QANTAS AIRWAYS LIMITED

SUBMISSION

TO

NATIONAL COMPETITION COUNCIL

ON

APPLICATIONS FOR DECLARATION OF AIRPORT SERVICES

BY

AUSTRALIAN CARGO TERMINAL OPERATORS PTY LTD

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1. INTRODUCTION

1.1 The National Competition Council ('**NCC**') has received applications from Australian Cargo Terminal Operators Pty Ltd ('**ACTO**') for the declaration of services provided through various facilities, some owned by the Federal Airports Corporation ('**FAC**'), some by Qantas Airways Limited ('**Qantas**') and some by Ansett.

1.2 Qantas supports the staged process adopted by the NCC to deal with the various applications lodged by ACTO and its decision to deal firstly with the applications for declaration of the services provided by the FAC.

1.3 Qantas adopts a neutral position in respect of ACTO's applications for declaration of the FAC's services. Qantas is mindful that the legislative access regime established under Part IIIA of the *Trade Practices Act 1974* ('**TPA**') is of recent origin and Qantas wishes to assist the NCC in its administration of the scheme. This submission has been prepared in order to furnish the NCC with relevant information and to raise relevant issues and thus assist the NCC make its recommendation.

1.4 If, after the NCC makes its recommendation to the Treasurer in respect of the FAC's services, ACTO elects to pursue its applications for declaration of Qantas' and Ansett's services, Qantas would wish to make a further written submission to the Council in respect of those applications and expressly reserves all its rights in relation to them. Nothing in this submission is intended to bind Qantas or operate as a waiver of Qantas' rights to raise any issue in relation to any other application. This submission should not therefore be taken to be necessarily indicative of Qantas' position in relation to ACTO's applications for declaration of Qantas' and Ansett's services.

2. AIRPORTS ACT 1996

2.1 Before the enactment of the *Airports Act 1996*, an airport service could be declared under Part IIIA of the TPA only after:

(a) written application is made to the NCC for access;

(b) the NCC has made its recommendation to the designated Minister; and

(c) the Minister decides to declare the service.

2.2 In deciding to declare that service, the Minister must be satisfied that the service meets the statutory criteria for declaration (section 44H).

2.3 Part 13 of the *Airports Act* now requires the Minister approximately 12 months after an airport lease is granted, to determine (without the benefit of any recommendation by the NCC and without reference to any statutory criteria) that airport services are 'declared services' for the purposes of Part IIIA of the TPA, except where an undertaking on access to the airport services is in operation *(section 192)*.

2.4 The *Airports Act* effectively extinguishes the assessment and declaration process in Part IIIA of the TPA by deeming each airport service to be a declared service unless it becomes the subject of an access undertaking within the first 12 months after the relevant airport lease is granted.

Does the Airports Act override Part IIIA of the TPA?

2.5 The principle of statutory construction to resolve conflicts between inconsistent statutes is that an earlier general Act will always yield to a later special Act. This principle is clearly enunciated in *Australian Central Credit Union v Commonwealth Bank of Australia* (1991) 4 ACSR 145(1) revg (1990) 54 SASR 135.

2.6 In that case, there was an obvious conflict in the requirements of 2 Acts as to the registration of security interests. The SA Supreme Court resolved the conflict in favour of the 'later special Act' as it dealt with one narrow class of property (motor vehicles), as opposed to the earlier Act's more general provisions which related to every kind of property capable of being owned by companies. Similarly, the later *Airports Act* deals specifically with access to airport services while the earlier and more general Part IIIA of the *Trade Practices Act* deals with access to all essential services.

