



Our Reference:

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Contact:

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Dear Mr Willett

Thank you for the opportunity to comment on the application of Air Cargo Terminal Operators (ACTO) for declaration of airport services currently provided by the Federal Airports Corporation (FAC). Our submission addresses the interaction between the *Airports Act 1996* ("the Act") and the *Trade Practices Act 1974* ("TPA"), and provides information sought by the Council on certain public interest matters and on the "national significance" criterion.

### Interaction between the Airports Act and Part IIIA of the Trade Practices Act

The access provisions of the Act (Part 13) are designed to expedite the processes (established in Part IIIA) of developing an access undertaking at leased airports or, failing that, declaring airport services. Without limiting the operation of this Part, its primary policy intent was to ensure that airport operators could not impede the entry of new passenger airlines into the industry by restricting access to airports.

The interpretation of 'airport service' (subsection 192(5) of the Act) is central to the operation of s192. It was the Department's expectation that the scope of 'airport service' be explored and tested by the airport operator and the Australian Competition and Consumer Commission (ACCC) in the development of an access undertaking. Only if such an undertaking were not in place 12 months after leasing would the Department be required to advise the Minister on the scope of any declaration covering airport services.

Nevertheless, and for the Council's guidance, the Department, in developing the Airports Act provisions, has taken the criteria specified at 44G(2) of part IIIA as being highly applicable to airports generally; and the reference to the size (sufficient to warrant national significance); the scope (importance to trade) and

the difficulty of replicating such a facility as being of prime importance when looking at a subset, or element, of the services provided by an airport.

In the context of the ACTO application, the Department considers that the service of providing access to the apron and hard stand of an airport for freight is directly analogous to the service of providing access to terminal space for check-in counters, baggage handling and aerobridges for passengers. It is our view that these services cannot be economically duplicated. We consider, therefore, that the provision of space for freight-handling at an airport is an "airport service" within the meaning of subsection 192(5) of the Act.

The Department considers that the Act does not affect the application of Part IIIA of the TPA (except for the demand management provisions, see s193 of the Act).

Our legal advice indicates that there is nothing in the Act which implies that the Council cannot, prior to 12 months post-leasing, recommend the declaration of a service at a leased airport. Furthermore, our advice is that a declaration after the initial 12 months by the Minister for Transport and Regional Development under the provisions of the Act would not cancel out an existing declaration by the Commonwealth Treasurer under the provisions of the TPA.

## Public interest considerations associated with the operation of the Airports Act

### Melbourne Airport

The sales timetable covering Melbourne Airport is aimed at leasing by the end of this financial year. The Act, including the access provisions, will operate once the airport is leased.

Although the Act would not prevent the Commonwealth Treasurer from declaring a service for access either before the airport is leased or during the first 12 months of its lease, there are a number of practical considerations which the Council should take into account.

A declaration of the services sought by the ACTO application at Melbourne Airport prior to leasing would require the FAC at Melbourne to commence negotiation with ACTO on access terms. While it is uncertain how long such negotiations might take, it is clear that the FAC would not be able to conduct the negotiations as the long term operator of the airport. Any terms entered into with ACTO may have to be conditional - out of fairness to the commercial position of the new airport operator, and so as not to compromise the development of an access undertaking by the new operator.

Due to the advanced state of the current sale process, we strongly suggest that declaration, if it is envisaged, be held over at Melbourne until a new operator has had the chance to discuss the matter with ACTO. If necessary, the Council could suggest an early deadline for talks with the new operator.

For similar reasons, the Department considers that a declaration of the relevant services should not occur at Melbourne if the airport has already been leased by the time the Council considers this matter. A new operator at Melbourne should not be disadvantaged by the negotiating position of the FAC on the matter, and ACTO should be encouraged to enter into fresh negotiations as soon as possible. The fact that an access undertaking is being developed or due to be developed would indicate that there is a willingness to enter into negotiation with new entrants. While the TPA specifically proscribes declaration where an access undertaking is in place, the fact that an access undertaking is in prospect should be a significant factor for consideration by the NCC and the Treasurer.

It is also worth noting that the airport operator is required under the Airports Act to have an approved master plan and environment strategy in place for the airport within 12 months of the transfer of the airport. These planning documents should be coordinated with the terms of any access undertaking (including the siting and pricing of facilities to provide access to airport services). The Department believes it would be important for the new airport operator to meet these obligations, and to develop its commercial policies, in these areas in a comprehensive and coordinated way.

Regardless of when a declaration might occur, these factors will impact on the **duration** of any declaration.

The prospect of the airport operating under two separate declarations, or a declaration for some services and a broader access undertaking, could have adverse implications for airport planning and management, which will affect the allocation of resources and activities at the airport.

For this reason, the Department considers that, if a declaration were to be recommended by the NCC for freight-related services at Melbourne Airport, the declaration should not provide a disincentive to the development of a comprehensive access undertaking or impede the scope of a declaration at the airport after 12 months of its lease.

