

Non-Confidential Version**Restriction of Publication Part Claimed****Application for Authorisation AA1000460-1: Further Submission to the ACCC****1. Summary**

- 1.1 The purpose of this submission is to provide the ACCC with additional information to facilitate the ACCC's consideration of the application for Authorisation as well as respond to the ACCC's information requests on 20 February 2020 and 26 February 2020.
- 1.2 The Applicants have therefore sought to address all outstanding issues in this submission. The Applicants reserve their rights to respond to CAPL's submission to the ACCC on 12 February 2020.
- 1.3 The Applicants are also cognisant of the ACCC's information request to CAPL dated 26 February 2020, in particular, the ACCC's request for copies of CAPL's Request for Tender documents. The Applicants also reserve their rights to respond to CAPL's submission of 2 March 2020 which responded to the ACCC's information request.
- 1.4 This submission aims to further explore the new counterfactual to the Proposed Conduct, being the Applicants' making independent decisions regarding CAPL's Request for Proposal and Tender processes, (together, the RFT); particularly given that the ACCC has expressly requested the Applicants to consider the effect of the RFT (as the counterfactual) on the public benefits claimed by the Applicants. Although the RFT and collective negotiations are separate processes, the concurrence of the RFT process will nevertheless have an impact on the ACCC's assessment.
- 1.5 The Applicants will make independent, confidential commercial decisions regarding how they may wish to engage with CAPL through the RFT. Given that the Applicants cannot engage with each other about the terms of the RFT and therefore cannot make collective submissions about the detail of the RFT, the Applicants urge the ACCC to refer to the RFT documents in parallel (as the ACCC may obtain from CAPL) and the design and structure of the RFT in assessing the statements made in this submission to achieve a holistic understanding of the key issues.
- 1.6 The Applicants assert that the ACCC should have regard to the following in the RFT documentation in determining whether to allow the Proposed Conduct:
 - the potential for CAPL's RFT process to have a blunting effect on any potential benefits as against the collective bargaining process, in particular:
 - the scope for transparency in the process such that the respondents explore configuration efficiencies with CAPL, whether in terms of improving allocative efficiency between any on-airport car rental operators or as between these users and other land users of Cairns Airport; and

- the prospects for successful respondents to the RFT to achieve cost savings that may then be passed on to consumers or are otherwise incentivised to engage in vigorous non-price competition.

1.7 In addition, the Applicants would like to highlight the following matters:

- CAPL's RFT process is both an indication and exercise of CAPL's significant market power in contriving a commercial process in parallel with the ACCC's consideration of the application for Authorisation. The new counterfactual enhances the degree of urgency for the Applicants to rely on the collective bargaining process to attempt to engage in meaningful negotiations with CAPL.
- Any efficiencies arising from CAPL's RFT process are speculative and unlikely to be achieved having regard to the design and structure of the RFT process. Whether it is the timely completion of commercial negotiations between respondents and CAPL, the potential introduction of new entrants to on-airport car rental services or the optimisation of allocative efficiencies - these are all efficiencies that are more likely to materialise, under the collective bargaining process.
- The collective bargaining process is likely to result in significant public benefits. In addition to the Applicants' previous ACCC submissions, the Applicants have more specifically identified opportunities to create increased efficiencies of CAPL's space and fairer redefinition of contractual terms with flow-on benefits to consumers. The vigorous price and non-price competition between the Applicants entail that cost savings are likely to flow on to consumers.

1.8 The Applicants reassert that the stringent information sharing protocols in place will effectively preserve the integrity of both the collective bargaining process as well as CAPL's RFT process and will ensure that the Proposed Conduct strictly stay within legal parameters.

1.9 The well-developed structure of the collective bargaining process is separate from CAPL's RFT process. The Applicants are hopeful that CAPL will consider engaging in the collective bargaining process, if only to make an informed decision about which process will enable it to reap better commercial outcomes (taking into account all relevant public benefits).