2.7 In the *Central Credit Union* case, the Court stated that 'the principle of construction that an earlier general Act will always yield to a later special provision dealing with the same subject matter is reasonably well established although sometimes difficult in its application'. In support of its decision the Court relied upon *Goodwin v Phillips* (1908) 7 CLR 1, where Griffiths CJ said:

> 'Where the provisions of a particular Act of Parliament dealing with a particular subject matter are wholly inconsistent with the provisions of an earlier Act dealing with the same subject matter, then the earlier Act is repealed by implication ... Another branch of the same proposition is this, that if the provisions are not wholly inconsistent, but may become inconsistent in their application to particular cases, then to that extent the provisions of the former Act are excepted or their operation is excluded with respect to cases falling within the provisions of the later Act'.

2.8 The SA Supreme Court stated that it was unnecessary to go so far as to say that the earlier Act is repealed, because it would still be open to a credit-provider to register a goods security interest under both Acts. However, it was necessary to go so far as to say that the operation of the provisions of the earlier Act are excluded in relation to a particular company-owned motor vehicle where that vehicle was already registered under the later Act.

2.9 An earlier NSW case, *Black v Director-General of Education* [1982] 1 NSWLR 576 (NSW Govt & Related Employees App Trib) supports the principle in the *Central Credit Union* case. In that case, the Court held that a principle of statutory

interpretation was that, where 2 Acts are patently inconsistent, the later Act impliedly repeals the conflicting provisions in the earlier Act.

2.10 There would therefore seem to be little doubt that the *Airport Act*, being an airport specific statute enacted after Part IIIA of the TPA evinces a legislative intention to cover the field, at least in relation to the declaration of those airport services that fall within the definition of 'airport service' in the *Airports Act*.

2.11 '***Airport service***' is defined to mean 'a service provided at a core regulated airport, where the service:

(a) is necessary for the purposes of operating and/or maintaining civil aviation services at the airport; and

(b) is provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated;

and includes the use of those facilities for those purposes.

2.12 The NCC needs to determine whether any of the services the subject of ACTO's applications fall within the definition of 'airport service' and are therefore governed by the *Airports Act*.

2.13 The NCC must also decide whether the legislature intended that Part IIIA of the TPA would continue to govern access to services provided at the airport which fall outside the 'airport service' definition in the *Airports Act* but may satisfy the declaration criteria in Part IIIA or whether Part IIIA has no application to any services provided at the airport, on the basis that access to airport services is governed entirely by the *Airports Act*.

2.14 If the NCC accepts that Part 13 of the *Airports Act* overrides Part IIIA of the TPA to the extent that an 'airport service' (as defined in the *Airports Act*) is involved, due regard must be given to the process for the sale of airport leases under the *Airports Act* and the regulatory framework established for airport-lessee companies.

Sale of airport leases

2.15 The *Airports Act* creates a legislative framework to facilitate the privatisation of Australia's core regulated airports (Sydney, Sydney West, Melbourne, Brisbane, Perth, Adelaide, Darwin, Hobart, Launceston, Coolangatta, Canberra, Townsville and Alice Springs).

2.16 Under the present privatisation timetable, it is anticipated that long term leases to Melbourne, Brisbane and Perth airports will be granted by June 1997.

Regulatory Framework

2.17 Following the sale of each airport lease, the relevant airport-lessee company would be able to choose to:

- lodge an undertaking specifying the terms and conditions on which access will be provided for various airport services; or

- wait to be declared at the end of the 12 months and then seek to agree terms of access with an access seeker or take part in an arbitration.

2.18 If the Treasurer accepts a recommendation from the NCC that certain FAC services be declared at Melbourne and Sydney airports, such a declaration would be likely to take effect at about the time of the intended sale of Melbourne's airport lease and many months before any sale of Sydney's airport lease. Accordingly, such a declaration, if made, would effectively deprive the relevant airport-lessee company of the option of lodging an undertaking setting out the terms and conditions on which it will provide access to the declared services. This is because once airport services are declared, the airport-lessee company will be unable to lodge undertakings in respect of those airport services and will be subject to the arbitration procedures set out in Part IIIA in the event of any dispute in relation to access.

