



S O L I C I T O R S

7 February 1997

Sydney Office

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Mr Ed Willett
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BY FACSIMILE

Dear Sir

ACCESS TO AIR FREIGHT SERVICES

We refer to the National Competition Council's ("Council") Issues Paper dated December 1996 in relation to Australian Cargo Terminal Operators Pty Ltd's ("ACTO") application for a declaration of airport services and the Council's request for submissions from interested parties to assist it in assessing the application.

Corrs Chambers Westgarth acts for various participants in the aviation industry including insurers, Government departments and prospective bidders for the long term leasehold interests in Melbourne, Brisbane and Perth airports ("Phase 1 airports"). Comments set out in this letter are general in nature and, while they may reflect our clients' thoughts and comments on the ACTO application, are not attributable to any one of our clients specifically. Corrs Chambers Westgarth reserves the right to represent any of our clients whose views may be incorporated in this submission in relation to any future hearings on the ACTO application or any other access regime application.

We understand that the Council encourages interested parties to address their comments to the Council's guidance questions set out in the Issues Paper. While we intend addressing each relevant guidance question, for the sake of clarifying our comments on each question, we will make some general comments and observations at the outset.

1 Part 13 of the Airports Act, 1996

We understand the services to which ACTO seek access ("Relevant Services") are those provided through facilities owned by the Federal Airports Corporation ("FAC"), Qantas and Ansett at Melbourne and Sydney airports. Specifically these services are:

- use of the freight apron and hard stand to be able to load and unload international aircraft at Sydney and Melbourne airports;

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- use of an area on-airport to store the required equipment for ACTO's freight operations at Melbourne and Sydney airports; and
- use of an area on-airport to construct a cargo terminal.

Services relating to the use of the apron and ramps are services fundamental to the operation of an airport and it is for this reason that we believe that the Relevant Services are "airport services" for the purposes of the *Airports Act, 1996* ("*Airports Act*"). They are services provided at an airport which are necessary for the purposes of operating and/or maintaining civil aviation services at the airport and cannot be economically duplicated.

Under Part 13 of the *Airports Act*, "airport services" will be "declared services" under Part IIIA of the Trade Practices Act 12 months after the sale of the airport unless an access undertaking has been given in relation to a particular airport service. The intention of this part of the *Airports Act* would seem to be to allow the new airport operator a 12 month period to negotiate access undertakings in relation to airport services provided by the airport operator and then, after this time, if no undertakings are in place, any third party may seek access to airport services.

This issue is particularly relevant for the time being in relation to Melbourne airport which is one of the Phase 1 airports and in due course will be equally relevant to Sydney. It is difficult to see how, if the Council were to recommend that the Relevant Services be declared at Melbourne airport, the services could continue to be declared upon commencement of the operation of the *Airports Act*. An inconsistency would seem to arise. If the Relevant Services were already declared at a leased airport this would undercut the intention of the *Airports Act* as the new airport operator would not be given the opportunity to consider the advantages (or disadvantages as the case may be) of giving an access undertaking in relation to ramp handling services and cargo terminal services.

We believe the Council should postpone any decision in relation to Melbourne airport until after the new airport operator has been chosen and the designated period under the *Airports Act* has elapsed.

2 Aligned airlines

International airlines operating at both Sydney and Melbourne airports are increasingly likely to be part of a global airline alliance. Alignment with Ansett or Qantas may be through a partnership or more indirectly through a code sharing or operating agreement. The number of unaligned airlines is reducing as airlines strive to establish alliances to give them global coverage.

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In the context of these global alliances (which are themselves constantly changing), whatever their nature, it is unlikely that independent CTO and ramp handling service providers will be in a position to market their services to airlines already aligned with Qantas or Ansett.

What seems to be a concentrated market position occupied by Qantas and Ansett in relation to the provision of CTO and ramp handling services, is curtailed and controlled by Qantas and Ansett being subject to countervailing pressure of aligned airlines which provide CTO and ramp handling services to Qantas and Ansett at a range of "home base" locations. Qantas and Ansett would no doubt want to ensure that they are not subject to unreasonable charges at foreign bases and would therefore be unlikely to abuse their market power with aligned airlines.

