

**APPLICATIONS FOR DECLARATION  
OF CERTAIN AIRPORT SERVICES**

**AT SYDNEY AND MELBOURNE  
INTERNATIONAL AIRPORTS**

**REASONS FOR DECISION**

8 MAY 1997

**Applications for Declaration under Section 44F  
of the *Trade Practices Act 1974***

**STATEMENT OF REASONS FOR DECISION ON  
APPLICATIONS FOR RECOMMENDATION OF DECLARATION OF  
CERTAIN AIRPORT SERVICES**

**APPLICANT:** AUSTRALIAN CARGO TERMINAL OPERATIONS  
PTY LTD

**PROVIDER OF THE SERVICE:** FEDERAL AIRPORTS CORPORATION

**SYDNEY INTERNATIONAL AIRPORT**

**Application 1:** Declaration of the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Sydney International Airport ('S1')

**Application 2:** Declaration of the service provided by the use of an area at the airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at Sydney International Airport ('S2')

**Application 3:** Declaration of the service provided by use of an area to construct a cargo terminal at Sydney International Airport ('S3')

**MELBOURNE INTERNATIONAL AIRPORT**

**Application 1:** Declaration of the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Melbourne International Airport ('M1')

**Application 2:** Declaration of the service provided through the use of an area at the airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at Melbourne International Airport ('M2')

**Application 3:** Declaration of the service provided by use of an area to construct a cargo terminal at Melbourne International Airport ('M3')

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## ABBREVIATIONS

<b>Abbreviation</b>	<b>Full Name</b>
AAS	Australian Airport Services
ACA	Air Cargo Automation
ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
ACS	Australian Customs Service
ACTO	Australian Cargo Terminal Operators Pty Ltd
AFIF	Australian Federation of Freight Forwarders
AIPA	Australian and International Pilots Association
AQIS	Australian Quarantine and Inspection Service
BA	British Airways
BOC	BOC Cargo Services Pty Ltd
BTCE	Bureau of Transport and Communications Economics
CCW	Corrs Chambers Westgarth
CSC	Cargo Services Centre
CTO	Cargo Terminal Operations
DTRD	Federal Department of Transport and Regional Development
EOI	Expressions of Interest
FAC	Federation Airports Corporation
FedEx	Federal Express
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
KSA	Kingsford Smith Airport (Sydney International Airport)
LDLs	Lower Deck Loaders
MA	Melbourne International Airport

MDLs	Main Deck Loaders
SRD-NSW	NSW Department of State and Regional Development
SRA	Security Restricted Area
ULDs	Unit Load Devices

# 1. INTRODUCTION

On 6 November 1996, the National Competition Council (the Council) received a number of applications from Australian Cargo Terminal Operators Pty Ltd (ACTO) for the declaration of services:

- provided through facilities owned by the Federal Airports Corporation (FAC) at Tullamarine International Airport (hereafter 'Melbourne International Airport') and Kingsford Smith International Airport (hereafter 'Sydney International Airport');
- provided through facilities owned by Qantas at Melbourne and Sydney International Airports; and
- provided through facilities owned by Ansett at Melbourne and Sydney International Airports.

This statement of reasons deals with the services provided by means of the facilities owned by the FAC.

The applications for Qantas and Ansett services relate to access to ramp services and some cargo terminal operations owned by each airline at the airports. The Council has postponed consideration of the applications that relate to Qantas and Ansett but will now proceed to deal with them having made its recommendation to the Commonwealth Treasurer in respect of the FAC services.

## Process

After receiving the applications, the Council informed the FAC, Qantas and Ansett (the infrastructure owners) and the Commonwealth Treasurer (as the Designated Minister) of receipt of the applications. Staff from the Council's Secretariat then met with the infrastructure owners and the applicant to discuss the applications and the process to be adopted in dealing with them.

The Council decided to deal with the applications through a staged process, with the applications in relation to the FAC services being dealt with first. The Council considered this to be the most efficient means of dealing with the applications and ensured that each application would be dealt with on its merits.

In December 1996 the Council published the fact that the applications had been received and requested written submissions from interested parties by 7 February 1997. To aid interested parties in preparing their submissions the Council issued a discussion paper in December 1996.

The Council received 20 written submissions, a list of which is at Appendix 1. Copies of the non-confidential submissions were made available to the applicant, ACTO, and the FAC. All parties who had made submissions were advised that the other submissions were available if they wished to consider them. Any additional comments parties might like to make were sought by 1 April 1997.

The Council had originally anticipated making its recommendation to the Commonwealth Treasurer on 11 April 1997, however due to the fact that many of the submissions were received later than had been expected, the Council revised the date for recommendation to 30 April 1997. The applicant, the FAC and all parties that made submissions were informed of the variation.

The Council considered all the submissions and reached a decision on its recommendation at its meeting of 24 April 1997.