### Sydney airport

The Government has stated that Sydney Airport will not be leased until noise issues associated with the airport have been addressed. Therefore, the Airports Act considerations are not as immediate as in the case of Melbourne Airport, but may be a factor depending on the duration of any declaration.

## Economic efficiency and other public interest considerations

### (a) Economic efficiency

There are a number of considerations in respect of economic efficiency in relation to this application.

The Department considers that increasing competition in cargo terminal operations (CTOs) has the potential to enhance the economic efficiency of these services at airports, with attendant benefits for air freight operators, freight forwarders and customers.

However, the economic efficiency of the airport as a whole should also be considered. The given size of the airport, the limitations on certain land uses within the airport boundary, and the highly integrated nature of airport operations mean that development decisions on the airport site need to be closely planned to maximise the efficiency of airport infrastructure.

Related to this, it should also be noted that achieving access for new cargo terminal operators (CTOs) to the airport site may not achieve greater competitiveness in the provision of freight services overall. As demonstrated by ACTO's application, a comprehensive freight service involves a number of different processes, including ramp services, breaking down and making up freight consignments, and warehousing cargo.

The extent to which ACTO can increase competition in the provision of these services depends on the efficiency with which it can provide each of them. In turn, this will depend in part on the efficiency with which it can utilise the facilities of existing service providers on the airport - namely Qantas, Ansett and Australian Air Express - or provide its own service independent of these operators.

The Department believes that the NCC's separation of the ACTO application may reduce the flexibility of ACTO in commencing its operations on the airport and providing the most efficient service.

In addition, the FAC or a new airport operator would be entitled to earn a return on the facilities it had provided. ACTO's business planning would need to comprehend that an access fee will reflect the Commonwealth's interest in earning a reasonable rate of return from airport investments; and a similarly commercial desire on the part of the new operator at Melbourne.

### (b) International air service agreements

Scheduled international air services operate under air services agreements and arrangements between pairs of countries. There are more than 3000 such

arrangements worldwide and Australia has 50. Australia has obligations in respect of the provision of ground handling services to international airlines in a number of its bilateral international air services agreements - most of the agreements have treaty status.

The provision relating to ground handling in Australia's standard air services agreements is:

'At its option, each designated airline shall, in the territory of the other Contracting Party, have the right to perform its own ground-handling or contract with a competing agent of its choice, including any other airlines which perform ground-handling, for such services in whole or in part. These rights shall be subject only to restrictions resulting from considerations of airport security. Where such considerations preclude a designated airline from performing its own ground-handling or contracting with an agent of its choice for ground-handling services, these services shall be made available to that designated airline on a basis of equality with all other airlines.'

The Department does not believe that this provision will have any material effect on ACTO's application for declaration of services but asks that the Council note the provisions and the fact that Australia is required to meet its international obligations as set out in bilateral air services agreements.

The only possible relevance is in relation to claims that Government regulation mandates anti-competitive ground handling arrangements. It does not, as indicated above.

### (c) Aviation security

The Department of Transport and Regional Development administers the aviation security regime for the air cargo, courier and mail industry. The implementation of the scheme is in response to a Standard of the International Civil Aviation Organisation (ICAO).

ICAO Annex 17, Standard 4.3.6 states:

*Each Contracting State shall establish measures to ensure that cargo, courier and express parcels and mail intended for carriage on passenger flights are subjected to appropriate security controls.*

Recommended Practice 4.3.7 states:

*Each Contracting State should establish measures to ensure that operators do not accept consignments of cargo, courier and express parcels or mail for carriage on passenger flights unless security of such consignments is accounted for by a known shipper or such consignments*

*are subjected to other security controls to meet the requirements of Chapter 4.3.6.*

Implementation of the ICAO air cargo security Standards and Recommended Practices is achieved through Australia's Air Navigation Regulations (ANRs). The ANRs require all items of international air cargo exported from Australia to be subject to security controls, which may be applied by Regulated Agents or by the airlines.

The Department maintains a register of Regulated Agents which is regularly promulgated to airlines, Regulated Agents and other interested parties. Regulated Agents are freight forwarders and courier companies which have agreed to operate in accordance with an approved security program. The ANRs require the security program to specify equipment and procedures for preventing cargo from containing explosives or incendiary devices, preventing unlawful access to the cargo and documenting the security procedures in relation to each item of cargo.

ACTO, in order to operate in the capacity they are seeking, may wish to apply to the Department for acceptance as a Regulated Agent. Based on information previously supplied by ACTO, the Department expects that an application by ACTO would be accepted.

Under the ANRs each airport is given overall responsibility for the security of the airport. The airlines carry specific responsibilities for some aspects of the operations.

The Sydney and Melbourne Airport Security Programs, as approved by the Department, place responsibilities in relation to security on airport contractors, lessees and users. The programs also specify areas which are designated as security restricted areas (SRAs) and to which access is controlled. The SRAs include the airport aprons on which ACTO is seeking to operate. This will require staff to be briefed on their responsibilities in such areas and issued with Aviation Security Identity Cards by the FAC, after appropriate background checking.