2.19 To the extent that there may be a service declared under ACTO's applications which is covered by the definition of 'airport service' in the *Airports Act*, there is an inconsistency, in terms of the outcome for an airport-lessee company, between Part IIIA of the TPA and the *Airports Act*.

2.20 In order to assess the significance of this inconsistency, it is necessary to understand the advantages and disadvantages of proceeding under an undertaking or a declaration.

Undertaking or declaration?

2.21 While each airport-lessee company will not be under an obligation to lodge an undertaking and could choose to negotiate access terms with each access seeker, clearly the deprivation of this right may be viewed as significant by some of actual and prospective bidders for the airports at Melbourne and Sydney. For example, some bidders may be attracted to the undertaking option during their first 12 months operation as an airport-lessee company because an access undertaking:

- may be a means by which the airport-lessee company can obtain certainty about access arrangements, before a third party seeks access; and
- may enable the airport-lessee company to improve on the position it would be in if it had to agree upon the terms of access with an access seeker or have it determined in arbitration proceedings; and
- may avoid the possibility of time consuming and expensive disputes about the terms and conditions on which access should be granted.

2.22 Another advantage in seeking to lodge an undertaking rather than waiting for services to be declared and then agreeing with an access seeker, is that once the undertaking has been accepted by the ACCC the service provider knows the terms and conditions on which it has to provide access to all access seekers. If there are a large number of access seekers this is an advantage because it limits the need for negotiation with each access seeker.

2.23 Disadvantages associated with the lodgement of an undertaking would include the following:

- undertakings involve a process of public consultation, whereas once the services are declared it is possible to reach an agreement with an access seeker without the need for public consultation;

- the public consultation process may necessitate the disclosure of confidential or commercially sensitive documents; and

- due to the need for undertakings to apply generally, their preparation and acceptance may be a time consuming process.

3. PRELIMINARY ISSUES

3.1 The NCC has interpreted ACTO's applications as applications to have three services declared at each of Sydney and Melbourne International Airports. The NCC describes these services at each airport in the following terms:

(a) use of the freight apron and hard stand to be able to load and unload international aircraft;

(b) use of an area within the airport perimeter to store the equipment required to load and unload international aircraft and to transfer the freight to and from trucks and to and from the equipment used to load and unload international aircraft; and

(c) use of an area within the airport perimeter to construct a cargo terminal.

3.2 Each service involves the use of an area of the airport for a particular purpose. Where the purpose of using airport land is ancillary to the central or core activity of the airport (namely, the landing and take-off of aircraft), an issue arises as to whether any restriction on the usage of land for such an ancillary purpose should be exposed to examination under Part IIIA of the TPA.

Donovan principle

3.3 In the United States, it is well established that a corporation with control over a unique location essential to the conduct of a certain kind of business can lease a part of that location to one entity for the purpose of an ancillary business, thereby giving that entity an effective monopoly in that ancillary business, without violating the Sherman Act, 15 U.S.C., sections 1 and 2. This principle was established by the US Supreme Court in *Donovan v Pennsylvania Co.*, 199 U.S. 279 (1905). In that case, the Supreme Court recognised the right of a railroad company operating a terminal to have an exclusive arrangement with one taxi company on its premises. This principle has been followed in numerous subsequent cases (see *E.W. Wiggins Airways, Inc. v Massachusetts Port Authority* (1966) Trade Cases ¶71,811; 362 F.2d 52,56 (1st Cir. 1966); *Parmalee Transp. Co v Keeshin* (1961) Trade Cases ¶70,061, 292 F.2d 794 (7th Cir. 1961), cert. denied, 368 U.S.944, reh. denied, 368 U.S.972 (1962); *Friend v Lee*, 221 F.2d 96, 100 n.5 (D.C. Cir. 1955); *cf. Savon Gas Stations #6, Inc v Shell Oil Co* (1962) Trade Cases ¶70,506; 309 F.2d 306 (4th Cir. 1962), cert. denied, 372 U.S. 911 (1963)). This principle has more recently been followed in *Export Liquor Sales, Inc. v Amnex Warehouse Co., Inc and Detroit & Canada Tunnel Corp.* (1970) Trade Cases ¶73,171 where it was held that the owner of a

vehicle tunnel between Detroit, Michigan and Windsor, Ontario could properly lease a portion of the tunnel premises to an export liquor seller to the exclusion of any other person, so long as it did not discriminate among motorists driving through the tunnel. The vehicle tunnel owner could by its lease give the export liquor seller an effective monopoly without violating the Sherman Act.

