



**Car rental operators at Cairns Airport –
Application for authorisation AA1000460
Interim authorisation decision
13 February 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000460, lodged by a group of car rental operators (the **Applicants**) on 28 November 2019.
2. Interim authorisation is granted to enable the Applicants to prepare for negotiations, and negotiate with, Cairns Airport Pty Ltd (**Cairns Airport**) in relation to the acquisition of space associated with the provision of car rental services at Cairns Airport, including in relation to the continuation of existing agreements on the basis of existing terms. Interim authorisation does not extend to entering into collectively negotiated agreements.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

4. The Applicants are:
 - WTH Pty Ltd trading as Avis Australia
 - Budget Rent a Car Australia Pty Ltd
 - Hertz Australia Pty Limited
 - CLA Trading Pty Ltd trading as Europcar
 - Redspot Head Office Pty Ltd trading as Enterprise, Alamon, National and Redspot
 - Kingmill Pty Ltd trading as Thrifty Car Rental and Dollar Car Rental.
5. The Applicants seek authorisation for 10 years to enable them to collectively bargain with Cairns Airport in relation to the acquisition of space associated with the provision of car rental services at Cairns Airport (including counter space, car parking bays and shared facilities), including the terms and conditions of the Licence Agreement and Lease Agreements (the **Proposed Conduct**). The Applicants are also seeking authorisation on behalf of future car rental companies that commence operating at Cairns Airport during the term of the authorisation.
6. The Applicants seek authorisation to collectively negotiate all terms and conditions (both price and non-price) related to the acquisition of airport space and services from Cairns Airport. In particular, they wish to collectively negotiate:
 - the amount and annual increases for key payment terms in Licence and Lease Agreements, such as the Minimum Guaranteed Payment, the Turnover Percentage Payment, Car Parking Fees and rent

- terms relating to the operation of the above key payment terms and other payments such as a security bond or bank guarantees, and
- the breadth and scope of definitions such as ‘operator’s turnover’ for the purposes of calculating various concession payments.

The authorisation process

7. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

8. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. Interim authorisation allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
9. The Applicants requested interim authorisation on the basis that the majority of the Applicants’ existing agreements with Cairns Airport are due to expire in early 2020. Interim authorisation would allow the Applicants to begin to prepare for and then negotiate with Cairns Airport as soon as possible, in order to maximise the effectiveness of collective negotiations with Cairns Airport while the ACCC considers the substantive application.

Consultation

10. The ACCC invited submissions from a range of potentially interested parties including Cairns Airport, other car rental companies operating in Cairns, industry associations and government agencies.¹
11. The ACCC received one submission in response, from Cairns Airport. Cairns Airport considers that the Proposed Conduct will not deliver any public benefit, and would risk causing significant harm to competition in upstream and downstream markets, as well as harm to the economic efficiency of Cairns Airport. Regarding interim authorisation, Cairns Airport submits that granting interim could result in irreversible harm through the sharing of commercially sensitive information, which could not be undone if the ACCC were to subsequently decide not to authorise the conduct.²
12. In response to Cairns Airport’s submission, the Applicants submit that interim authorisation would not result in irreversible harm through the sharing of commercially sensitive information, reiterating the restricted scope of the Proposed Conduct and the use of information sharing protocols to prevent the sharing of sensitive information. They also submit that commencement of negotiations under interim authorisation would allow continuity and certainty regarding car rental operations at Cairns Airport, and assist in realising the benefits of the Proposed Conduct in a more timely manner (should the ACCC ultimately grant authorisation).³
13. The ACCC has taken into account Cairns Airport’s submission, and the Applicant’s response, in making the decision on interim authorisation. Cairns Airport’s submissions on the substantive application for authorisation will be considered as part of the ACCC’s draft determination on this matter.

¹ A list of the parties consulted and the public submissions received is available from the ACCC’s public register www.accc.gov.au/authorisationsregister.

² Cairns Airport Pty Ltd, Submission, 19 December 2019.

³ For more information, see Applicants Response to Submissions, 16 January 2020.

14. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

15. In granting interim authorisation, the ACCC considers that:

- there is some urgency to the request for interim authorisation given the expected timing of the Request for Proposal process being conducted by Cairns Airport and noting that the majority of the Applicants' existing agreements with Cairns Airport are due to expire in early 2020.
- it is unlikely that interim authorisation will materially alter the competitive dynamics in any market. The Applicants will implement an information sharing protocol to address concerns about the sharing of commercially sensitive information. Further, interim authorisation extends to potentially agreeing to 'holdover' existing agreements but does not extend to the Applicants entering into any new agreements with Cairns Airport. Therefore, if the ACCC does not ultimately grant authorisation the relevant markets are able to return to substantially their current state.

Reconsideration of interim authorisation

16. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.