The Applicants' further submission

2. Overview of CAPL's RFT process

- 2.1 The information asymmetry between CAPL and the Applicants means that the Applicants only have a fragmented understanding of the structure of CAPL's RFT process. CAPL gauged interest for its RFT through soliciting expression of interest (EOI) from relevant parties. Recently, CAPL has initiated its RFT phase.
- 2.2 The ACCC should have regard to the scope for the respondents to achieve efficiency benefits, whether through engaging with other respondents and CAPL and compare the relevant scope under the RFT process as against the collective bargaining process. This assessment may be influenced by considerations such as whether there is a negotiation phase in the RFT and whether CAPL has adopted facilitative negotiation tactics in the past. This is an important consideration as it is likely to have a material effect on the commercial incentives available for both the respondents and CAPL to engage in collaborative discussion to realise any efficiency benefits achievable under the RFT.
- 2.3 At a practical level, the ACCC should also have regard to the breadth and depth of information respondents are required to provide to submit a RFT response, including any broad evaluation criteria and any minimum criteria (such as minimum pricing terms) that the respondents are required to address. Equally, the ACCC should review the scope of CAPL's discretion to reject any non-conforming RFT responses and the impact this may have on the actual terms and conditions that any respondent may be able to negotiate or bid on.
- 2.4 In assessing the terms unlikely to be negotiable in the RFT, the ACCC should also take into account the likelihood for CAPL to reject any RFT response that may not conform to any baseline terms/minimum criteria which may have been included in the RFT. This may provide an indication of the likelihood for negotiations about the terms and allocation/configuration efficiencies in the RFT (as against the collective bargaining process). Moreover, any minimum pricing terms, fixed configuration aspects (i.e. number of facilities available, location of facilities) and any proposed methodology for determining any pricing terms may limit not only any real scope for negotiation, but may also pose open questions on the likelihood or incentives for potential entrants/incumbents to viably compete for the RFT (and if successful, to achieve the benefits to consumers which CAPL has asserted that its RFT process will achieve).
- 2.5 To the extent that the respondents may be able to bid on a limited set of terms and conditions under the RFT, the degree to which other terms may be open to negotiation with CAPL is uncertain as is the practical burden imposed by such terms. For example, the preferential nature of a RFT process may mean that any scope for respondents to 'bid' will be skewed to only satisfy CAPL's commercial interest (i.e. respondents may feel compelled to bid the minimum price or higher to secure a competitive bid, even if the minimum prices set by CAPL are significantly higher than existing terms or comparable airports). The closed nature of the RFT process exacerbates this risk as it is specifically designed to avoid public scrutiny of its terms, including assessing whether such terms are fair and reasonable as a matter of ordinary commercial practice.

3. Any efficiencies flowing from CAPL's RFT process is likely to be speculative

- 3.1 As recognised by CAPL in its submission to the ACCC,¹ it is well established that the ACCC should not take into account merely speculative benefits, being benefits which are unlikely to arise based on commercial reality in considering an application for Authorisation.
- 3.2 Similarly, when considering the RFT as a counterfactual, the ACCC should not give weight to possible efficiencies submitted by CAPL to result from its RFT process on the basis that such benefits are unlikely to materialise under the rigid structural design of the RFT as compared with the open, dynamic nature of the collective bargaining process. Further, the collective bargaining process seeks to canvass all relevant efficiencies that may be realised under CAPL's RFT process.
- 3.3 To the extent that any efficiencies may follow from CAPL's RFT process, they are likely to be as follows:
- the expeditious completion of commercial negotiations, with CAPL imposing a strict timeline which implicitly assumes the completion of any further negotiation with selected parties by the set RFT timelines;
 - the opportunity to introduce new entrants into Cairns Airport's on-airport car rental operations, whether from off-airport operators or other sponsored entrants; and
 - optimising allocative efficiencies of CAPL's airport space.

a) Timelines of negotiations

- 3.4 In relation to the timeline imposed by CAPL for its RFT, there is no commercial guarantee that CAPL will indeed complete the process by the proposed deadline. The ACCC should have particular regard to the degree of latitude for CAPL to vary the RFT timelines in the RFT documents.
- 3.5 The Applicants submit that they have advanced their discussions with the collective negotiator following Interim Authorisation regarding key proposed terms and conditions. It follows that if CAPL were to engage with the Applicants and negotiate collectively,² the timely completion of commercial agreement on common terms and conditions between the Applicants and CAPL is not a remote commercial possibility. To the extent that any Applicant may then wish to exercise its latitude to negotiate any further aspects of their agreements with CAPL individually, it is unlikely to cause undue delay as these aspects are likely to be minimal.