## **Consultancy**

During the course of dealing with the applications the Council sought information on international experiences in relation to international air freight handling operations. The Council contracted with ACIL Economics to provide this information through a short term consultancy. In essence, ACIL was required to provide information in relation to the health and safety issues of international air freight handling operations and to examine the extent to which cargo terminal operations may have been conducted at overseas airports in a way similar to that proposed by the applicant. The report provided by ACIL formed part of the information considered by the Council and is included at Appendix 2.

## **Confidential submissions**

The Council regards submissions as public documents unless confidentiality is requested. However, the Council is conscious of the need to protect confidential information, including commercially sensitive information.

A number of submissions were made to the Council on a confidential basis. The FAC supplied confidential versions and general release versions of its submissions in respect of both Sydney and Melbourne Airports. The Council accepted the confidentiality request of the FAC in respect of the commercially sensitive information contained in the confidential versions of its submissions. A confidential submission was made by the Australian Chamber of Commerce and Industry (ACCI). ACCI subsequently withdrew its request for confidentiality and the submission was made available for general release. Federal Express also requested that its submission be treated as confidential. The Council was prepared to accept that parts of the submission should be treated confidentially, but did not accept that the entire submission should be confidential. The Council and FedEx later agreed on those parts of the FedEx submission which were to be treated as commercial in confidence.

## 2. THE APPLICATIONS

The Council received six applications in respect of services provided by facilities owned by the FAC at both Melbourne and Sydney International Airports. The applications in respect of both airports were identical.

### **Sydney International Airport**

- Application 1:** Declaration of the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Sydney International Airport ('S1')
- Application 2:** Declaration of the service provided by the use of an area at the airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at Sydney International Airport ('S2')
- Application 3:** Declaration of the service provided by use of an area to construct a cargo terminal at Sydney International Airport ('S3')

### **Melbourne International Airport**

- Application 1:** Declaration of the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Melbourne International Airport ('M1')
- Application 2:** Declaration of the service provided through the use of an area at the airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at Melbourne International Airport ('M2')
- Application 3:** Declaration of the service provided by use of an area to construct a cargo terminal at Melbourne International Airport ('M3')

The Council has dealt with the applications for declaration of the services at Melbourne and Sydney International Airports together to the extent possible. It considers many of the issues to be common to both airports. However, it recognises that it is necessary for each application in respect of each airport to be fully considered against the criteria in Part IIIA, and the Council has ensured that this has been done. In some instances, the situations at Melbourne and Sydney differed from each other and these differences have been specifically identified and discussed.

Applications S1 and M1 are directed at access to the freight and passenger aprons and hard stands so as to enable the applicant to provide ramp services to international aircraft (both freight and passenger).

Applications S2 and M2 are directed at access to space within the airport to transfer the freight from the ramp equipment to trucks so it can then be transported to an off-airport CTO (this process is also conducted in the reverse for export freight). An area is also required to store the equipment necessary to provide ramp services.

Applications S3 and M3 relate to access to an area within the airport perimeter to construct a CTO.



None of the submissions received by the Council treated the services or the facilities identified in applications S1 and M1 as materially different from those in S2 and M2. The services and facilities identified in both sets of applications are linked in the sense that both relate to facilities necessary to be able to operate a ramp service so as to be able to load and unload international freight and then to have that freight moved off (or moved on) the airport. The Council has effectively considered these applications together as it sees the facilities that provide the services which are the subject of these applications to be essentially the same.

### **Application**

Section 44(F)(1) provides for any person to make a written application to the Council asking the Council to recommend to the designated Minister under section 44G that a particular service be declared. Regulation 6A of the Trade Practices Regulations requires that an application include certain information.

The Council considers that it has received valid applications for the declaration of certain FAC services at Sydney and Melbourne International Airports from Australian Cargo Terminal Operators Pty Ltd on 6 November 1996. Those applications provided information as required by Trade Practices Regulation 6A.

### **Good faith**

Section 44F(3) states that “the Council may recommend that the service not be declared if the Council thinks that the application was not made in good faith”.

The Council has no information which would suggest that the applications were not made in good faith in accordance with section 44F(3) and decided to proceed with the applications.

The Applicant informed the Council that it had attempted to negotiate access with the FAC at both Sydney and Melbourne International Airports over a period of time prior to making the applications to the Council. This was not disputed by the FAC.

### **Threshold question**

The first issue for the Council to consider is whether the services which are the subject of the applications come within the meaning of ‘service’ in section 44B of the *Trade Practices Act 1974* (the Act).

Section 44B of Part IIIA of the Act defines a service as:

“a service provided by means of a facility and includes:

- (a) the use of an infrastructure facility such as a road or railway line;
- (b) handling or transporting things such as goods or people;
- (c) a communication service or similar service;

but does not include:

- (d) the supply of goods; or
- (e) the use of intellectual property; or
- (f) the use of a production process;

except to the extent that it is an integral but subsidiary part of the service.”

In order to test whether a particular service is a ‘service’ under the Act, it is necessary to determine the ‘facility(ies)’ that provide the service(s).

