STATEMENT OF DECISION AND REASONS CONCERNING THE
APPLICATION FOR DECLARATION OF AIRSIDE SERVICES
PROVIDED BY SYDNEY AIRPORT CORPORATION LIMITED

I, the Hon Ross Cameron MP,
Parliamentary Secretary to the Treasurer, and
the designated Minister for the purposes of Part IIIA of the Trade Practices Act 1974,
make the following Decision in relation to the
application for declaration of airside services provided by
Sydney Airport Corporation Limited.

DECISION

On 1 October 2002, the National Competition Council (NCC) received an application from
Virgin Blue Airlines Pty Ltd for declaration of airside services at Sydney Airport provided
by Sydney Airports Corporation Limited (SACL). These airside services are the services
required for the use of runways, taxiways, parking aprons and other associated facilities
(Airside Facilities) necessary to allow aircraft carrying domestic passengers to (i) take off
and land using the runways at Sydney Airport; and (ii) move between the runways and
the passenger terminals at Sydney Airport.

The NCC’s Final Recommendation concerning the above mentioned application was
received by the Ministerial Office on 2 December 2003.

Section 44H of the Trade Practices Act 1974 provides that on receiving a declaration
recommendation from the NCC, I (as the designated Minister) must either declare the
service or decide not to declare it.

In deciding whether to declare a service or not, I must consider, among other things,
whether it would be economical for anyone to develop another facility that could provide
part of the service (subsection 44H(2)). I cannot declare a service, however, unless I am
satisfied of all six matters specified under subsection 44H(4).

Given SACL’s demand projections and the absence of capacity constraints in the short to
medium term, as well as the high sunk costs inherent in establishing an airport, I am
satisfied that it would not be economical for anyone to develop another facility that could
provide part of the service.

Following consideration of the recommendation by the NCC, I am not satisfied that access
to the airside services pursuant to a declaration under Part IIIA of the
Trade Practices Act 1974 would promote competition in at least one market other than the
market for the airside services. Further, I am not satisfied that access to the service
through declaration would not be contrary to the public interest. On these bases, I cannot
declare the airside services, and I decide accordingly.
RELEVANT PRINCIPLES

Pursuant to section 44H(4) of the Trade Practices Act 1974, I cannot declare the service unless I am satisfied of all of the following matters:

(a) that 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;

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

(c) that 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;

(d) that access to the service can be provided without undue risk to human health or safety;

(e) that access to the service is not already the subject of an effective access regime;

(f) that access (or increased access) to the service would not be contrary to the public interest.

Further, as mentioned above, section 44H(2) requires me to consider ‘whether it would be economical for anyone to develop another facility that could provide part of the service’.

REASONS

The first requirement, specified in section 44H(4)(a), is: that 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. In this case, the relevant dependent market is that for domestic air passenger services.

In determining whether competition will be promoted by the declaration of services, it is necessary to examine whether the provider of the service can, in absence of declaration, use its market power to adversely and materially affect competition in a dependent market.

In the absence of declaration under Part IIIA, the terms and conditions on which SACL provides access to the airside facilities are constrained by the risk of re-regulation of airport pricing, and to a lesser extent, the need for the airport to maintain passenger numbers so as to gain revenue from non-aeronautical activities.

The NCC has concluded that while these tempering effects on SACL’s behaviour might not be sufficient to completely negate SACL’s incentive to exercise market
power, they provide a strong incentive for SA CL to maintain prices close to competitive levels.

Given that aeronautical charges constitute a small proportion of airlines' cost structures, including those of a low cost airline and that all airlines are likely to have some ability to price discriminate amongst their customers, I am not satisfied that a small increase in the price of the airside service above competitive levels would have a material adverse effect on competition in the dependent market for domestic air passenger services.

The NCC reported in its recommendation that:

'It is not clear to the Council that even a significant increase in airside charges (100 per cent for example) would have such a material impact on demand as to lead to a possible exit or contraction in the number of services offered on Sydney routes such that competition on Sydney routes, and hence the Domestic Passenger Market, would be adversely affected'.

Consequently, I am not satisfied that access to the airside services through declaration would promote competition in a market other than the market for those services.

As a result of my finding with regard to criterion (a) I also consider criterion (f): that access (or increased access) to the service would not be contrary to the public interest, to be particularly relevant in my decision not to declare the airside services.

I consider the promotion of competition in a dependent market to be the primary potential public benefit of declaration. However, as mentioned, I am not satisfied that such benefit would arise as a result of declaration. I also accept the NCC's findings that potentially there would be a number of direct and indirect costs of declaration, including foregoing the potential benefits of allowing commercial negotiation to develop within a light handed regulatory environment.

On the basis that I am not satisfied that declaration would result in the promotion of competition in another market, I consider that the potential benefits of declaration are outweighed by the costs of regulation. Consequently, I am not satisfied that declaration would not be contrary to the public interest.

I agree with the NCC's conclusions in relation to subsections 44H(4)(a) and (f); therefore, I am not satisfied that the application complies with the essential declaration requirements specified in those subsections.

CONSIDERATION OF OTHER CRITERIA

Subsection 44H(4)(b) specifies that I cannot declare a service unless I am satisfied that it would be uneconomical for anyone to develop another facility to provide the service.

- Given the extent of the infrastructure required to provide airside services, and in light of the costs of establishing an airport capable of meeting the demand of Sydney Airport and Sydney Airport's ability to meet demand in the short to medium term, I am satisfied that it would be uneconomical to develop the facilities required to provide airside services at Sydney Airport.
- Therefore, I am satisfied in relation to the matter specified in subsection 44H(4)(b).

As mentioned above, subsection 44H(2) requires me to consider whether it would be economical for anyone to develop another facility that could provide part of the service.

- I have considered this matter and formed the view that given the integrated nature of the operations of a major airport such as Sydney Airport and the services for which declaration is sought, I am satisfied that it would not be economical for anyone to develop another facility that could provide part of the service.

Subsection 44H(4)(c) requires that the facility be of national significance.

- The facility is of national significance due to its central role in Australia’s commercial travel and air freight links with the rest of the world, as well as the impact of inbound and outbound passengers on the Sydney economy.

- Accordingly, I am satisfied in relation to the matter specified in subsection 44H(4)(c).

Subsection 44H(4)(d) requires that access can be provided without undue risk to human health or safety.

- In absence of evidence that access cannot be provided without undue risk to human health or safety, I consider that access can be provided without undue risk to human health and safety.

- Therefore, I am satisfied in relation to the matter specified in subsection 44H(4)(d).

Subsection 44H(4)(e) requires that access to the service is not already the subject of an effective access regime.

- Sydney Airport is not subject to a state access regime. Further, I consider that the slot management scheme and other contractual obligations on Sydney Airport’s slot allocation to be insufficiently comprehensive or legally enforceable so as to be considered an effective access regime.

- I am satisfied that there is no effective regime covering the services under application, consequently I am satisfied in relation to the matter specified in subsection 44H(4)(e).

ROSS CAMERON

29 JAN 2004