¹ Refer to section 4.1 - 5.2 of CAPL's submission to the ACCC for application for Authorisation AA1000460-1 (19 December 2019).

² Please refer to section 5 of the Applicants' submission to the ACCC for application for Authorisation AA1000460-1 (6 February 2020) regarding the reasonable basis on which the Applicants consider that CAPL may seek to engage with the Applicants collectively.

b) New or additional entrants for the supply of car rental services at Cairns Airport

- 3.6 Given that CAPL has not previously initiated a RFT process for Cairns Airport, it is an open question whether the RFT process will indeed increase the competitive dynamics on-airport as CAPL contends, including through inviting incumbents to participate in the RFT.³ The ACCC should closely consider any minimum criteria set by CAPL in its RFT - both financially and operationally, and its likely effect on any off-airport car rental operators to be able to effectively participate in the RFT process.
- 3.7 In particular, the ACCC should scrutinise whether CAPL's RFT process may have the effect of superficially expanding the pool of potential entrants without correspondingly providing real incentives for such entrants. This may be reflected in the definition of key payment terms which can limit the options for potential entrants to prove their financial capability to operate on-airport (particularly if they have had no prior trading history on Cairns Airport).
- 3.8 Further, if the proposed basis for the determination of minimum prices for access to Cairns Airport and particular facilities at Cairns Airport are financially onerous or structurally rigid, and the likelihood for new entrants to over-estimate their financial projections to lodge a competitive bid is high, there is a real risk for new entrants to suffer a financial shortfall and be unable to deliver any consumer benefits (restrained by the need to achieve a 'fair and reasonable' recovery of CAPL's fees as has been the Applicants' experience to date).
- 3.9 As submitted previously, the collective bargaining group is open to any other car rental operators that may commence operations at Cairns Airport. More importantly, from a practical standpoint, if potential entrants want to achieve fairer contractual terms, explore allocative efficiencies and incur transaction cost savings - which they can do through joining the collective bargaining group - arguably this will provide a fairer playing field for all possible on-airport car rental operators. The collective bargaining process is likely to result in a better outcome for the mutual benefits of the Applicants, CAPL and consumers (as contrasted with CAPL's RFT process which is skewed to only satisfy CAPL's parameters as set out in the RFT at the expense of all other relevant stakeholders).
- 3.10 The Applicants will further discuss the likelihood of respondents relying on the RFT process to achieve allocative efficiencies in sections 5.3 -5.7 of this submission. Similar to the above, the Applicants' position is that the rigid structural design of CAPL's RFT process limits any scope for negotiation between the Applicants and CAPL collectively, significantly foreclosing opportunities for improving allocative efficiencies.

³ Refer to section 2.17 of CAPL's submission to the ACCC for application for Authorisation AA1000460-1 (19 December 2019).

4. Significant public benefits flowing on from the collective bargaining process

- 4.1 Building upon the Applicants' previous ACCC submissions regarding the substantive public benefits realisable from the collective bargaining process,⁴ the Applicants have identified additional sources for increased allocative efficiency of airport space and objective ways in which key payment terms can be redefined so that cost savings may flow on to consumers. The Applicants consider that collective negotiation will generate significant mutually beneficial outcomes, specifically, the innovative and fair options outlined below will create capacity for CAPL to continue its growth in a sustainable manner.

a) Increased allocative efficiency of CAPL space

- 4.2 As discussed in the Applicant's previous ACCC submission,⁵ there are at least two factors affecting allocative efficiencies of CAPL's space, being:

- allocative efficiency as between the on-airport car rental operators; and
- flowing on from the above, allocative efficiency as between the above participants and other CAPL land users.

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⁴ Refer to section 7 of the Applicant's ACCC submission (28 November 2019); sections 2.9-2.11 of the Applicant's ACCC submission (16 January 2020); and the Applicant's ACCC submission for application for Authorisation AA1000460-1(5 February 2020).