## **The Facilities**

The facilities which are the subject of the applications are:

- S1 and M1: the freight and passenger aprons and hard stands at Sydney and Melbourne International Airports;
- S2 and M2: space within the airport perimeter at Sydney and Melbourne International Airports (which may include, but is not limited to, freight and passenger aprons and hard stands); and
- S3 and M3: an area suitable for the construction of a CTO, within the airport perimeter at Sydney and Melbourne International Airports.

It is the Council’s view that infrastructure such as hard stands and aprons are facilities within the meaning of the TPA, in the same way that roads are facilities.

The Council was required to consider the question of whether a service provided through the use of a space or area within the airport perimeter could be the subject of an access declaration under the TPA. The Council sought legal advice on the issue of whether land could be a facility within Part IIIA of the TPA.

In essence the advice to the Council was that improved land could amount to a facility. Under Part IIIA, the term ‘facility’ is not defined. However, Part IIIA contemplates that a facility can be developed, extended, or operated. The advice stated that:

the area where aircraft are parked and the freight apron is an ‘infrastructure facility’ .... This area can be developed (in the sense of created), can be extended, and can be operated (in the sense of being used). On this basis, the use of this area would be a ‘service’ to which a third party could seek access ....<sup>1</sup>

The advice went on to examine the situation of unimproved land on an airport or where improvements to land were not specific to any particular use. In this case, the land may not amount to a facility. However, a determination of the terms and conditions of access ‘may deal with any matter relating to access by the third party to the service’(section 44V(2)). Therefore, the advice argued that in certain situations a person may be able to obtain access to unimproved land at an airport as something necessary to give effect to access to a service provided through means of a facility.

After considering the legal advice, and the submissions from parties, the Council is of the view that the on-airport land which has been converted into a freight apron airport does constitute a ‘facility’ within the meaning of Part IIIA of the TPA. The Council recognises that the improvement to this land is specific to a particular ‘airport’ purpose, namely its use as a parking bay for aircraft.

Further to this, the Council considers that it is likely that land located within the perimeter fence but which has not been converted into a freight apron (or dedicated to any other purpose), should

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<sup>1</sup> Legal Advice, 18 November 1996

nonetheless be considered a facility. The perimeter fence around this land provides for the security of the airport. The land is also likely to have been cleared, drained, and otherwise made suitable for an airport purpose. To the extent that the location of this land is significant in determining its purpose, it is noted that this land is immediately adjacent to existing facilities and is available for further development of new airport facilities. In any event, consistent with section 44V(2), access to this land could be considered necessary to give effect to access to the freight apron.

The Council recognises that the amount of space within the airport perimeter and the size of the area within the airport perimeter required by the Applicant to undertake freight loading and unloading activities differs according to the particular method of operations adopted by the Applicant. Accordingly, the Council considers that questions relating to how much land is necessary for the performance of particular functions are best left to the parties to decide between them (or to arbitration by the Australian Competition and Consumer Commission if the parties cannot agree).

### **The Services**

As stated above, section 44B of the TPA defines service to include “the use of an infrastructure facility such as a road or railway line”. In respect of the applications made by ACTO P/L the Council considers that the services the subject of the applications are the use of the facilities identified above, ie hard stands, freight and passenger aprons and space within the airport perimeter.

Part IIIA of the TPA relates to declared services, not declared facilities. The reason for this distinction is that a facility may provide multiple services, only some of which might satisfy the criteria for declaration<sup>2</sup>

As each of the facilities the subject of the ACTO applications could be put to a number of different uses, (eg a hard stand is also used to park an aircraft), with only some relevant to the Applicant, the Council has been guided in the use of the facilities by the intentions of the Applicant.

ACTO has stated in its applications that the facilities could be used in a number of different and related ways:

- to operate equipment required to load and unload widebodied aircraft such as main deck loaders and lower deck loaders and the associated tugs, air stairs and dolly/barrow towing equipment on the freight and passenger apron (proposed by applications S1 and M1);
- direct truck access to main deck loaders serving freighter aircraft (S1 and M1);
- direct truck access to dollies located on the freight apron or passenger apron and used to transport freight to/from passenger and freighter aircraft (S1 and M1);
- park, store and maintain its equipment as well as operate truck loading and unloading activities; (S2 and M2); and
- construct and operate an international cargo terminal and provide other kinds of ground handling services (S3 and M3).

These different uses of the facilities can be seen as necessary for the Applicant to be able to operate its businesses of providing ramp services and CTO services to international airlines. The exact uses

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<sup>2</sup> Draft Guide to Part IIIA, p 17

of the facilities would be determined by the method of operation of the ramp services and CTO services, with perhaps some of the above uses not being required.

The FAC agrees that these services are within the definition of service in Part IIIA of the *Trade Practices Act*.<sup>3</sup>

### **Description of the Air Freight Chain<sup>4</sup>**

The freight process usually involves a number of basic steps.

Firstly, the producer/customer engages a freight forwarder to collect the freight from its premises. Freight forwarders, agents for the producer/customer, gather various loads of freight, and build them up to pallets ready for transit. The freight forwarder then contracts with an airline in order to arrange for space on an aircraft for the freight. The airline advises the freight forwarder which CTO will handle the freight for that flight. The freight forwarder then raises an Airway bill (an international standard form document). This will include a description of the goods, their value, the sender and receiver and the weight of the freight. The freight is then transported to the cargo terminal by the freight forwarder.

