



# Cairns Airport

Proposed authorisation for car rental operators to collectively bargain with Cairns Airport

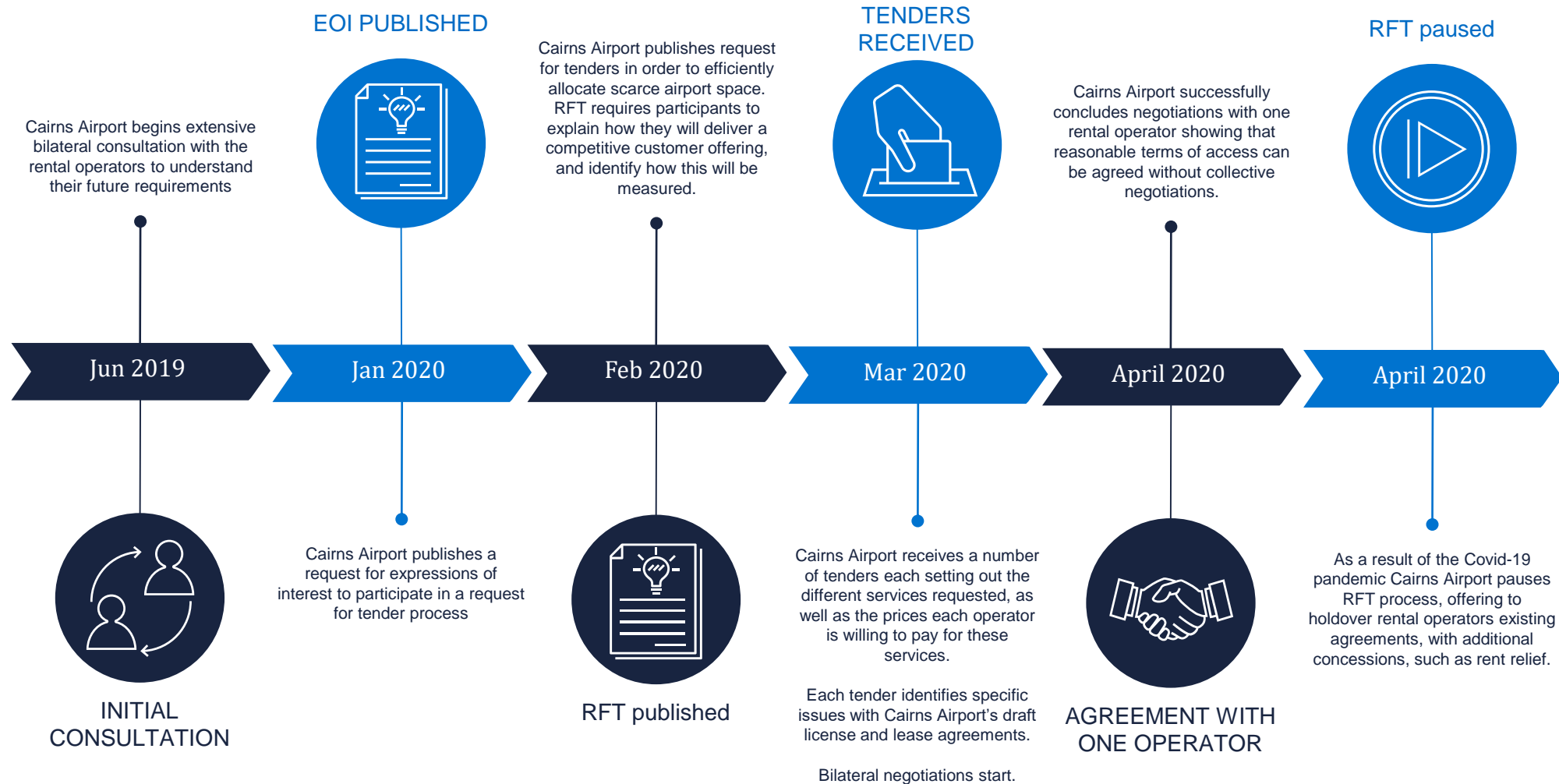
30 April 2020

# Car rental operators at Cairns Airport

Incumbents are large sophisticated multinational companies in a highly concentrated downstream market  
Redspot is the most recent entrant – beginning operations at Cairns Airport in 2004