3.4 The development of the essential facilities doctrine under the Sherman Act in the United States provides useful guidance in determining issues in respect of access to essential infrastructure. While the national access regime under Part IIIA of the TPA differs in some ways to the essential facilities doctrine, some of the principles that have been established by U.S. Courts are of relevance to Australia.

3.5 If the principle enunciated in *Donovan* is applied to ACTO's applications, an issue arises as to whether the FAC's current restrictions on the usage of the freight apron and other areas of the airport discriminates among users of the airport *qua* airport. Even if the central activities of the airport are viewed broadly so as to include the unloading and loading of international freight, there is an issue as to whether any denial of the use of the airport either to store equipment (S2 and M2) or construct a cargo terminal (S3 and M3) would discriminate among users of the airport in its capacity as an airport.

Statutory interpretation

3.6 In order for a service to be declared under Part IIIA, it must qualify as a 'service' as defined in s.44B of the TPA. Section 44B defines a 'service' to mean 'a service provided by means of a facility' and includes 'the use of an infrastructure facility such as a road or railway line ...'. Where access to a facility, such as a road or railway line, would not involve a use of that facility *qua* facility (or in its capacity as an infrastructure facility); namely, to drive along the road or convey carriages along the railway line, there is an issue as to whether such access would involve, upon a proper construction of section 44B, 'the use of an infrastructure facility'.

3.7 Accordingly, there is a preliminary issue as to whether each of the services (S1, S2, S3, M1, M2 and M3) identified as part of ACTO's applications should be regarded by the NCC as a 'service' within the meaning of section 44B. Qantas submits that the question to be asked is whether the proposed use of an area of the airport to:

(a) load and unload international freight;

(b) store loading/unloading and transportation equipment; or

(c) construct a cargo terminal

involves a use of the airport in its capacity as an airport.

3.8 If any of the proposed uses do not qualify as a use of the airport *qua* airport, the subject matter of ACTO's applications (or that part which fails to so qualify) may be outside the ambit of Part IIIA.

3.9 The determination of this preliminary issue is important in that it clearly may have ramifications beyond the immediate applications presently before the NCC. There is a need for careful determination of this issue in relation to each separate service.

3.10 As ACTO seeks access to different areas of each airport for different purposes, it is possible that some areas may qualify, while others may not depending upon the purpose for which the area is to be used.

4. ACCESS CRITERIA

4.1 The remainder of this submission addresses the criteria specified in section 44G of the TPA, and seeks to comment upon some of the issues specifically raised by the NCC in its Issues Paper dated December 1996 (in the same order as they appear in that paper).

Criterion (a) Whether access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service.

NCC Issues

4.2 *Whether ACTO is correct in defining the downstream markets as: a market for CTO services; and a market for ramp handling services?*

4.2.1 Market definition is a complex field which requires economic and legal analysis of detailed market information in the light of the particular conduct being considered. Such a detailed analysis is beyond the scope of this submission. Qantas therefore is unable to express a view as to which market(s) may be relevant to an assessment of competition if access to any FAC services is granted. However, Qantas makes a number of observations in order to assist the NCC in its own analysis.

4.2.2 There are two services in which ACTO has expressed interest in providing, namely CTO services and ramp services.

4.2.3 In the purely freight handling context, ramp services incorporate several activities, including:

- loading and unloading aircraft
- provision of rolling stock to accommodate aircraft units
- in some cases transporter vehicles specially designed to convey aircraft units from one vehicle to another.