#### On-Airport CTO operations

With on-airport CTO operations, the freight forwarder's truck will pull up at the cargo terminal and unload the freight. The CTO operator will match the goods received with those itemised on the Airway bill. Once in the cargo terminal, the freight is available for Customs and quarantine inspection. The airlines impose a two hour cut-off time for delivery at the CTO prior to aircraft departure in order to allow sufficient time for the necessary clearance and loading to take place.

Effectively, what the CTO does is provide the airline with a consolidation service. The CTO takes responsibility for the freight when it enters the cargo terminal. The CTO collects freight potentially from a number of different freight forwarders, consolidates this freight, builds it up if necessary (some freight will simply be transported as "loose freight") into a full load unit load device ("UDL"), raises a master Airway bill and then presents to the airline a totally made up single load for that flight which has been prepared and weighed. The CTO will advise "load control" (who is theoretically a separate ground handler at the airport but under the present system is either Qantas or Ansett) of the weight of the freight and "load control" devise a load sequence that will "trim" the aircraft (the "trim" refers to the placement of freight and baggage in an aircraft needed in order to ensure an evenly balanced aircraft). The CTO takes responsibility for the total weight of the freight. The CTO then compiles a manifest for the airline.

The CTO advises Customs and AQIS that a flight has been prepared for departure.

Once the freight has been cleared for departure, it is passed to the ramp operator. A "ramp operator" is a ground handler at the airport who transports freight between the CTO and aircraft via trolleys (called "dollies") and deckloaders. The freight moves through to the "airside" side of the cargo terminal out onto dollies and onto the apron. The freight is transported to the aircraft where it is loaded into the aircraft, usually by a main deck loader, or "MDL" (for pure freighters) or lower deck loader, or "LDL" (for passenger aircraft).

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<sup>3</sup> FAC, Melbourne and Sydney submissions p.54

<sup>4</sup> This information has been adapted from information supplied by the FAC in its Sydney general release submission, at p.7-14

For import freight, the process is reversed.

Nowadays the airway bill process is largely electronic. Freight forwarders, CTOs and Customs all access the "cargo automation system". For inbound/outbound freight, this automation creates efficiency as Customs can pre-clear most freight and notify the CTO accordingly through the system of freight requiring customs screening.

Freight may need to be warehoused by the CTO prior to pick up by the freight forwarder or delivery to the aircraft.

### Off-Airport CTO Operations

An off-airport CTO could operate in a variety of different ways, however conceptually, the general feature of the off-airport CTO is that freight is not built up or broken down at a warehouse on the airport but instead "by-passes" this stage until off the airport at a warehouse.

For import freight, the off-airport CTO would receive from the on-airport bypass operation those units that are pre-cleared from its client airline by Customs.

### Customs and AQIS.

The *Customs Act* 1901 requires that all imported goods are "screened" for barrier control purposes before being transported to a bonded warehouse, and that duty payable, be paid before imported goods are "taken out of bond". Customs may inspect freight while in the cargo terminal, where pallets can be broken up and then rebuilt before transit. Customs is prepared, if certain conditions are met, to licence off-airport warehouses as approved places to inspect cargo.

The Australian Quarantine Inspection Service (AQIS) may also inspect the freight while at the CTO, if a quarantine entry has been issued. AQIS works alongside Customs, if the goods are subject to quarantine.

### Integrators.

Integrators are independent express freight systems that manage and own the resources needed to move packages and documents worldwide. They provide the on-ground pick up and delivery fleets processing facilities and air linehaul. The integrators cover all functions relating to physical lodgement and clearance and Customs within their own infrastructure. The main players in the Australian markets are DHL, Federal Express, UPS and TNT.

### 3. EVALUATING THE APPLICATIONS

The criteria against which the Council must assess each of the applications are contained in section 44F(4) and sections 44G(1), (2) and (3). Those sections are reproduced below.

**44F(4) [Consideration of alternative facilities]** In deciding what recommendation to make, the Council must consider whether it would be economical for anyone to develop another facility that could provide part of the service. This subsection does not limit the grounds on which the Council may decide to recommend that the service be declared or not be declared.

**44G(1) [Access undertakings]** The Council cannot recommend declaration of a service that is the subject of an access undertaking in operation under section 44ZZA.

**44G(2) [Council to be satisfied of matters]** The Council cannot recommend that a service be declared unless it is 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.

**44G(3) [Effective access regimes]** In deciding whether an access regime established by a state or territory that is a party to the Competition Principles Agreement is an effective access regime, the Council:

- (a) must apply the relevant principles set out in that agreement; and
- (b) must not consider any other matters.

In respect of section 44G(1), none of the services the subject of these applications are the subject of an access undertaking in operation under section 44ZZA.

The criteria detailed in sections 44F(4) and 44G(2) are considered below.