ACTO may wish to establish its terminal operations off airport, and access the apron for loading and unloading of cargo. In order for ACTO to operate in this fashion, it would be required to make use of the existing secure entrances and be subjected to the security constraints imposed upon all traffic to and from SRAs. These constraints may include inspection of vehicles and Aviation Security Identity Cards.

Each of these measures is standard for organisations working on the airport.

(d) Current plans by the FAC to provide for new freight operators

The Department understands that the FAC is currently conducting a review of freight services at Sydney Airport and exploring provision for new freight operators at Melbourne Airport. The FAC will provide further detail of its plans in its submission to the NCC.

Application of the national significance test

The Council has sought comment on how the “national significance” criterion should be applied to the services covered by ACTO’s application. Our view is that the facilities should be examined collectively for each airport, with their significance being considered as an essential part of the infrastructure required by CTOs and the air freight industry. As noted earlier, we expect that the facilities would satisfy the national significance criterion if applied in this way.

The hard stand, freight apron and areas to allow loading and unloading should be examined collectively because they must be located at the airport and are part of what is essentially one task (a “berthing facility” to enable movement of cargo to/from landside to airside, much like a dock).

We consider that the facilities satisfy the national significance criterion under subcriterion (ii) “the importance of the facility to constitutional trade or commerce” and subcriterion (iii) “the importance of the facility to the national economy”. The facilities are important to constitutional trade because they are essential to the loading and unloading of air cargo, which in turn is essential to the international air freight industry, exporters and importers.

The Department suggests that the Council review the very recent House of Representatives Standing Committee Report, “Jet Fresh: Paddock to Plate”, which investigates rates charged for export of air freight out of Australia. While different commodities sustain different freight rates, export rates as a whole tend to be very low, and cross-subsidized by both passenger traffic and imports. This may expose some issues in the degree of benefit likely to be seen by exporters from off-airport handling.

The volume of international air freight passing through Melbourne and Sydney airports has sufficiently high values and growth potential in the Department’s view such that it can be considered of national significance.

In the 1995/96 financial year, \$32.2 billion of exports and imports passed through Sydney and Melbourne Airports. This amount of air freight accounted for 78 per cent of Australia’s total volume of international air freight, 16 per cent of our international trade in goods and services, and 7 per cent of GDP. Some \$21.2 billion of air freight passed through Sydney Airport alone, accounting for

51 per cent of our air freight market, 11 per cent of our international trade in goods and services, and 4 per cent of GDP.

The two airports' facilities are important to the national economy because the efficiency of the use made of them influences not only the productivity and competitiveness of Australia's international air freight industry, but also that of many other industries which rely on international air freight.

## Implications of the Air Freight Exports Inquiry

The recommendations of the Air Freight Exports Inquiry "Jet Fresh: Paddock to Plate" with implications for this application are:

### **Recommendation 1**

The committee recommends that the Federal Government and the Federal Airports Corporation facilitate effective competition in cargo terminal operations.

### **Recommendation 2**

The committee recommends that the Federal Airports Corporation facilitate the creation of off-airport cargo terminal operators subject to operators meeting Australian Customs Service and Australian Quarantine and Inspection Service standards.

The Government is required to respond to the recommendations of the Air Freight Exports Inquiry in March 1997 and is currently developing its response. Recommendations 1 and 2 are likely to have implications only for Sydney Airport, since Melbourne Airport is not expected to be under the FAC's ownership by the end of the current financial year.

## Competition in international air freight

Because of the relatively low value of most of the air freight flown out of Australia, the transport of goods on dedicated air freighters is less viable in Australia than it is in other markets where exports have higher values. The bulk of air freight to and from Australia is thus transported in the belly holds of passenger aircraft, and international freight operations are driven to a large extent by international passenger operations. At present there are almost 700 passenger services, but only 26 dedicated freighters, operating weekly to and from Australia.

The Department considers that while there will be a trend towards higher value-added exports transported by air freight, the belly holds of passenger aircraft will continue to be the most viable method of transporting these exports and hence international freight operations will continue to be driven by international passenger operations.



Flowing from this, competition between Australia's international airports for international freight will be largely driven by competition for passenger operations. It is generally acknowledged that passenger operations are a function of travel destination. Melbourne and Sydney are therefore relatively constrained in competing for passenger traffic to the other airport.

The availability, frequency, timeliness and cost of flights appear to be of greater importance for freight operations. Australian Bureau of Statistics air freight export data for state of origin show that a significant proportion of air freight exports from Australia (in particular some perishable goods) travel interstate to be uplifted from another international airport, often one with better flight connections than those available in the home state. As with passengers, however, destination is also likely to be critical, especially given the time-sensitive nature of most air freight.

There may be more scope for competition for freight on the basis of flight availability, frequency, timeliness and price. Attracting freight will depend, however, on the airport operator's ability to increase the frequency of scheduled passenger services to destinations sought by exporters and/or encourage new dedicated freight services.

I hope that this submission is of use in the Council's consideration of ACTO's application. Please contact me on (06) 274 7390 or Malcolm Thompson on (06) 274 7188 if you should wish to discuss any aspects of our submission.

Yours sincerely



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