TREASURER

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30 JUN 1997

Mr Graeme Samuel
President
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001

Dear Mr Samuel

I refer to the application of 6 November 1996 by Australian Cargo Terminal Operators Pty Ltd (ACTO) to the NCC for declaration under the *Trade Practices Act 1974* (the Act) of certain freight handling services provided by the Federal Airports Corporation (FAC) at Sydney and Melbourne international airports.

On 9 May 1997, I received the NCC's recommendation concerning ACTO's application. In accordance with s44H of the Act, I have considered the NCC's recommendation and decided to declare:

- the services provided through the use of the freight aprons and hard stands to load and unload international aircraft at Sydney and Melbourne international airports; and

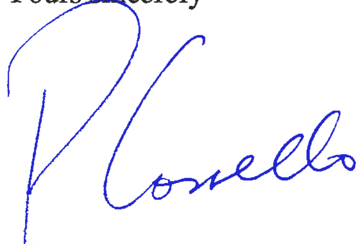
- the services provided by the use of areas at Sydney and Melbourne international airports to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at the airports.

The declaration in respect of Sydney will be effective from 1 August 1997 to 31 July 2002. In the case of Melbourne, the declaration will have effect from 1 August 1997 to 9 June 1998.

I have decided not to declare the services provided by the use of areas to construct cargo terminals at Sydney and Melbourne international airports. As noted in the attached statement of reasons, this application fails the criterion that the service in question must relate to a facility which is not economically duplicable.

Copies of the declarations are attached for your information.

Yours sincerely



PETER COSTELLO

TREASURER'S STATEMENT OF REASONS

Application relates to "services" in accordance with section 44B of the Trade Practices Act 1974 (TPA)

I agree with the NCC's conclusion, and their reasons supporting that conclusion, that the services in question are services provided by means of an infrastructure facility within the meaning of s44B of the Act.

Access to the service would promote competition in at least one market, other than the market for the service, in accordance with s44H(4)(a) of the TPA

There is currently limited competition in the provision of ramp and cargo terminal operation (CTO) services at Sydney and Melbourne international airports. Submissions to the NCC by users of freight facilities indicated widespread discontent about service quality and price levels under existing market conditions.

I consider that providing access to services provided by the airport operators' facilities at each airport would remove a significant barrier to entry to the freight handling market. I therefore agree with the NCC's conclusion and supporting reasons that providing access would promote competition in at least one market, including the market for freight handling services at Sydney and Melbourne international airports.

It is uneconomical for anyone to develop another facility to provide the service, in accordance with s44H(2) and s44H(4)(b) of the TPA

The hard stands, freight and passenger aprons, and related storage areas at airports must be co-located with other airport infrastructure, such as runways, if they are to fulfil their functions. The NCC noted that, as a result, in order to duplicate these facilities one would need to duplicate Sydney and Melbourne international airports. I agree with the NCC's conclusion and supporting reasons that the airports, and therefore the hard stands, freight and passenger aprons, and related storage areas, are not economic to duplicate.

An area to construct a cargo terminal could be provided off airport. As such, I consider this facility to be economically duplicable. However, I agree with the NCC's conclusion that it is uneconomic to duplicate the interface between an off-airport CTO and the hard stands, freight and passenger aprons, and related storage areas of airports.

The facilities in question satisfy the national significance test in accordance with s44H(4)(c) of the TPA

I agree with the NCC's conclusion and supporting reasons that the facilities in question are of national significance in terms of their importance to the movement of freight into and out of Australia.

The NCC noted that Sydney and Melbourne international airports account for 70 per cent of Australia's trade by air and there is often no practical alternative to the two major international airports in these cities. They also noted that some 20 per cent of Australia's trade by value takes place by air freight. Air freight is particularly important for businesses involved in, or using, express shipments, overseas air mail, and/or just-in-time type commercial or industry activity.

The services can be provided without undue risk to human health or safety in accordance with s44H(4)(d) of the TPA

I agree with the NCC's conclusion and supporting reasons that the services can be provided without undue risk to human health or safety. There are safety concerns inherent to any CTO or ramp handling operation, and I do not see that ACTO's proposed methods of operation pose additional safety concerns.

The service is not already subject to an effective access regime, in accordance with s44H(4)(e) of the TPA

Under current administrative arrangements of section 8 of the *Federal Airports Corporation Act 1986*, the FAC is empowered to make arrangements in respect of access to airport facilities. However, the NCC noted that these arrangements simply give the FAC the power to make arrangements for access to and control of the airport sites, and are not intended to form the basis of an access regime within the meaning of the TPA.

Part 13 of the *Airports Act 1996* provides for the Minister for Transport and Regional Development to declare 'airport services' at privatised airports. The scheme provides that the Minister shall declare airport services 12 months after leasing, unless an access undertaking is in operation in relation to the services. Until that declaration has taken place or, alternatively, an access undertaking has been approved, an effective access regime cannot be deemed to be in place.

In light of the above, and the fact that ACTO has been unable to gain access to freight handling facilities at Sydney and Melbourne international airports, I agree with the NCC's conclusion and supporting reasons that an effective access regime is not in place for these facilities at either of these airports.

Providing access to the service would not be contrary to the public interest, in accordance with s44H(4)(f) of the TPA

I agree with the NCC's conclusion and supporting reasons that ACTO's application is not contrary to the public interest. The main public interest considerations raised in submissions to the NCC were those concerning the interaction between the *Airports Act* and the *Trade Practices Act* and FAC concerns that providing access would interfere with airport planning processes.

- Submissions to the NCC raised concerns that, in accordance with the *Airports Act,* the private operator at Melbourne Airport should be provided the opportunity to develop an access undertaking before services are formally declared under the TPA. While I accept the reasoning behind this argument, I understand that the applicant has been seeking access for around 12 months and I agree with the NCC that the applicant should not be required to wait for possibly a further 12 months to negotiate access.
  - The expiry date of the Melbourne Airport declaration of 9 June 1998 will provide the ACCC sufficient time to accept an access undertaking (should this be submitted by the airport operator) before the services would be automatically declared under the *Airports Act.*
- I do not accept that providing access would interfere with airport planning processes. As noted by the NCC, declaration is only the first step in providing access to the services in question. Subsequent negotiation over the terms and conditions of access should reflect the need for the efficient planning of Sydney and Melbourne international airports by the airport operators.

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974, Section 44H

DECLARATION NO: 1

I, PETER COSTELLO, Treasurer, in pursuance of section 44H of the *Trade Practices Act 1974* hereby:

(1) declare, effective from 1 August 1997, the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Sydney International Airport;

(2) declare, effective from 1 August 1997, the service provided by the use of an area at Sydney International Airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at the airport;

This declaration will cease to have effect after 31 July 2002.

Dated this 30 day of June 1997.

PETER COSTELLO

TREASURER

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974, Section 44H

DECLARATION NO: 2

I, PETER COSTELLO, Treasurer, in pursuance of section 44H of the *Trade Practices Act 1974* hereby:

(1) declare, effective from 1 August 1997, the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Melbourne International Airport;

(2) declare, effective from 1 August 1997, the service provided by the use of an area at Melbourne International Airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at the airport;

This declaration will cease to have effect after 9 June 1998.

Dated this 30th day of June 1997.

PETER COSTELLO

TREASURER