### 3.1 PROMOTING COMPETITION IN OTHER MARKETS

- (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*

#### APPROACH

The Council, in the discussion below, has defined the market for the services which are the subject of the applications, defined other markets that are reliant on the services of the applications and identified the prospects for increased competition in those other markets. The Council has also considered the arguments that access to the services the subject of the applications would have little or no effect on competition.

The Council has adopted the interpretation of “would promote competition” discussed in its Draft Guide to Part IIIA of the Trade Practices Act (Draft Guide) which states that “Part IIIA only requires that the action in question (specifically, providing access to an infrastructure service) would promote competition: while a trivial increase in competition would not satisfy this test, access would not need to substantially promote competition”<sup>5</sup>.

To assess whether competition would be promoted, it is necessary to identify the market within which competition can occur. The Draft Guide notes that “In assessing whether access will promote competition in a particular market, the Council will consider the long run substitution possibilities in both production and consumption”<sup>6</sup> and while noting substitution possibilities are a key consideration for defining a market, the Council will consider the product, geographic functional and temporal dimensions of markets.<sup>7</sup>

#### THE MARKET FOR THE SERVICE

The requirement under criterion (a) that competition be promoted in another market, means that the market in which competition is promoted cannot be only the market for the infrastructure service. It is therefore necessary to identify what is the market for the infrastructure services the subject of these applications.<sup>8</sup>

Section 4E of the TPA provides:

For the purposes of this Act, unless the contrary intention appears, “market” means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services, and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services.”

In a submission made to the Council in another, unrelated matter, Professor Henry Ergas discussed whether the different functional layers of a market constitute distinct markets. He stated that:

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<sup>5</sup> National Competition Council, National Access Regime: A Draft Guide to Part IIIA of the Trade Practices Act, August 1996, p.19

<sup>6</sup> Draft Guide, p.2, as discussed in *Re Queensland Cooperative Milling Association Ltd* (1976) 25 FLR 169

<sup>7</sup> Draft Guide, p.21

<sup>8</sup> Draft guide, p.22

Two tests are especially relevant to assessing whether distinct functional layers constitute separate markets.

The first of these tests hinges on whether the layers at issue are in fact separable from an economic point of view. The crucial question here is whether the transactions costs involved in the separate provision of the good or service at the two layers would not be so great to prevent such separate provision from being feasible.

While separability, ..., is a necessary condition for distinct functional layers to form distinct markets, it is not sufficient. Rather it must also be the case that serving each of the these distinct layers requires assets specialised to that layer, so that supply-side substitution (in this instance in the form of movement from one layer to another) is not so immediate as to effectively unify the field of rivalry within which services at the two layers are provided. The specialised assets at issue may be physical assets (ie distinct capital equipment), human capital, organisational skills and/or contractual assets more generally (that is, the explicit or implicit contracts required for service to be provided).<sup>9</sup>

### **Relevant product market**

The services to which the Applicant is seeking access can be loosely referred to as ‘the use of FAC facilities at both Sydney and Melbourne International Airports in order to provide freight ramp services and CTO services to international aircraft at those airports’. These FAC facilities would include the hard stands, freight and passenger aprons, storage space and space to conduct CTO activities. These same FAC facilities can be, and are, used by a number of parties to provide a variety of services, such as catering, baggage handling, engineering and cleaning, to international aircraft. The extent to which the facilities are used by these parties is determined by their method of operation, with some activities requiring more, or different, use of specific facilities. There are some similarities between them in that any activity that is based on servicing an aircraft generally requires access to that aircraft while it is parked on a hard stand. This will further require the operator to have the ability to bring their equipment onto the hard stand and passenger and freight aprons. Some of this equipment may not require on-airport storage, eg catering trucks, some may, eg ramp equipment. However all the activities require a level of access to the facilities owned by the FAC.

In 1993, the Prices Surveillance Authority (PSA) examined the issue of the market power of the FAC. The report resulting from this examination makes a number of observations that are relevant to these applications.

The report discussed the degree to which close substitutes existed for the services provided by airports. It found that the long distances between major Australian destinations tend to reduce competition with other modes of transport. This can be compared with the situation in Europe, for example, where shorter distances facilitate competition between different means of transportation.

The Industry Commission report into intrastate aviation also noted that distance limits the scope for competition between airports and alternative transport modes.<sup>10</sup>

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<sup>9</sup> Ergas, H, submission to the NCC in support of an application by Carpentaria Transport Pty Ltd, p.1-3

<sup>10</sup> Industry Commission, Intrastate Aviation, Report No. 25, July 1992, p.4



The Council considers that there are no other services that would provide an adequate substitute to the users of the FAC services. The lack of possible substitution stems from the fact that the services are only capable of being provided by the operator of an international airport.