4.2.4 Qantas buys ramp services at all of its overseas destinations: it is always the case that the service provider furnishes the equipment necessary to perform these services.

4.2.5 In its applications, ACTO alludes to a limited activity of unloading aircraft units from the rolling stock (dollies) of another ramp handler onto trucks belonging to itself and vice versa. Qantas is unclear whether ACTO wishes to enter into a total ground handling activity or wishes to confine its ramp activity as described above.

4.3 *Who are the participants in these markets?*

4.3.1 The participants in the field of cargo terminal operations at Sydney and Melbourne airports are:

(a) Qantas Freight;
(b) Ansett International; and
(c) Australian Air Express.

4.3.2 Elsewhere within Australia a number of other CTO's operate, including:

(a) DHL;
(b) Airport Handling Agents (Cairns) Pty Limited (in Cairns and Townsville);
(c) Foxerco Pty Ltd (the joint venture between Linfox Transport group and Serco) at Avalon airport, near Tullamarine airport. Qantas understands that this operation will involve the provision of both CTO and ramp services by Foxerco and/or its subcontractors.

4.3.3 The existing participants in the field of ramp services at Sydney and Melbourne international airports are:

(a) Qantas Airways Limited;
(b) Ansett International Ramp Services.

4.4 *Is the market for CTO services already operating in a competitive manner, or will the entry of new players to that market improve competition?*

4.4.1 Qantas Freight believes that the existing CTO's already operate in a competitive manner. There have been overtures by other independent companies to establish ground handling facilities in Australia in recent years (eg Ogdens) which have not come to fruition.

4.4.2 Qantas Freight is of the opinion that the:

- prohibitive cost; and
- marginal return

of ground handling services has caused a reconsideration of these entrants' plans.

4.4.3 Any entry by 'new players' may have the effect of not so much improving competition but of alleviating congestion. As freight volumes increase and airlines multiply, the present CTOs are becoming capacity constrained in some major ports, particularly Sydney and Melbourne. For example, Qantas Freight, in recent weeks, has had to divest itself of some handled carriers. It is true to state that in seeking alternatives those carriers have sought as their preference an on-airport handling agent and have discarded an off-airport CTO.

4.5 *Is the market for ramp handling services already operating in a competitive manner, or will the entry of new players in that market improve competition?*

4.5.1 Qantas believes that both existing ramp operators at Sydney and Melbourne airports compete energetically with each other.

4.5.2 Qantas is uncertain whether ACTO's entry into this field is likely to improve the level of competition for ramp services, particularly if ACTO does not propose to offer a comprehensive ramp handling service. In that event, the existing ramp handlers will still need to provide the bulk of the ramp services required.

4.5.3 Our understanding of the application is that ACTO requires only access to the ramp to facilitate its principal role as a CTO.

4.6 *Will access to the service promote competition in the CTO market by ACTO? By any other company or person? If yes, how?*

4.6.1 Whether ACTO would promote competition in the CTO field remains to be seen: it would depend largely upon carrier acceptance of the services ACTO is able to offer and whether those carriers perceived that ACTO possessed any competitive edge from being on-airport.

4.6.2 As previously stated, recent experience in Qantas has demonstrated a preference of some carriers to remain on-airport even though a choice may have been available to them.

4.7 *Will access to the services promote competition in the ramp services market by ACTO? By any other company or person? If yes, how?*

4.7.1 As previously stated, if the access to ramp services proposed by ACTO is limited, it is unlikely that ACTO's presence will have any significant competitive impact upon present ramp services. It is our understanding that ACTO requires access to ramp services only to offer CTO services.

4.7.2 ACTO, or any other company, would need to offer a FULL and COMPLETE range of ramp services to affect competition or prove attractive to clients. These services would need to include:

- loading/unloading of aircraft
- baggage handling
- mail handling.

This would require a substantial outlay in equipment and manpower.