Similarly with some non-aligned airlines who perform the services for Qantas or Ansett at their home base because there is no aligned airline present at this home base, the non-aligned airline can exert the same countervailing pressure in relation to abuse of market power.

However, for those non-aligned airlines whose home bases are the same as an aligned airline, there is the potential for Qantas or Ansett to abuse their market power in relation to these non-aligned airlines for CTO or ramp handling services at Melbourne or Sydney airports with no threat of the non-aligned airline abusing its market power in relation to Qantas or Ansett in response.

In any event, in relation to any "unprotected" non-aligned airlines, and indeed all other airlines, charges for cargo handling are regulated by the International Air Transport Association ("IATA").

The real issue for those non-aligned airlines who cannot bring countervailing pressure on Qantas or Ansett is whether they are being provided with CTO and ramp handling services in accordance with international best practice especially at peak times where Qantas and Ansett ramp handlers would be expected to tend to "their own" aircraft first.

3 Safety and security

Aviation safety and security are not static issues. Safety is integral to the proper operation of any major airport. Similarly, security is a top priority for the airport operator. The foremost concern for any airport operator is safety and security not only of the people working at the airport but of all airport users and indeed of the nation at large.

It is in no one's interest to have too many providers of the Relevant Services. Not only does over provision of a service mean non-profitability for the providers but it

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threatens the safe and secure operation of the airport. We believe that a main concern of the airport operator is to ensure that no organisation has access to an airport where that organisation not only is not making a profit but is not properly utilising equipment and does not have safety as its foremost objective.

Ramp handling and CTO services involve the use of heavy and expensive equipment which is inherently dangerous if not utilised correctly. Access for new participants in the CTO and ramp handling services should be restricted and controlled in the interests of the safe operation of the airport.

Recognising that the number of non-aligned foreign airlines is low and that it is unlikely that any of aligned airlines will disassociate themselves from Qantas and Ansett, we believe that the best approach for an airport operator in relation to the selection of a new ramp handler and CTO is to consult with the members of the industry to establish benchmark levels of movements at the airports against which a need for new entrants can be assessed.

Ideally, these benchmarks would be published so that industry would be able to understand the selection of a new entrant.

4 Existing independent ramp handlers

We understand that there are already one or more independent ramp handling agents operating at Sydney and Melbourne airports. Indeed, we understand that the FAC in negotiations with BOC in relation to the development of a major cargo handling facility at Melbourne airport.

While our comments are made with this in mind, they are directed to the impact of the granting of access to ACTO.

5 International air freight

The majority of international freight at Sydney and Melbourne airports is hold cargo (ie carried in the bellies of passenger aircraft). One consequence of this is that, in principal it is more economical for a ramp handling agent to provide services in relation to the passengers to also handle the cargo. Naturally, there would be specialist staff to handle cargo (as opposed to luggage etc) but they would be supervised by the ramp handling service provider.

6 The Council's guidance questions

Having provided the Council with some background comments, we will now address the Issues Paper guidance questions in the order they appear in the Issues Paper.

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Page 12**Whether ACTO is correct in defining the downstream markets as: a market of CTO services; and a market for ramp handling services?**

ACTO is correct in so defining the markets. CTO services and ramp handling services are separate activities that constitute separate markets.

Ramp handling services are different from cargo terminal services and can be run by different organisations. We raise the example of the proposed BOC facility at Melbourne airport where it is possible (although unknown at this stage) that different organisations will carry out the ramp handling and cargo terminal services.

Who are the participants in these markets?

Major international airlines invariably choose to provide their own ramp handling services at their home bases. Melbourne airport is a home base for Qantas and Ansett.

While Ansett has few international services at Melbourne airport the number of aircraft to whom the relevant services are provided by Ansett is effectively much higher as Air New Zealand (who is now closely aligned with Ansett) has a significant number of flights from Melbourne.

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

It is difficult for us to comment in this regard as we are unaware of the pricing arrangements in the CTO market and the ramp handling market.

Our comments in relation to aligned airlines are set out in paragraph 3 of this letter.