The logo for Avis, featuring the word "AVIS" in a bold, red, sans-serif font with a registered trademark symbol (®) to the upper right.The logo for Budget, featuring an orange square with a white diagonal line to the left of the word "Budget" in a blue, sans-serif font with a registered trademark symbol (®) to the upper right.The logo for Europcar, featuring the word "Europcar" in a white, italicized, sans-serif font with a yellow underline, set against a green rectangular background.The logo for Hertz, featuring the word "Hertz" in a bold, black, italicized, sans-serif font on a yellow rectangular background.The logo for Redspot, featuring the word "Redspot" in a white, sans-serif font with a red dot at the end of the word, set against a black rectangular background.The logo for Enterprise Rent-A-Car, featuring the word "enterprise" in a white, lowercase, sans-serif font with a green square containing a white "e" to the left, and "rent-a-car" in a smaller white font below it, all on a black rectangular background.The logo for Thrifty, featuring the word "Thrifty" in a white, italicized, sans-serif font with a registered trademark symbol (®) to the lower right, set against a blue rectangular background.

# Overview of negotiations with car rental operators



# RFT process

## Objectives

- Efficiently allocate airport space to the highest value use
- Ensure that successful tenderers offer a competitive service offering in the downstream market

To achieve these objectives the RFT expressly required tenderers to:

*“...provide information that demonstrates how they can meet Cairns Airport’s car rental service requirements and **provide a competitive service offering which benefits the end customer**, by submitting a capability statement.”*

Specifically, tenderers were required to:

*“Demonstrate how your organisation will offer competitive pricing that will provide Cairns Airport customers with value for money with a range of vehicle choices for the duration of the lease”*

*“Provide details of how your organisation will measure and report on its price competitiveness and deliver value for money for car rental customers at Cairns Airport”*

*“Provide data on customer satisfaction surveys over the preceding 12-24 months.”*

# Tenders

## Key takeaways

- Individual rental operators have different preferences for areas of the airport and services
- Individual rental operators value different areas and services differently
- Rental operators clearly do value the ability to provide services at the international terminal and inside the terminals
- Rental operators have incurred costs to respond to the RFT and identify contractual issues with Cairns Airport's proposed draft license and lease
- Cairns Airport has successfully concluded negotiations with one rental operator demonstrating that now reasonable terms of access can be agreed without collective negotiations and that at least one rental operator does not consider that greater benefits will arise from collective negotiations

# COVID-19

## **Cairns Airport has temporarily paused the RFT process due to COVID-19**

- The RFT process will resume as usual following the a return to more normal business conditions
- In the interim Cairns Airport has offered to holdover the existing arrangements with the car rental operators
- Cairns Airport is in constructive discussions with car rental operators in fair and proportionate adjustments to existing contractual arrangements
- Cairns Airport is having regard to the national cabinet code of conduct for commercial leases

# Cairns Airport will not engage in collective negotiations

## **Cairns Airport sees no value in engaging in collective negotiations**

- Cairns Airport has been consistent in its position that it will not engage in collective negotiations
- Cairns Airport has already consulted extensively with the rental operators and is firmly of the opinion that it is best placed to determine the efficient allocation of the airport, in conjunction with the RFT process

## **Collective negotiations would result in worse outcomes for consumers**

- The proposals of the collective negotiator to remove services inside the terminals, and altogether at the international terminal, will result in significantly poorer outcomes for car rental customers at Cairns Airport.
- Instead of having car rental services available at the international terminal, customers wanting to hire a rental car will have to make their way to the domestic terminal – located approximately 500m away – either via shuttle or other means. This will result in inconvenience, exposure to inclement weather, and delay to consumers.

# Relevant precedent

The test for what is considered to be a public benefit or detriment is well established and is common ground between Cairns Airport and the Applicants

“ *We must be satisfied that the benefit or detriment is such that it will, in a tangible and commercially practical way, be a consequence of the relevant agreements if carried into effect and must be sufficiently capable of exposition (but not necessarily quantitatively so) rather than ‘ephemeral or illusory’, to use the words of the Tribunal in Re Rural Traders Co-operative (WA) Ltd (supra) at 263.*”

Qantas Airways Limited (2005), A Comp T9

”

“ *We are to be concerned with **probable effects rather than with possible or speculative effects**. Yet we accept the view that the probabilities with which we are concerned are **commercial or economic likelihoods***”

QCMA, quoted with approval in Re QIW Ltd and Qantas

”

“ *Thus, for a benefit or detriment to be taken into account, **we must be satisfied that there is a real chance, and not a mere possibility** of the benefit or detriment eventuating*”

Qantas Airways Limited (2005), A Comp T9

”