The Council considers that the services covered by these applications, exist within the market for all services provided by the facilities of an international airport necessary to operate airline services, both passenger and freight. It is necessary to have access to the services that the Applicant seeks to have declared in order to be able to provide services to international aircraft such as ramp handling, catering, engineering etc. These services form part of the chain of services provided through the use of airport facilities to enable the operation of airline services, both passenger and freight. It is also necessary for international aircraft to be able to access other services provided through use of the airports facilities, such as landing and terminal facilities. All the services necessary to operate an airline, provided through the use of the facilities of an international airport, exist within the one market. The distinct functional levels would not constitute distinct markets because the individual services fail both tests of separability:

- the provision of a distinct service, for example, use of the freight aprons to load and unload international aircraft, is not commercially feasible; and
- the different services essentially use the same infrastructure; that is, the airport.

While one airport might compete with another for the business of international airlines, a facility at one airport does not compete against a like facility at another airport.

The Council considers that the services the subject of the applications fall within a product market that can be defined as the services provided by an international airport to enable the operation of airline services, both passenger and freight.

### **Relevant geographic market**

Having defined the product market as being reliant upon the services of international airports, the geographic market for the services provided by the airports needs to be established by considering the level of competition (actual or potential) between those airports.

The PSA Report found that strong competition between airports in Australia was not likely. Demand for airport services is derived from demand for travel to destinations.<sup>11</sup> This feature is reiterated by the submission from the DTRD:

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 of destination. Melbourne and Sydney are therefore relatively constrained in competing for passenger traffic to the other airport.<sup>12</sup>

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<sup>11</sup> PSA Report No. 48, p.51

<sup>12</sup> Department of Transport and Regional Development submission, p.9

However, the situation may be different for freight only carriers, with the possibility of diverting flights to other destinations. DTRD stated that:

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.<sup>13</sup>

One such occurrence was Martinair's rerouting of flights from Sydney to Melbourne.<sup>14</sup> The PSA report had noted that Sydney and Melbourne International Airports are very weak substitutes with some limited substitutability occurring for international air services.<sup>15</sup>

After consideration of the PSA Report and the comments made by submissions, the Council has found that there is little scope for competition between Melbourne and Sydney International Airports in services that relate to freight handling due to:

- the location specific nature of time sensitive freight;
- the small cost of airport charges relative to the cost of operating aircraft;
- the destination specific nature of aircraft travel; and
- the geographical separation between the two airports.

#### Competition from regional airports

While geographically dispersed airports are not likely to compete, an airport located within a region may. The proposed Sydney West Airport and Avalon airports have been proposed as substitutes for the existing Sydney and Melbourne International Airports respectively. However, several submissions<sup>16</sup> have argued that these options are remote long term possibilities, for example, Australian Federation of International Forwarders Ltd (AFIF) sees no short term opportunity for the services of the FAC to be provided by another facility.<sup>17</sup> The House of Representatives Standing Committee's report into time sensitive freight (the Vaile Report) noted several difficulties which the operator of a new freight airport would need to overcome in order to be commercially viable. These difficulties include the incumbent airport's ability to provide access at a currently under-utilised international airport, the commitment of major participants to the existing airport's infrastructure, and the fact that exports are likely being drawn from the same regions.<sup>18</sup>

The PSA Report noted that airport charges were a small component of the total cost of a trip,<sup>19</sup> indicating a lack of relative price incentive to seek other substitutes. A report by the Monopolies and Mergers Commission (MMC) noted comments by airlines using Heathrow, that:

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<sup>13</sup> DTRD submission, p.9

<sup>14</sup> CSC, p.1

<sup>15</sup> PSA Report No. 48, p.51

<sup>16</sup> Other submissions include the submission from Corrs, Chambers, Westgarth, the Victorian Government submission, and the submission from Federal Express

<sup>17</sup> AFIF Submission, p. 4

<sup>18</sup> Vaile Report, p. 63

<sup>19</sup> PSA Report No. 48, p.51

it would take a very substantial increase in airport charges, possibly as much as tenfold, before they would seriously consider diverting operations to other UK airports.<sup>20</sup>

The Council considers that there is no prospect for competition from another functional level in respect of the product defined above. The only possible supplier of the service is the operator of the international airports in Sydney and Melbourne, currently the FAC. For the users of the service, access is essential to enable them to operate their activities. The Applicant has sought access to the service in order to be able to provide ramp services and CTO services to international aircraft. These ramp and CTO services are in themselves inputs into the international airfreight forwarding chain (this chain is described at pp 11-13 above).

## **Conclusion**

While recognising that there maybe some substitution possibilities between airports, the Council considers these are limited and have little impact on the overall competitiveness of the airports. The Council therefore considers that in respect of the product identified, separate markets exist in each of Sydney and Melbourne.

The Council considers that the services to which the Applicant is seeking access are part of the market for airport services that are necessary to the operation of international airline operations at both Sydney and Melbourne.

The competitive environment of international airport services is further considered under criterion (b).

## **PROMOTION OF COMPETITION**

The FAC raised a preliminary issue: whether competition is promoted in markets other than the market for the services? The FAC argued that

the reference to ‘would’ clearly indicates that it is insufficient for the NCC to be satisfied that access “might” promote competition.<sup>21</sup>

The evaluation of the applications under this criterion requires the application of economic principles in order to make a considered judgement as to the outcomes which can be reasonably expected to occur. The application of the test does not require the Council to certify that a sequence of future events will actually take place, but rather to make a considered judgement as to the likely effects of access in respect of the promotion of competition in markets other than the market for the service. This approach is consistent with that described in the Draft Guide.