4.7.3 In consideration of the application by ACTO, Qantas invites the NCC to consider the following:

- To what degree ACTO is likely to enhance freight handling at:
  - Sydney - bearing in mind its limited facility?
  - Melbourne - bearing in mind it has, as yet, no facility?
- To what extent competition could be enhanced in ramp services without a **full** commitment to ramp handling infrastructure as detailed in the above material?
- To what extent ACTO would be willing to commit to on-airport freight handling infrastructure/developing facilities?
- To what extent ACTO would need to rely upon existing facilities (ie Ansett and Qantas) to provide a service?
- What is the square meterage of the ACTO facility in Sydney?

- What throughput does ACTO believe it can handle in its Sydney facility?
- In mixed containers how would ACTO handle mail and express product?

4.8 *Will access to the services promote competition in any other market that has not been identified by the applicant? If yes, what market, by whom and to what extent?*

4.8.1 Without first identifying the market(s) relevant to ACTO's applications, it is not possible to assess ACTO's competitive impact in 'any other market'. However, it is possible to identify a number of industries that are serviced by the existing CTO's including:

- the airfreight shipping community;
- the importing community;
- the freight forwarding industry;
- Australia Post;
- the express/courier industry.

4.8.2 Without knowing the nature, scope and commercial terms of ACTO's 'post declaration' services, it is difficult to make any assessment of the competitive impact, if any, of ACTO's services in these other industries.

Criterion (b) Whether it would be uneconomical for anyone to develop another facility to provide the service

4.9 In assessing whether it would be uneconomical for anyone to develop another facility to provide any of the services sought by ACTO, consideration needs to be given to the existing and proposed international freight operations being conducted at regional airports, particularly those proximate to Melbourne or Sydney international airports. For example, Avalon airport will be primarily used for aircraft transporting freight and the close proximity of this airport to Tullamarine airport may mean that these airports are in the same market, at least in respect of aircraft transporting freight. If they are in the same market, the construction of Avalon airport may duplicate some of the facilities at Tullamarine to which ACTO seeks access. Similarly, Essendon airport may already possess facilities which are used to facilitate the unloading, loading and transportation of international freight.

4.10 In relation to criterion (b), the NCC should also consider the relevance of the proposed second airport for Sydney, to be located at either Badgerys Creek or Holsworthy, particularly in relation to any international freight facilities planned for that airport.

NCC Issues:

4.11 *The extent to which international freight operations are dictated by international passenger operations.*

4.11.1 Certainly, in terms of the international freight carried into and out of Sydney and Melbourne by Qantas, almost all of that freight (approximately 92%) is carried on board passenger aircraft.

4.12 *Details on the amount of international freight that enters Australia through Sydney and Melbourne airports respectively; what percentage of all international freight to and from Australia does this represent?*

4.12.1 Qantas can only report on figures to which it has access, namely its own flights and those of the carriers it handles.

1995/6	Qantas imports	Handled carriers imports
Sydney	84,381,938kg	42,121,158kg
Melbourne	27,930,546kg	26,344,985kg

[Please note that the above figures include transhipment cargo, that is cargo entering Australia en route to other international destinations.]

4.12.2 Qantas is unable to state the percentage of all imports these figures represent.

4.13 *The level of competition, if any, that exists between Sydney, Melbourne and any other international airports, in the provision of services to international aircraft both passenger and freight.*

4.13.1 As previously stated, passenger movements are dictated by passenger preferred destinations. Freight therefore must 'work around' passenger demands.

4.13.2 This suits destinations like Sydney, where both passenger and freight demand is high. It does not suit destinations like Cairns with high passenger demand but low, or at least seasonal, freight demand nor Melbourne with high freight needs but lesser passenger demand.

4.14 *Whether another facility could be developed to provide any of the services. If yes, what services and what type of facility?*

4.14.1 It is unclear whether the question refers to additional facilities at existing airports or whether opinion is sought on establishing facilities at a new airport, for example, Parkes.