⁵ Refer to sections 3.17 - 3.22 of the Applicant's ACCC submission for application for Authorisation AA1000460-1 (5 February 2020).

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4.6 The structure of the RFT process may not allow the Applicants to fully explore the opportunities available to achieve improved allocative efficiencies with CAPL - this will be further discussed in sections 5.3 - 5.7 of this submission.

⁶ Refer to section 2.9 of CAPL's submission to the ACCC for application for Authorisation (17 December 2019).

b) Fairer re-definition of contractual terms with flow-on benefits to consumers

- 4.7 As discussed in the Applicant's previous ACCC submission,⁷ 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. If fairer contractual terms can be realised, it would position the Applicants to be able to provide cost savings for customers, either as a direct result of their pricing model or as a matter of competitive dynamics.
- 4.8 Consolidating upon the Applicants' previous ACCC submissions in this regard, the Applicants would like to explore additional opportunities for collective negotiation with CAPL (see below) through redefining contractual terms based or benchmarked, if possible, on objective factors and ultimately, enhancing consumer welfare.
- 4.9 The Applicants' view is that collective negotiation will assist in facilitating fairer re-definition of key contractual terms that can lead to a more balanced allocation of demand risk between CAPL and the Applicants. This risk is currently not appropriately reflected in the Applicants' agreement with CAPL, skewed so that the Applicants are required to uptake most of the risk.
- 4.10 The mutual demand-side risk for both CAPL and the Applicants was aptly recognised by Hertz in its commissioned Frontier Economics Report submission as a part of the applicant's submission to ACCC's Perth Airport decision.⁸ There is no reason that this mutuality should not apply here. For CAPL, there is a risk that demand for on-airport car rental services may not turn out as expected, and space and land assigned for this use could have been utilised in other more profitable ways. For the Applicants, there is a risk that demand for airline travel services may not be as high as expected (such as during a disease outbreak or other natural disasters), such that the passengers using Cairns Airport may be lower than expected.

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⁷ Refer to sections 3.5 - 3.7 and 4 of the Applicants' submission to the ACCC for application for Authorisation AA1000460-1 (5 February 2020).

⁸ Refer to Hertz's Frontier Economics Report (p9) - submission to the ACCC for collective bargaining notification CB0143 (27 May 2010).

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c) Cost savings may be passed on to customers as a part of the Applicants' pricing models and competitive market dynamics

4.15 As discussed in section 4 of the Applicants' ACCC submission of 5 February 2020, enabling the Applicants with the collective opportunity to redefine fairer contractual terms will result in passing of cost savings to consumers, through either or both of the following ways:

- as a direct result of the Applicants' pricing models; and
- strong competitive market dynamics at the retail level meaning that even if only some Applicants achieve competitive pricing pursuant to the above, the remaining Applicants will be compelled to compete vigorously on-price to remain a viable business.

4.16 The Productivity Commission acknowledged in its Final Report that there are no perfect substitutes to on airport locations for car rental operators.⁹ The same observation applies to CAPL so that on-airport car rental services and off-airport operators should aptly be considered as separate markets. Consequently, the Applicants' have constrained their analysis of competitive dynamics to the on-airport car rental services market and do not propose to deviate from this established approach in this submission.

4.17 The Applicants have already previously provided information to the ACCC regarding:

- the degree to which they compete with each other on price;
- how they set prices for car rental services provided to consumers;
- what combination of charges make up some of the Applicants' price charged to consumers (fixed/variable components); and
- the manner in which some of the Applicants calculate their location fee.

In addition to the examples provided in sections 4.8 - 4.10 of the Applicants' previous submission to the ACCC on 5 February 2020, the Applicants provide further illustrations of the strong competitive dynamics on Cairns Airport below.

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4.20 In addition to the vigorous price competition between the Applicants, the Applicants also compete on various non-price aspects and seek to differentiate themselves through marketing strategies, established commercial partnerships with airlines and other organisations as a part of building their commercial propositions. Examples of the diverse competitive tactics some of the Applicants adopt are provided below.

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⁹ Australian Government, Productivity Commission, Final Report into the Economic Regulation of Airports, 21 June 2019 (Pages 20-21) <<https://www.pc.gov.au/inquiries/completed/airports-2019/report/airports-2019.pdf>>.