Aligned airlines

As discussed above, Qantas and Ansett are not in the monopolistic position that it might at first instance appear. Qantas and Ansett are unlikely to overcharge aligned airlines and non-aligned airlines (where no aligned airline operates at the same home base) because of the countervailing power of these airlines to overcharge at their own home bases. There are concerns, however, for unaligned airlines whose home bases are the same as aligned airlines and these concerns relate to both abuse of market power and receiving services in accordance with industry best practice.

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None the less, any attempt to overcharge by Qantas and Ansett in relation to their provision of CTO and ramp handling services should be curtailed by the charging regulation of cargo services imposed by IATA in accordance with the multilateral Interline Cargo Handling Agreement.

Effect of new entrant

A private non-airline CTO or ramp handling service provider could possibly provide services at a lower cost or provide a better service. The major problem with the airlines running the ramp handling services is that the ramp handlers naturally, can be expected to tend to "their own" planes first during the airports' peak periods when Qantas or Ansett might be capacity constrained in their ability to provide the Relevant Services.

This is where non-aligned airlines who are not in a position to provide services to Qantas or Ansett at their home bases may suffer delay.

What difference will competition make?

Even if competition is introduced by a new entrant to the ramp handling and CTO market, the relevant question is what difference will such competition actually make to the cost of moving the goods? The answer is very little. While increased competition via a new participant may result in planes being loaded and unloaded in a more timely manner, it will not increase the capacity of the airports to handle freight and it will not widen the market.

Further, as discussed, a new ramp handler at Melbourne or Sydney airports will only be gaining business from those airlines not aligned in any way with Qantas or Ansett. Accordingly, a new ramp handler and cargo service provider may, at the margin, slice off charges for non-aligned airlines and turn non-aligned planes around quicker, however, the aligned airlines (which, it seems, constitute the majority) will continue to be serviced by Qantas and Ansett.

Competition between Qantas and Ansett

It should not be forgotten that Qantas and Ansett, while having some mutual interests, are fierce competitors at every level of airline operations. The current presence of independent ramp handlers at Sydney and Melbourne airports adds to the competition in this area

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The extent to which international freight operations are dictated by international passenger operations?

As pointed out in paragraph 5, nearly all of the international freight at Melbourne airport is carried in the holds of passenger aircraft. Of approximately 18,000 total international movements at Melbourne airport last year, less than 1,500 of those were all freight movements.

The exact details of the number of movements at both Sydney and Melbourne airports will no doubt be provided more comprehensively by the FAC.

Details of 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?

This is a question best answered by the FAC however we understand that Melbourne airport accounts for approximately 25% of the total tonnage of freight in Australia and Sydney approximately 50% and therefore ACTO's estimate of 70% for both airports may be close to correct.

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?

This question could be addressed at some length however we believe that it is suffice to say at this stage that any such competition would be limited. There may be scope for competition between Melbourne and Adelaide airports in relation to export cargo however this is likely to be minimal.

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

There is the possibility of the development of Avalon airport near Melbourne airport to provide the Relevant Services. There is currently no possibility for Sydney airport at least not until completion of Sydney West airport.

Keeping in mind that the majority of the international cargo is carried in international passenger aircraft, it would be uneconomical for cargo and passenger services to be desegregated ie where one airport is developed specifically for cargo services but does not have a high number of passenger flights.

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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?

Our simple answer to the last of these three questions is "yes". Use of the services provided by the Ansett and Qantas facilities could offer an alternative to ACTO in the operation of its business. Even if Ansett and Qantas found themselves at capacity they could expand.

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?

It is necessary for a CTO to operate on site at an airport.

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

It is necessary that a CTO operate on site at an airport for reasons of security and safety. Freight sheds should be on the airport site "straddling" the airside/landside area. The airport operator and the safety regulator would wish to minimise heavy goods traffic on the aprons and therefore rather than have trucks driving straight to the aircraft, the goods should be towed by dolly train to and from the sheds where goods can be received by road and distributed by road well away from the aircraft.

If trucks were permitted to be driven up to the aircraft, the drivers of the trucks would require special airside safety training and the vehicles themselves would be subject to the strict security search requirements. It is much easier for the aircraft freight to be unloaded (or loaded from) dolly trains towed across the apron to or from the freight shed where the cargo can be broken down and distributed.