Assuming that the former is the case - yes, other facilities could be developed to provide any and all of these services:

(a) full ramp handling services can be provided by any service provider with the required capital and expertise;

(b) similarly, freight handling services are quite feasible with the necessary investment in infrastructure, management, staff and skills needed in such a specialised enterprise.

The type of facility in (b) above would be customer driven. As previously stated there is evidence suggesting a preference of some carriers for on-airport terminal services.

It would be the off-airport CTOs task to convince carriers of their merits. However, there is plenty of precedent, especially in the USA and Europe for off-airport handling.

4.15 *Whether it is possible that another facility could be developed to provide part of any of the services. If yes, what part of the services could be provided by another facility, and what would such a facility entail? For example, could use of the services provided by the Ansett and Qantas facilities offer an adequate alternative to ACTO in the operation of its business?*

4.15.1 At present, Qantas facilities, developed and paid for by Qantas, have been designed to service Qantas and its handled carriers customers. Qantas has very little latitude at peak periods to offer additional throughput capacity to other entities. Given the limited spare capacity available at Qantas, any access granted to ACTO would necessarily by restricted and this restricted access may not offer an adequate alternative to ACTO in the operation of its business.

4.15.2 If ACTO were granted access without restriction to Qantas' facilities there is a real likelihood that Qantas' and its handled carriers' customers would be disadvantaged. This would arise because, in an effort to extend services to a part of the industry which has chosen to use ACTO, Qantas' customers would be inconvenienced as its limited resources are diverted.

4.16 *Whether it is necessary for a CTO to operate on site at an airport, or is it possible to develop an off-airport facility to perform the operations.*

4.16.1 It is not necessary for a CTO to be on-airport provided all Customs and AQIS regulations and permissions are met and held. With the recent release of the Nairn Report, it is anticipated that further quarantine restrictions and other regulations protecting public health will be promulgated at international airports.

4.17 *If it is necessary, why? What restraints exist that require CTO functions to be performed on airport?*

4.17.1 See paragraph 4.16.1.

4.18 *Whether it is possible that some of the CTO functions could be conducted off airport. If so, which functions and how could they operate off-airport?*

4.18.1 In terms of freight handling, most functions could be provided by an off-airport facility. For example:

- bulk break/build up;
- receipt/delivery;
- Customs clearance;
- Cargo Automation;
- documentation etc.

4.19 *Whether part of the service could be provided by another facility. If yes, what part and by what facility?*

4.19.1 At the risk of increasing congestion and reducing safety (see submission under criterion (d)), certain ground handling services could be provided in the interface between aircraft and cargo terminal. This can be accomplished at:

- the aircraft;
- somewhere upon the ramp;
- through a bypass facility eg freight terminal;
- a 'stand alone' design built transit depot.

Criterion (c) **Whether the facility is of national significance, having regard to:**

(i) the size of the facility; or

(ii) the importance of the facility to constitutional trade or commerce; or

(iii) the importance of the facility to the national economy

NCC Issues:

4.20 *The size (in tonnage and value terms) and importance of the international air freight market to and from Australia, with specific reference to Sydney and Melbourne airports.*

4.20.1 The size, in tonnage terms, of imported and exported international air freight carried by Qantas and its handled carriers at Sydney, Melbourne, Brisbane, and Perth airports are set out below.

1995/6	Export	Import
Sydney	119,426,328kg	126,503,096kg
Melbourne	51,292,48kg	54,275,531kg
Brisbane	38,299,802kg	29,144,629kg
Perth	24,625,236kg	10,721,667kg

[Note: The value of international freight to and from Australia is best obtained from the Australian Bureau of Statistics.]

4.21 *Whether all the facilities described by the applications, ie the hard stand, the freight apron and areas to provide storage and to enable loading and unloading are so much part of the airports that the significance test should be applied to the airport itself, rather than to the separate facilities.*

4.21.1 The international airports at Sydney and Melbourne contain a vast range of different facilities ranging from air traffic control towers and aircraft fuelling facilities to passenger luggage carousels and bathrooms. The facilities described by ACTO (ie the hard stand, the freight apron and an area to store equipment comprise only a small part of the facilities at each airport.