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5. Increase in public detriments associated with CAPL's RFT process

5.1 As this submission illustrates, the ACCC should assess the potential benefits and detriments of the Proposed Conduct against the scope for meaningful negotiation between the respondents and CAPL under the RFT process. As compared with the collective bargaining process, any design shortcomings of the RFT process will have a material impact on the likelihood of realising the public benefits as is capable through the collective process.


5.2 The Applicants invite the ACCC to consider closely the design limitations of CAPL's RFT process. The following factors may be helpful in assisting the ACCC in making this assessment:

- the extent to which the respondents are compelled to bid for all the requirements under the RFT to ensure that such bids will be considered by CAPL;
- whether there are any non-negotiable terms and conditions in the RFT, and if so, the centrality that such terms and conditions have to affecting the ability and flexibility in which the respondents can operate on-airport;
- the impact that any centrality of non-negotiable terms and conditions (i.e. high minimum pricing terms) in the RFT may play in affecting the respondents' decisions risk lodging a non-conforming proposal (i.e. even if they have no need for certain facilities, or have alternative ideas for configuration/determination of pricing terms that may deliver better outcomes for CAPL and result in flow on benefits for consumers);

- the Applicants' past experience in negotiating with CAPL, where the notable imbalance of bargaining power between the Applicants and CAPL have led to CAPL imposing significant fee increases and an inability to negotiate about terminology and the scope of terms;
- the scope in which the Applicants can realistically explore facility sharing arrangements and other configuration efficiencies with CAPL within the structural design of the RFT;
- the increased transaction cost in terms of the significant human resources and time required for respondents to engage with CAPL regarding the RFT, and related to that, the real possibility for CAPL's RFT process to hinder the respondents' ability to identify common contractual problems in a streamlined manner; and
- the limitations that the RFT process imposes on the terms and conditions which may be achieved between the successful respondents and CAPL, and the impact this may have on the respondents to be able to deliver price or non-price benefits to consumers.

a) Potential diminished opportunities for exploration of configuration efficiencies

- 5.3 The ability for the Applicants (and any other respondents) to explore options for improving configuration efficiencies with CAPL will be materially affected by the significant degree of discretion CAPL has in controlling the RFT process. Relevant configuration efficiencies between on-airport car rental operators could stem from facility sharing arrangements, or a reduction of overall facilities which could free up CAPL space for other uses.
- 5.4 Importantly, and relevantly, any limitations imposed on the respondents' ability to engage with other respondents or with CAPL to explore opportunities for realising configuration efficiencies (beyond CAPL's proposed terms in its RFT) will affect the likelihood for realising these configuration efficiencies in practice. It is left to CAPL's complete discretion whether it will liaise with respondents on facility sharing arrangements. There is unlikely to be a real incentive for CAPL to initiate any such engagement without ongoing active participation by all stakeholders/users of CAPL facilities (which may be limited under the specialised nature of the RFT process which is publicly focussed on the on-airport car rental services portfolio of Cairns Airports' full potential service offerings.)
- 5.5 Beyond the absence of real commercial incentives for CAPL to engage collaboratively with the respondents, the ACCC should also consider whether the structural design of the RFT may have the effect that CAPL and each respondent will consider their commercial interest in a 'siloed' fashion rather than being able to considering efficiencies more broadly. If that is the case, there is unlikely to be any latitude for the respondents and CAPL to explore what may be in their collective commercial interest, which would result in a more competitive, cost effective outcome for consumers. For example, alternative configuration efficiencies or reconsidering the method for determining pricing terms.

- 5.6 The ACCC should also take heed of whether CAPL's RFT process will enable respondents to refuse to bid for certain facilities should they determine that they have no commercial need for such facilities without risk putting in a non-compliant response that may be rejected by CAPL.
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b) Significant increase in transaction costs imposed by CAPL's RFT process

- 5.8 The Applicants will not repeat the submissions regarding the significant transaction cost savings possible under the collective negotiation process discussed in its previous ACCC submissions.¹⁰ However, the Applicants submit that CAPL's RFT is likely to impose significant transaction costs on all respondents whom are each responsible for all the costs they incur as a result of engaging with CAPL's RFT process.
- 5.9 Each Applicant has already expended significant internal time and resources in liaising with CAPL during their individual consultation phase in 2019 where CAPL attempted to scope each Applicants' capacity and need for the renewal of each Applicant's agreement from 2020. In addition, the short timelines imposed by CAPL's RFT process, when considered alongside with the comprehensive information each respondent has to compile for the RFT - entails that any respondent needs to devote additional resources (on top of what the Applicants expended - a disproportionate burden as compared with off-airport operators/incumbents). The transaction costs will also include any additional external consultant/professional respondents which may be required to compile the relevant financial and operational data for CAPL's consideration.

