

Ms Naomi Menon
Director, Competition Exemptions
Australian Competition and Consumer Commission
23 Marcus Clarke St
Canberra ACT 2601

Email: exemptions@accc.gov.au

9 January 2025

Dear Ms Menon

Toowoomba City Council Community Airport Incorporated – RN10000456 – Notification of collective bargaining | Interested Party Consultation

1. We refer to the notification lodged with the ACCC by Toowoomba City Council Community Airport Incorporated (**TCCAI**) dated 8 October 2024 (**Notification**) and the ACCC's invitation to interested parties to make a submission on the Notification.
2. Toowoomba Regional Council (**Council**) is the owner and operator of the Toowoomba City Aerodrome (**Aerodrome**). The Council is the Target of future collective negotiations in respect of certain hangar leases at the Aerodrome that are the subject of the Notification.
3. The Council welcomes the opportunity to provide its views on the Notification.

Executive Summary

4. The Council neither supports nor opposes the Notification and ability for the TCA Tenants (as defined in the Notification) to collectively bargain in respect of the conduct notified.
5. The Council notes that the conduct that is the subject of the Notification is limited to *"negotiating with the [Council] on behalf of the TCA Tenants, in relation to the Aerodrome Hangar lease agreements to be entered into between the [Council] and each of the TCA Tenants"*.
6. The Council expects that if the Notification is allowed to stand, TCA Tenants will adhere to engaging collectively within this narrow form of conduct which does not extend to any *"other commercial matters"* (section 3.4 of the Notification).
7. The Council accepts that there are potential benefits arising from the TCA Tenants' ability to collectively negotiate, including certain efficiencies and reduced legal costs. However, the Council submits that other public benefits may be overstated.
8. In particular, the Council submits that the public benefits advanced by TCCAI in relation to the services provided to the community by TCA Tenants must arise from the TCA Tenants' ability to collectively negotiate (rather than the services themselves).
9. With or without the ability to collectively bargain, the TCA Tenants may continue to provide services said to be of benefit to the community if the parties can agree as to terms. However, if, in the absence of an ability to collectively bargain, other future tenants may enter into a lease that also provide services said to be a benefit to the public. That is, the public benefits put forward by TCCAI should not be tied to the particular services of the TCA Tenants as other potential benefits may arise from the services of prospective tenants.

10. Having regard to the limited scope of the conduct notified, the Council does not support the 10 year term of the Notification. TCCAI has not identified any reasonable basis for allowing the TCA Tenants to engage in the notified conduct for this period when negotiations of the upcoming TCA Leases is expected to be concluded by end of 2025, subject to the tenants accepting standard reasonable lease terms. The Council supports the submissions of TCCAI and other interested parties that there is a benefit in the certainty that longer leases provides. Accordingly, the Council would support a shorter period and no more than 2 years to cover any TCA Tenant rolling off a current lease in effect between the parties.

Scope of the collective bargaining

11. The Council understands that a notification to engage in collective bargaining, if allowed to stand, provides an exemption from the operation of certain provisions of the *Competition and Consumer Act (CCA)*.
12. Without the protection of the Notification, the proposed conduct of the TCA Tenants may breach competition law.
13. As a result, the Council understands that the ACCC will consider the conduct that is the subject of an exemption in its narrowest form.
14. The Council understands the Notification to apply to:

negotiating with the [Council] on behalf of the TCA Tenants, in relation to the Aerodrome Hangar lease agreements to be entered into between the [Council] and each of the TCA Tenants.
15. However, the Council notes that the Notification variously also introduces broader forms of conduct that should not be the subject of the Notification. This includes, any "*other commercial matters*" and the ability to "*participate in the review of the terms of the standard aerodrome lease*". In respect of the latter, to the extent that this is a reference to participating in the independent market review of rent of the tenancies, this review is current being undertaken by an independent third party and there is no scope for the TCA Tenants or TCCAI to participate in this review.

Purported delay in offering leases

16. The Council understands that the Notification, if allowed to stand, will allow TCA Tenants to appoint TCCAI to act on their behalf in respect of future negotiations with the Council in relation to the Aerodrome Hangar lease agreements to be entered into between the Council and each of the TCA Tenants (**TCA Leases**).
17. Currently, a number of TCA Tenants are on month to month leases.
18. As the TCA Tenants are aware, the Council has sought an independent market review of the rental charge applicable to its hangar leases at the Aerodrome (which includes the TCA Leases). The Council has not undertaken a market review of its rental charges in 18 years. Council is also reviewing reasonable operational costs (outgoings) for the lease sites and Aerodrome.
19. The Council considers that it is necessary to undertake a market review of its leases to assist in maintaining the viability of the Aerodrome. Currently, the Aerodrome's revenue from leases and landing fees fails to cover operational costs.
20. Additionally, the Council wishes to ensure that the services that it provides at the Aerodrome comply with its obligations of ensuring fair competition for the provision of such services, including the hangar leases.
21. It is not the case, that the Council has intentionally delayed entering into leases with tenants. The Council equally desires the certainty provided by longer term leases but considers it

premature to open those discussions with prospective tenants until the market review has been completed.

