.4 Core to each information sharing protocol is the obligation imposed on all Applicants to not share their competitively sensitive information with other Applicants.



- 6.5 To illustrate by way of examples, the information processing precautions which have been taken by the Applicants to date, in drafting the Authorisation Application:

- **the comparative graph in section 2.4 of Authorisation Application-** an external consultant collated data on cost and number of transactions based on each Applicant sharing its granular data only with AFIA and the external data consultant. The consultant then aggregated and anonymised the data into the comparative graph. Cost per transaction was also chosen as a neutral measure to prevent the Applicants from 'reverse engineering' other Applicants' competitively sensitive information such as total revenue.
- **Schedule 1 and 2 of Confidential Annexure A (Authorisation Application)-** Data specific to each Applicant was sent only to K&L Gates and AFIA by each Applicant, following which K&L Gates then collated the data. In circulation of individual drafts of the Authorisation Application to each Applicant, data specific to all other Applicants is redacted so that each Applicant only have access to their data.
- **Applicant specific examples of interactions with Cairns Airport-** (such as in Confidential Annexure A (Authorisation Application)) - this information is dealt with in the same manner as described for Schedule 1 and 2 of Confidential Annexure A (Authorisation Application).

- 6.6 Following the above approach, the Applicants' current pricing information, such as relating to the leasing space at airport or price of car rentals would be classified as competitively sensitive information and will be processed through aggregation and anonymisation or redaction. This is consistent with the information sharing approach the Applicants have followed to date and which the Applicants intend to follow if the Proposed Conduct were allowed.

Information sharing if Interim Authorisation is granted

- 6.7 As discussed in section 4 of Authorisation Application, if Interim Authorisation is granted, the Applicants will formally engage the third party negotiator to prepare for and commence the collective negotiation process. However, the Applicants will not collectively enter into finalised contractual arrangements with CAPL.

- 6.8 If Interim Authorisation is granted, the Applicants anticipate to be able to collectively negotiate 'hold over' arrangements on the basis of commercially acceptable terms between CAPL and each Applicant. [REDACTED]

[REDACTED] the Applicants intend to share CAPL's communication of timelines for 'hold over' arrangements and surrender of premises following the expiration of their Agreements with CAPL to assist the Applicants to seek a longer 'hold over' period in accordance with the ACCC's indicative timelines for the Authorisation (with the specific terms and conditions being left for each Applicant to individually negotiate with CAPL).

- 6.9 In addition, the Applicants would also like to explore all the commercial terms which they wish to be included in collective negotiations (and terms which the Applicants wants to individually negotiate), structure of any collective negotiations (i.e. whether there should be multiple phases) and timelines of the collective negotiation process.

The collective negotiator's information sharing approach

- 6.10 The collective negotiator's information sharing approach will be consistent with the Applicant's information sharing practices described above. All Applicants will not share competitively sensitive information with each other and will only share such information privately with the collective negotiator. To the extent the collective negotiator will rely on competitively sensitive information, such information will either be redacted or appropriately aggregated and anonymised before it is shared with the Applicants.
- 6.11 Where the collective negotiator requires further discussion with each Applicant about its competitively sensitive information such as inclusions in payment terms, such discussions will be conducted privately between the Applicant and the collective negotiator. The collective negotiator will subsequently analyse each Applicant's competitively sensitive information and provide a collective recommendation to the Applicants regarding the proposed negotiating position for their consideration (without reference to any Applicant's competitively sensitive information).
- 6.12 Any collective discussions between the negotiator and the Applicants will be "forward-looking" information/proposals, that is, focusing on the appropriate contractual positions that the Applicants wish to negotiate with CAPL (rather than on what each Applicants' current contractual position is).
- 6.13 As an example to illustrate the operation of the above, assume that a key term for collective negotiation is Bank Guarantees - specifically, whether one is required and if so, the relevant quantum. It is anticipated that the collective negotiator will discuss collectively with the Applicants whether they wish to have a bank guarantee, and privately with each Applicant on their current terms and the amount of bank guarantee they are willing to accept. If varying levels of bank guarantees are required between the Applicants, a possible methodology for or criteria relating to bank guarantees and their quantum may involve the collective negotiator suggesting a consistent formula with the same variables to be applied for all Applicants for calculating Bank Guarantees under the Applicants' agreements with CAPL.

- 6.14 If Interim Authorisation/Final Authorisation is granted, any group meetings between the Applicants and the collective negotiator will have an agenda to appropriately circumscribe discussion boundaries. Moreover, a competition law lawyer will act as a probity officer supervising all group meetings to enforce the relevant information sharing protocols.

No increased likelihood of collusion in downstream markets and service standardisation

- 6.15 In sections 6.20 - 6.24 of its submission, CAPL suggests that the Proposed Conduct will increase the risk of collusion between the Applicants in downstream markets. CAPL's assertions are misconceived in two ways as there are commercial and legal restraints preventing the Applicants from engaging in collusion.
- 6.16 Firstly, as discussed in section 6 of this submission, there are strong competitive dynamics between the Applicants both at Cairns Airport and off-airport. A robust level of retail competition and the Applicants' different business models prevents the Applicants from colluding in the downstream market, particularly in light of the greater number of competitors in the downstream market as compared with upstream.
- 6.17 Secondly, the stringent information protocols and confidentiality barriers in place described in section 4 of this submission provides sufficient legal restraint to prevent the Applicants from sharing any competitively sensitive information with each other. Even if the Proposed Conduct is allowed, the scope of the conduct is limited to enabling the Applicants to negotiate with CAPL regarding on-airport operational terms. Consequently, the Applicants will not need to share and will not be sharing downstream operational information.
- 6.18 As a corollary point, there are strong competitive dynamics between the Applicants both on and off-airport and the significant efficiencies generated from the Proposed Conduct for allocative efficiencies.⁸ Consequently, it is likely that the Proposed Conduct will allow greater scope for Applicants to innovate and compete with each other and will not lead to service standardisation as asserted by CAPL at sections 6.17 - 6.19 of its submission.

⁸ Refer to sections 3.17 - 3.22, 4.10 of this submission.