¹⁰ Refer to section 7.3 of the Applicants' submission to the ACCC to application for Authorisation AA1000460-1 (28 November 2019); section 2.10 of the Applicants' ACCC submission (16 January 2020) and section 5.7 of the Applicant's ACCC submission (5 February 2020).

c) Potential reduced likelihood for successful respondents to achieve (and hence pass on) cost-savings to consumers under the RFT

5.10 As discussed previously, any set onerous minimum pricing terms and limitations on the scope of negotiation which the respondents can exercise under the RFT to explore fairer options to determine concession terms will have a material impact on the respondents' ability to achieve cost savings, and consequently, to pass on such cost savings to the consumer. The Applicants have previously provided the ACCC a comparison of their current terms and the significant fee increases proposed by CAPL in individual consultations last year to illustrate the notable imbalance in bargaining power between the Applicants and CAPL.

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6. Stringent information sharing arrangements will preserve the integrity of CAPL's RFT process and other competitive downstream markets

- 6.1 Building on the Applicants' previous extensive submissions to the ACCC regarding the information sharing protocols in place,¹¹ the Applicants further provide the following clarification to the information sharing arrangements in place, which will preserve the integrity of CAPL's RFT process and will not adversely influence other relevant competitive dynamics, such as downstream markets.
- 6.2 Any information sharing between the Applicants is strictly limited for the purpose of facilitating the collective negotiation process between CAPL. As discussed in the Applicants' previous ACCC submissions, no competitively sensitive information will be shared directly between each Applicant, being the following:
- each Applicants' existing terms and conditions with CAPL or with any other off on/off-airport locations;
 - any terms and conditions proposed by CAPL to each of the Applicants for the "2020 - 2025 agreement" or vice versa or any proposed terms between the Applicant or with any other airport/off-airport operators; and
 - how the terms and conditions of each Applicant's agreement with CAPL translates into their relevant pricing approach/business model (or with any other airport/off airport operators).

To the extent that any competitively sensitive information needs to be shared by the Applicants' negotiator, it will either be aggregated and anonymised or appropriately redacted.

- 6.3 The RFT process is clearly demarcated from the collective negotiation process so that the Applicants will not share any non-public information about the RFT process, in particular, their approach to responding to the RFT. In any meeting involving the collective negotiator and the Applicants, a competition lawyer sits in the meeting acting as a probity officer to ensure that the demarcation between the collective negotiation and RFT process is strictly retained and all discussions are within the bounds permitted by competition law.

¹¹ Refer to section 8.3 of the Applicants' ACCC submission for application for Authorisation AA1000460-1 (28 November 2019); sections 2.1-2.4 of the Applicants' ACCC submission (16 January 2020); and section 6 of the Applicants' ACCC submission (5 February 2020).

- 6.4 In terms of the period of time that the Applicants propose to engage in collective discussions, for the purposes of clarity, it is the Applicants' intention that information sharing envisaged by the application for Authorisation will only occur in the discrete times where collective bargaining is required with CAPL. In the context of the 10 year Authorisation period sought to allow the Applicants to collectively negotiate two sets of agreements with CAPL for the periods 2020-2025 and 2025-2030, information will only be shared for the relevant negotiation periods. Any competitively sensitive information sharing between the Applicants will cease outside of the relevant collective bargaining periods as this is beyond the scope of the Proposed Conduct.

[REDACTED]

- 6.5 In paragraph 6.12 of the Applicants' ACCC submission of 5 February 2020, references is made that "any collective discussions between the negotiator and the Applicants will be forward looking proposals/information". This includes all meetings where more than one Applicant is present or where all Applicants are present with the collective negotiator.