## **ARGUMENTS PRESENTED FOR INCREASED COMPETITION IN OTHER MARKETS**

The Council is not required by the criterion to undertake an assessment of the likely impact of the Applicant’s proposals, rather the Council is required to make an assessment of the impact of access on competition in other markets than the market for the services. However, the information provided by the Applicant as to how it would operate given access, has been taken into account by the Council.

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<sup>20</sup> Merger and Monopolies Commission, BAA plc-A report on the economic regulation of the London airport companies, p.9

<sup>21</sup> FAC, Melbourne Airport p.38, and KSA Submission p.35

Submissions have identified the following as markets where competition is likely to be improved:

- the ramp service market;
- the CTO market;
- the freight forwarding market, and
- the airline market, particularly between freight airlines.<sup>22</sup>

A New Zealand study into air freight exports identified the linkages between the producer and customer where airfreighting is utilised.<sup>23</sup> That air freight chain includes exporters, transport providers, freight forwarders, terminal providers and freight carrying airline.

Qantas identified industries which are serviced by the existing CTOs, that is, airfreight shipping, importers, freight forwarders, Australia Post, and the express/courier industry.<sup>24</sup>

The Victorian Government submission suggested that the appropriate approach is to examine overall supply chain for the production and supply of time dependent export and import commodities from Australia and overseas, including the intermediate freight services used to transport the commodities and storage of time dependent commodities in Australia and overseas.<sup>25</sup>

### **CTO and Ramp Services Markets**

The Council considered whether there are separate markets for CTO and ramp services. The submissions on this issue provided a variety of views.

The Victorian Government submission argued that CTO services and ramp services were separate markets since warehouse storage services were not highly substitutable for aircraft loading and unloading services.<sup>26</sup> The ACIL report into CTOs and ramp handling also indicated that ramp handling requires specialised equipment.<sup>27</sup> The planned BOC CTO facility in Melbourne requires the sourcing of ramp services from existing providers, indicating that CTO and ramp services should be considered separately.<sup>28</sup>

The TNT submission argued that a degree of integration was required between the two services, as the efficiency and cost of ramp handling services is critical to a CTOs ability to deliver a satisfactory standard of service to its clients.<sup>29</sup>

Ramp services are provided to aircraft through the use of specialised equipment such as upper and lower deck loaders. Other equipment that may also be used includes forklifts, tugs and dollies. Equipment of this nature is used for both the handling of passengers' baggage and freight. For the users of ramp services, no substitute service has been identified. Suppliers of ramp services quite often supply other services that are required by aircraft, such as cleaning and catering. However, these other services could not be seen as a substitute for ramp services. It is not likely that a supplier of catering services would easily be able to provide ramp services, unless they already operated in

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<sup>22</sup> Qantas Submission p.10. and other submissions include TNT, Corrs Chambers, Westgarth, Australian Airport Services and the Victorian Government

<sup>23</sup> New Zealand Airfreight Exports: Constraints and Opportunities, p.16

<sup>24</sup> Qantas Submission, p.10

<sup>25</sup> Victorian Government Submission, p.5-6

<sup>26</sup> Victorian Government Submission, p.6

<sup>27</sup> ACIL Report, p.15

<sup>28</sup> FAC Meeting, 5 March 1997

<sup>29</sup> TNT Submission, p. 4

that market. The equipment required for each operation is quite distinct and the nature of the operations are different such that different staff may also be required.

Users of ramp services are limited in their ability to geographically ‘shop around’ for the services. Aircraft require the ramp services at the airports they land and take-off from. In respect of Melbourne and Sydney Airports, users are therefore limited to the ramp services provided at those airports.

CTO services involve the consolidating of freight and arranging for its transportation to the end destination. For international freight, additional requirements need to be met in regards to custom and quarantine requirements. International airlines contract with CTOs to provide their services in specific locations. CTOs require the ability to interface with the ramp services, so as to ensure that the freight is either loaded or unloaded from the international aircraft. This requires access to the airport facilities at some level. This requirement to have access to particular international airports, limits the ability for substitution in the CTO market.

The Council considers that the services provided by CTOs and ramp handlers should be considered as separate functional markets. Further the Council considers that the participants in the respective markets at Sydney and Melbourne International Airports operate in separate markets due to their reliance on the air traffic utilising those airports.