# 2010 Perth Airport decision

The Perth Airport decision dealt with an almost identical factual scenario

*“Given the voluntary nature of collective bargaining arrangements, the ACCC has also recognised that opportunities for collective bargaining to influence contract terms and conditions will generally only arise if both sides are likely to benefit from collectively negotiating an outcome.*

*That is to say, where the target of a proposed collective bargaining group has the option of continuing to deal with members of the group individually, **there would be no incentive for the target to agree to a collectively negotiated outcome unless the collectively negotiated agreement was going to achieve a better outcome for it than negotiating individually with each group member.**”*

# Collective negotiations increase transaction costs

- The applicants have not provided any evidence to substantiate their speculative assertion that the authorisation will result in a reduction in transaction costs
- In contrast there is already a demonstrable increase in transaction costs as a result of the Applicants attempts to collectively negotiate under the interim authorisation. The applicants have spent time and money appointing the independent negotiator Beyond Property, and liaising to coordinate their proposed issues for collective negotiations.
- The cost of any collective negotiations would be significant. These costs are clearly in addition to the costs of participating in the competitive RFT, which the rental operators have already incurred
- These additional costs are unnecessary and constitute a public detriment

If collective negotiations were successful it would result in worse outcomes for consumers

**What is the collective negotiator proposing?**



# Lack of probative evidence of authorisation efficiencies

## No evidence of increase in allocative efficiency

- The RFT process ensures airport space is allocated based on the highest value use. Allocative efficiency in its purest form. The Applicants have produced no evidence as to why collective negotiations will result in increased allocative efficiency. This is pure assertion. Rather, if the applicants are successful, it will result in a decrease in allocative efficiency and poorer services for consumers as discussed earlier.

## Reduction of information asymmetry is not a public benefit in itself

- As accepted by the ACCC, correcting for information asymmetry *is not* in itself a Public benefit. Rather, as discussed, information symmetry allows for collusion, and creates public detriments by reducing allocative efficiencies. There is no evidence of any efficiencies that would arise from removing information asymmetry.

## Cost savings would not be passed on to consumers

- The Applicants have provided no evidentiary basis that cost savings would pass through to consumers. As shown in Cairns Airport's first submission, rental operators consistently price at what the market would bear.

# Will public benefits arise from the authorisation?

Aspect	Without authorisation	With authorisation	Public benefit / detriment
<b>Allocation of airport space</b>	<p>Cairns Airport consults extensively with the rental operators on required airport upgrades on a bilateral basis.</p> <p>Rental operators respond to RFT setting out their proposed terms.</p> <p>Tenders used to allocate scarce airport space to highest value use.</p>	<p>Cairns Airport consults extensively with the rental operators on required airport upgrades on a bilateral basis.</p> <p>Rental operators respond to RFT setting out their proposed terms.</p> <p>RFT process used to allocate scarce airport space to highest value use.</p> <p>Rental operators spend time and money engaging an independent negotiator to propose inefficient reallocation of airport space.</p>	<p><b>No change</b></p> <p>Cairns Airport allocates airport space based on the highest value use.</p> <p>Cairns Airport rejects collective negotiator's attempt to reallocate airport space in an inefficient way that does not reflect the value that rental operators put on the service (as shown by tenders), which would result in worse outcomes for consumers, and which would (if accepted) result in a significant public detriment.</p>
<b>Transaction costs</b>	<p>Individual operators incur costs to review Cairns Airport's RFT, identify the value that they place on the services offered, review proposed contracts and respond with a tender.</p>	<p>Individual operators incur costs to review Cairns Airport's RFT, identify the value that they place on the services offered, review proposed contracts and respond with a tender.</p> <p>Rental operators incur additional costs of engaging an independent negotiator to attempt to collectively negotiate with Cairns Airport.</p>	<p><b>Public detriment – additional transaction costs</b></p> <p>Both with and without authorisation the parties incur the costs of participating in the competitive RFT process (in fact these costs have already been incurred).</p> <p>The additional processes involved in the Applicants' attempts at collective negotiations will result in additional transaction costs.</p>
<b>Contractual terms</b>	<p>Individual rental operators identify, in their individual tenders, proposed changes to contractual terms.</p> <p>Cairns Airport negotiates these terms on a bilateral basis with each rental operator.</p>	<p>Individual rental operators identify, in their individual tenders, proposed changes to contractual terms.</p> <p>Cairns Airport negotiates these terms on a bilateral basis with each rental operator.</p>	<p><b>No change</b></p> <p>Cairns Airport will only engage on a bilateral basis both with and without negotiation.</p>

Thank you