- 6.6 [REDACTED]

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- 6.7 In light of the strict information sharing parameters established, the Applicants will not share information regarding their individual willingness to pay and other upstream pricing considerations for future negotiations with CAPL. Rather, as discussed in the Applicants' previous ACCC submission,¹² the collective negotiator considers each Applicants' commercial needs individually and propose potential reasonable outcomes without specific reference to any Applicant's competitively sensitive information.

7. The operation of the Proposed Conduct in light of CAPL's RFT process

- 7.1 As a starting point, the Proposed Conduct is a separate process from CAPL's RFT process. The Applicants are cognisant that neither the scope of the Proposed Conduct nor the Interim Authorisation permits the Applicants to discuss the RFT as a part of the collective negotiation process. As discussed in section 6 of this submission, there are strict information protocols and enforcement processes in place to ensure that this demarcation is maintained in any collective discussions between the Applicants.
- 7.2 Each Applicant will make their independent decisions regarding CAPL's invitation to the Applicants to participate in the RFT process. In particular, there are no discussions or other communications between the Applicants about whether to participate in the RFT, or any aspect of their response to the RFT.
- 7.3 Indeed, the voluntary nature of the collective bargaining group is central to the Proposed Conduct, so that any Applicants can 'opt out' or additional entrants can 'opt in' at any time.

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- 7.5 Given the lack of information available to the Applicants regarding the scope of negotiation possible between the Applicants and CAPL under the RFT, there is still a degree of uncertainty about how the Proposed Conduct would operate in light of the RFT.

¹² Refer to sections 6.10 - 6.14 of the Applicants' submission to the ACCC for application for Authorisation AA1000460-1 (5 February 2020).

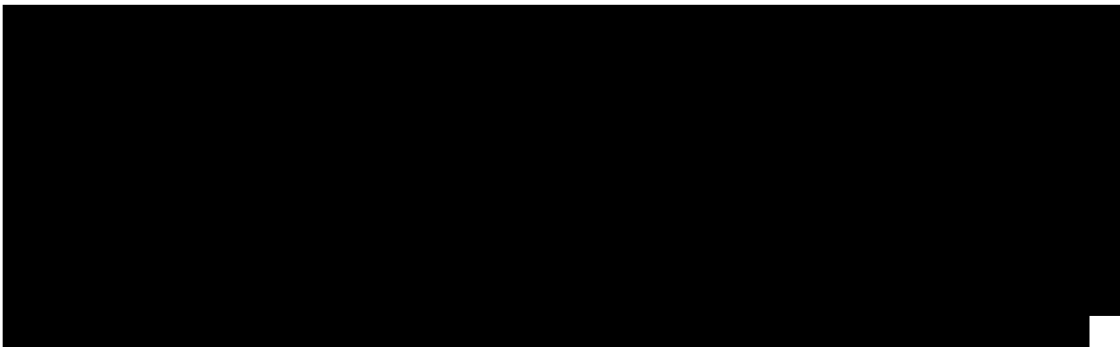
7.6 It is possible that if the RFT process does not produce the optimal commercial outcome that CAPL had hoped, CAPL may choose to extend the timeline of its RFT process or engage with collective negotiations so that it can consider the potential outcomes of the collective negotiations and adopt a course of action which is favourable to its commercial interest.

7.7 The Applicants remains hopeful that CAPL will engage with the Applicants in the collective negotiation process as it presents a valuable commercial opportunity to propel CAPL's growth in a sustainable manner. The Applicants' submissions to the ACCC, including this response, has well illustrated the commercial incentives which may compel CAPL to the negotiating table, and the significant public benefits that could be materialised for relevant stakeholders if CAPL choose to do so.

7.8 From a very practical standpoint, the Applicants have considered pursuing other alternative options if they were unable to reach an agreement with Cairns Airport through the proposed collective bargaining conduct. It is possible that the Applicants may decide to pursue their commercial interest individually, either through the RFT process (to the extent it may still be ongoing) or through individual negotiations with CAPL.

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7.11 A large rectangular area of the document has been completely redacted with a solid black box, covering approximately six lines of text.