22. The market review is expected to be completed in late February 2025 following which, the Council will be in a position to present the terms of the hangar leases to all tenants that are currently on month to month leases and as and when tenants roll off their current term-leases.

Competition and bargaining power of the parties

23. The Council submits that the Notification may not accurately reflect the state of competitive dynamics in relation to the services provided by the Aerodrome. In particular, the Aerodrome is located less than 20km from the Toowoomba Wellcamp Airport (**Wellcamp**).
24. TCCAI submits that Wellcamp is not a viable alternative because it is not an airport with equivalent services. However, Wellcamp's General Manager has publicly expressed¹ readiness to accommodate tenants of the Aerodrome if it were to cease operations. That is, even though Wellcamp does not currently offer equivalent hangar leases, it has the capacity and desire to do so (at market rent) and is a likely competitor of the Aerodrome. Accordingly, Wellcamp is a likely close competitor of the Aerodrome which restrains the Council from increasing rents or offering unattractive terms of the lease.
25. Further, it is inconsistent of TCCAI to submit that other airports (for example, Dalby, Warwick and Roma) only offer a limited constraint on the Council (due to the Aerodrome's unique location, business profile and position with tenants) yet also state that the TCA Tenants will face competition from businesses operating out of those same airfields.
26. Moreover, the Council does not agree with the TCCAI's "understanding" that tenants at those other airports are charged lower rents. As mentioned above, the Aerodrome's revenue from leases and landing fees fails to cover operational costs and the Council has not undertaken a market review of rental rates in 18 years. The Council disagrees with any inference that it is overcharging rent in respect of the hangar leases.
27. The Council notes that enabling the TCA Tenants to negotiate with the Council on a collective basis in order to remedy a perceived imbalance in bargaining power with the desired outcome of reducing revenue of the Aerodrome has the prospect of ultimately impacting the viability of the Aerodrome and impacting the public benefits advanced.

Public Benefits

28. The Council accepts that there are potential benefits arising from the TCA Tenants' ability to collectively negotiate, including certain efficiencies and reduced legal costs.
29. The Council notes the submission by TCCAI to the effect that the operation of the businesses by tenants at the Aerodrome provides various benefits to the public. This submission is, in effect, reflected in a number of submissions by other interested parties.
30. With or without the ability to collectively bargain, the TCA Tenants may continue to provide services said to be of benefit to the community if the parties can agree as to terms. However, if, in the absence of an ability to collectively bargain, other future tenants may enter into a lease that also provide services said to be a benefit to the public. That is, the public benefits put forward by TCCAI should not be tied to the particular services of the TCA Tenants but should be grounded in the ability to collectively bargain. As other potential benefits may arise from the services of prospective tenants the Council submits that these public benefits may be overstated.

¹ <https://toowoombaminute.com.au/toowoomba-city-aerodromes-future-hangs-in-the-balance/>

31. The Council agrees with TCCAI's submission that the continued longevity of the Aerodrome is a public benefit and the Council submits that the continued viability of the Aerodrome is critical to providing the public benefits stated in the Notification. As noted above, the Aerodrome's revenue from leases and landing fees already fails to cover operational costs. Submissions to the effect that the ability to collectively bargain to achieve 'fairer rents and longer leases' taken to its logical conclusion, could conceivably threaten the ongoing viability of the Aerodrome and the public benefits that the Aerodrome provides.

Public detriments

32. The Council submits that the ability of the TCA Tenants to collectively bargain may preclude other prospective tenants from accessing hangar space at the Aerodrome. The collective bargaining is designed to entrench existing tenants at the Aerodrome whereas, were the parties to negotiate bilaterally, the Council expects that there would be greater opportunity for new tenants to enter into a lease and provide their services to the community.
33. Where prospective tenants may deliver public benefits, they will be denied that opportunity. The Council submits that this is potentially a public detriment arising from the TCA Tenants' ability to collectively negotiate.

Term

34. The Council does not support a term of the Notification of 10 years.
35. The Notification proposes to enable TCA Tenants to collectively negotiate the TCA Leases, which are either currently month-to-month or otherwise rolling off their existing term over the next two years.
36. TCCAI has not identified any reasonable basis for allowing the Notification to stand for a period of 10 years where the conduct is limited to negotiating the TCA Leases and is not intended to cover any other commercial matters.
37. Having regard to these matters, the Council considers that, should the Notification be allowed to stand, its term should be limited to a period of two years.

Yours sincerely



Nick Hauser

Acting Chief Executive Officer