The CTO and ramp services markets are characterised by many buyers. The Vaile Report noted that around 55 airlines provide some 700 services per week to and from Australia, as well as 24 dedicated freight services and additional ad hoc charter flights.<sup>30</sup> Ramp handling and CTO services are currently provided by three major providers:

#### Sydney International Airport

1. Ramp service providers: Ansett, Qantas, South Pacific Airmotive,<sup>31</sup> and DHL;<sup>32</sup>
2. Cargo terminal operators (CTOs): Qantas, Ansett and Australian Air Express.<sup>33</sup> FedEx notes that DHL is a CTO provider which handles its own aircraft;<sup>34</sup> and
3. Integrators: Integrators at Sydney include DHL, UPS, TNT and Federal Express.<sup>35</sup> Integrators are independent freight operators which provide their own freight, and to varying degrees are dependent on the current airline passenger network.<sup>36</sup>

#### Melbourne International Airport

1. Ramp service providers: Qantas, Ansett, South Pacific Airmotive,<sup>37</sup> and DHL;<sup>38</sup>

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<sup>30</sup> Vaile Report, p. 5

<sup>31</sup> FAC, Sydney Submission p.15

<sup>32</sup> FedEx, p.8. notes that DHL has rights to load and unload its own aircraft

<sup>33</sup> FAC, Sydney Submission p.15

<sup>34</sup> FedEx, p.8

<sup>35</sup> FAC Sydney Submission, p.14

<sup>36</sup> FAC Sydney Submission, p.14

<sup>37</sup> FAC Melbourne Submission, p.14

<sup>38</sup> FedEx, p.8

2. CTOs: Qantas, Ansett, Australian Air Express,<sup>39</sup> and DHL.<sup>40</sup> Press announcements identify BOC as a new entrant only providing CTO services.<sup>41</sup>
3. Integrators: Federal Express, UPS and TNT.<sup>42</sup>

There is little evidence in the submissions to indicate that these markets provide high levels of competition. The FAC submission states that the current situations at both Sydney and Melbourne airports are not fully competitive frameworks<sup>43</sup> and the competition aspects of international freight operations are poor.<sup>44</sup>

The FAC noted that the current ramp operators and CTOs have a priority focus on their own cargo and passenger business and treat third party handling as a means of delivering higher utilisation of their facilities. Further the FAC considered that the potential for non-aligned airlines using the existing ramp handling or CTO services to be disadvantaged is very high. FAC also noted that the recovery of import freight was suffering long delays.<sup>45</sup>

The AFIF submission notes the effect of the current situation as underinvestment, rapidly increasing prices, and poor and undifferentiated service.<sup>46</sup>

Submissions have not drawn a distinction between the performance of the markets at the Sydney or Melbourne International Airports.

The Vaile Report noted similar criticisms of the cargo terminal arrangements at Sydney International Airport. These were: poor service; high prices; insufficient capacity; and a conflict of interest arising as the current service providers tend both their own and competitors aircraft.<sup>47</sup> It considered market access a key issue<sup>48</sup> saying that the potential “gains of increased competition may not eventuate if existing barriers to market access continue despite the entrance of new cargo terminal operators”.<sup>49</sup>

In order to promote competition, access to the services that are the subject of the applications must affect the degree of rivalry or competition within the market. Submissions have made arguments as to the likely effect of access on the competition aspects of this market. The Council has considered the arguments both for and against access in respect of its effect on competition.

### Small Number of Providers

The Federal Express (FedEx) submission questions whether a market encourages competitive conduct where there are barriers to entry and only a few participants. FedEx argues that at least three independent firms are required to break down oligopolistic coordination, and more than four participants are required to avoid explicit collusion, while contestability and entry need to be free to place competitive constraints.

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<sup>39</sup> FAC Melbourne Submission p.14

<sup>40</sup> FedEx p.8

<sup>41</sup> Daily Commercial News, 1/4/97, p.5

<sup>42</sup> FAC Melbourne Submission, p.14

<sup>43</sup> FAC Melbourne Submission p.15 and Sydney Submission p.16

<sup>44</sup> FAC Melbourne Submission p.39 and Sydney Submission p.36

<sup>45</sup> FAC Melbourne Submission p.15-16 and Sydney Submission p.16-17

<sup>46</sup> AFIF, p.2

<sup>47</sup> Vaile Report, p.8

<sup>48</sup> Vaile Report, p.7

<sup>49</sup> Vaile Report, p.9

At both Sydney and Melbourne International Airports, the provision of CTO services is limited to the three major providers, as noted above. The other CTO and ramp service providers which were identified to operate at Sydney International Airport and Melbourne Airport - South Pacific Airmotive and DHL, are limited to only handling their own freight.<sup>50</sup>

TNT considers that the current structure is duopolistic in nature due to the cross ownership between Australian Air Express and Qantas.<sup>51</sup> Australian Air Express is dependent on Qantas for ramp services.<sup>52</sup> Further, TNT notes that in specific freight services the dominance of one CTO is even higher due to the size of its market share.<sup>53</sup>

Corrs Chambers Westgarth (CCW) recognises that “there is potential for Qantas and Ansett to abuse their market power in relation to those non-aligned airlines ... at Melbourne and Sydney airports with no threat of the non-aligned airlines abusing its market power in relation to Qantas or Ansett in response”.<sup>54</sup>

Qantas noted that there had been threats of entry by independent companies to establish ground handling facilities, which had not eventuated.<sup>55</sup> Several submissions have indicated that current CTO service quality is poor.<sup>56</sup>

### