TO: Ms Deborah Cope  
NCC

DATE: 6 March 2003

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PAGES: 4 (Including Cover Sheet)

FROM: WARREN BENNETT

SUBJECT: APPLICATION BY VIRGIN BLUE FOR DECLARATION OF AIRSIDE SERVICE AT SYDNEY AIRPORT

Please refer attached.
Ms Deborah Cope  
Acting Executive Director  
National Competition Council  
GPO Box 250B  
MELBOURNE VIC 3001

Dear Ms Cope

APPLICATION BY VIRGIN BLUE FOR DECLARATION OF AIRSIDE SERVICE AT SYDNEY AIRPORT

1 Further Submission - use of Sydney Airport by aircraft carrying international passengers

We refer to BARA's Submission dated February 2003 in relation to the above application by Virgin Blue.

BARA wishes to make a Supplementary Submission, as follows, in relation to the use of Sydney Airport by aircraft carrying international passengers.

You will note in paragraph 7 of BARA's Submission that our member Airlines use Sydney Airport for the purpose of carrying international passengers. Whereas, Virgin Blue only carries domestic passengers (for the moment).

2 Virgin Blue application - "Airside Service"

In paragraph 3.1 of Virgin Blue's application, it asks that the Council recommend the declaration of the following service:

"(a) a service 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,

(Airside Service);..."
We note the application in its terms relates to use of the Airside Service by aircraft carrying *domestic* passengers.

3 Identical use of service for domestic and international aircraft

The Council has noted (page 16, Issues Paper) that the description of Airside Service by Virgin Blue refers to both the use of certain facilities and the purpose for which that use will be put, without reference to a specific end user.

For this reason, BARA believes that identical factors would apply to a consideration of use of the service, whether for carrying domestic or international passengers.

Further, the actual facilities providing the service are identical, regardless of whether they are being used by aircraft carrying domestic or international passengers.

The only exception to this is that when carrying international passengers, aircraft would be using, for part of the time, the *taxiways, parking aprons* (and if applicable, other associated facilities) leading to the international terminal, as distinct from the domestic terminals. They would of course be using identical *runways*.

4 "Other associated facilities"

We note in the Council's Issues Paper that the "other associated facilities" referred to by Virgin Blue will need to be specifically described. We assume that Virgin Blue will be filing a further Submission in this regard. BARA will also file a further Submission in this regard, subject to being granted an extension of time.

5 The relevant facility - the whole of Sydney Airport

(a) The Council recognises the authority of the *Sydney Airport* decision (at [2000] ACompT 1) that the relevant facility required for the provision of the Airside Service is, in practical terms, the whole of Sydney Airport.

The Council also notes that while the *Sydney Airport* decision considered services that required the use of facilities for international aircraft, Virgin Blue's Airside Service application relates to only domestic aviation. The Council's stated preliminary view is that "*nothing turns on this distinction for the purposes of paragraph (b)*".


(b) We note in paragraph 4.1.2 of the Virgin Blue application that it "considers that the relevant facility that should be considered is just not those specific facilities referred to in the description of Airside Service, but rather the whole of *Sydney Airport*. This is due to the highly interconnected or bundled nature of domestic air passenger transport operations at *Sydney Airport*". (emphasis added).

(c) BARA supports that proposition subject to the following comment.
BARA believes the "highly connected or bundled nature" of air passenger transport operations at Sydney Airport is not limited to domestic operations but also includes international operations.

6 The relevant services

(a) The application, and any consequent declaration, should not be confined to services for aircraft carrying domestic passengers, but also international passengers.

(b) The services will be a number of services provided by the use of the whole of Sydney Airport, not just Virgin Blue's defined "Airsie Service".

(c) Further submissions will be necessary on the delineation of services. We do not believe this will be necessary in relation to the runways, taxiways and aprons components of Virgin's defined "Airsie Service". However, it will be necessary as to "other associated facilities" in relation to "Airsie Service", and other services as are provided by Sydney Airport, notably services provided by the use of the Sydney International Terminal facility.

(d) Depending on the ambit of any declaration following this application BARA, on behalf of its member Airlines, may make a further application under Part IIIA in relation to certain services provided by the use of the Sydney International Terminal, or particular facilities within that terminal.

7 Conclusion

(a) BARA believes that its February 2003 Submission and this Supplementary Submission, taken together with Virgin Blue's Submission, deal with all matters which need to be considered in relation to an application for a declaration applying to use of at least the "Airsie Service" by aircraft carrying international passengers, as well as domestic passengers, and further to services provided by the whole of Sydney Airport (except for the domestic terminals).

(b) We would however be pleased to make a further Submission in relation to the delineation of the services.

(c) As a formality, we also ask for an extension of time for both this Submission and any further Submission in relation to the delineation of services.

Yours sincerely

[Signature]

Warren Bennett  
Executive Director