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?

There is the possibility for the provision of some services by a CTO operator off airport. For example, freight could be loaded onto a truck landside while it is still packed and taken to an off-airport site for customs clearance.

There may be various CTO services which could be provided off airport as long as adherence to the rule that trucks used for the loading and unloading of freight are not driven airside is maintained.

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The guidance questions which appear on page 16 of the Issues Paper would be best addressed by the FAC.

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Whether there are any health and safety risks in access being granted to any of the services described in the applications?

Paragraph 3 of this letter sets out our general comments on the importance of safety and security in assessment of the ACTO application.

There are numerous health and safety risks associated with access being granted to any of the services described in the applications. As discussed, we believe that the safe and secure operation of the airport is the paramount consideration when assessing the application. An increase in the number of persons working on the aprons and ramps gives to direct risks to the physical health of each person working on the ramps and aprons and indirect risks to every airport user.

A new entrant to the ramp handling and CTO market on airport will result in the use of large and potentially dangerous equipment airside in addition to the equipment currently being used. The size and nature of ramp handling and CTO equipment and the space on the airport site required to store the equipment gives rise to great risks of, not only physical harm to airport workers and users but also risk of damage to other airport equipment including aircraft.

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

Regulations, both in draft form and in gazetted form, in relation to environmental protection, building control, protection of airspace, ownership issues etc have been released pursuant to the *Airports Act*. However, the *Airports (Airside Vehicle Movement) Regulations* are yet to be released. Until it is known how airside driving and related security issues will be regulated by the Government, it is difficult for us to provide the Council with comprehensive and helpful comments in relation to risks and safety. However, on a general note, risks resulting from access to the Relevant Services being granted could be addressed as follows:

- drivers airside must undergo specialist training;
- all staff should be properly trained;

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- all equipment used must be vetted by the safety regulator and airport operator so that it is claimed fit for purpose; and
 - there must be strict maintenance schedules in place in relation to all equipment and vehicles.

Whether an effective access regime currently exists for the services the subject of the applications?

There is no effective access regime currently in place. As discussed in paragraph 3 of this letter, ideally, to lower the risks of any threat to the safe and secure operation of the airport, an airport operator should consult with industry and publish a set of criteria against which the airport operator would judge whether a new entrant is required.

The number of non-aligned airlines and the rate of growth or decrease of such number is one criteria which would be assessed in deciding whether or not a new provider of CTO and ramp handling services should be appointed. With the safety and security of the airport foremost in mind, the provider should be chosen through a competitive tender where the criteria to be assessed would include:

- experience of airfield operation;
- nature of the equipment to be used (eg range and age);
- maintenance procedures in place;
- staffing levels to be placed airside;
- compliance with environmental requirements; and
- financial viability.

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We have provided our responses to these questions at the beginning of this letter.

We reiterate that, in accordance with the intention of the *Airports Act*, a decision by the Minister to grant access at Melbourne airport should be postponed until the new airport operator for Melbourne has been selected and the 12 month period in which the new airport operator may give an access undertaking for access to ramp handling and CTO services has elapsed.

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What should be the duration of the declarations? What factors should the Council consider in this regard? In particular, the Council would like comments on the possible effect of the leasing of Melbourne Airport (and how the *Airports Act, 1996* may then effect this matter) and the recommendations of the Airfreight Exports Inquiry on duration of any recommendation.

Our comments in relation to the operation of the *Airports Act* appear at the beginning of this letter.

In relation to the duration of access however, we emphasise the importance of the selection process as to who will be permitted access. By carefully selecting an organisation through competitive tendering the duration of the access should be indefinite with strict performance monitoring measures in place.

We hope that this submission serves to assist the Council in assessing the Relevant Services. If you have any queries please do not hesitate to contact Andrew Lumsden direct on (02) 9210 6744.

Yours faithfully
CORRS CHAMBERS WESTGARTH

A handwritten signature in black ink, appearing to read 'Andrew Lumsden', is written over a printed name.

Andrew Lumsden