4.21.2 Qantas submits that the test of national significance should be applied to the separate facilities in question and not to the airport itself.

4.21.3 In Sydney, the hard stand at the rear (airside) of the Qantas Freight Terminal was built by Qantas, at its own expense, in 1983. In recognition of this Qantas leases the area from the FAC at a nominal rent. To date, Qantas has not charged other carriers for their use of the area.

4.21.4 In Melbourne, the hard stand at the rear (airside) of the Qantas Freight Terminal is a common user area. Qantas, and each other carrier, pay the FAC to the extent that it uses it.

4.22 *If yes, should the Council then consider the significance of Sydney and Melbourne airport to the national economy generally, or whether the consideration should be narrowed to the role of the facilities in respect of international air freight and the significance this has for the national economy?*

4.22.1 Qantas believes that the NCC should consider the role of the facilities in respect of international freight and the significance this has for the national economy.

4.23 *If no, are the facilities of themselves significant because of either their size or importance to the national economy?*

4.23.1 Qantas makes no submission in respect of this issue.

4.24 *Whether the facilities described by the application, ie an area at each airport to construct a cargo terminal, are significant because of either their size, impact on international trade, or importance to the national economy.*

4.24.1 Qantas makes no submission in respect of this issue.

Criterion (d) Whether access to the service can be provided without undue risk to human health or safety.

NCC Issues:

4.25 *Whether there are any health and safety risks in access being granted to any of the services described in the application.*

4.25.1 The limited space available upon the freight apron and hard stand necessitate that the number of participants permitted to provide ramp services be restricted in order to maintain safety at the airports. In Qantas' view there are major safety risks in access being granted to ramp services. The international ramp areas especially in Sydney and Melbourne are already subject to heavy vehicular traffic around aircraft.

4.25.2 To add an additional function - eg forklifting aircraft ULDs onto trucks (in itself a hazardous practice) - may be regarded as an unacceptable additional burden upon an already heavily congested area.

4.26 *If there are any risks, what are they? Can these risks be addressed in a satisfactory way?*

4.26.1 The Management of risks associated with ramp services is presently being considered by the Government - the Airports (Airside Vehicle Movement) Regulations have not yet been released. It is important for the NCC to be aware of these concurrent developments in assessing ACTO's applications.

4.26.2 Due to the circumstances prevailing on the ramps at each of the airports, there are risks to:

- ramp workers;
- vehicles;
- aircraft;
- terminals.

4.26.3 Should the applicant successfully compete for, and win, ramp handling business which is **currently supplied** by Qantas, then to the extent that Qantas withdrew those services, there would be no significant increase in these risks. It would simply be a matter of replacing one activity with a similar activity.

4.26.4 If, however, the applicant wishes to add an activity at the ramp merely to facilitate a CTO function, Qantas contends that this will constitute an unacceptable extra degree of safety risk to ramp operations.

4.26.5 At both Sydney and Melbourne the ramp areas are overly congested. Space between aircraft bays is constricted and affords little latitude for additional activity. Similarly, space even away from aircraft bays is constrained by taxiway requirements and ground infrastructure needs.

4.26.6 Qantas does not believe, under present conditions, that there is any scope to increase ramp activity beyond current levels.

Criterion (e) Whether access to the service is not already the subject of an effective access regime

NCC Issues:

4.27 *Whether an effective access regime currently exists for the services the subject of the application.*

4.27.1 Qantas makes no submission in respect of this question.

Criterion (f) Whether access (or increased access) to the service would not be contrary to the public interest

NCC Issues:

4.28 *The Council welcomes comments on any matter that be of relevance to the public interest in considering this application.*

4.28.1 Qantas makes no submission in respect of this issue.

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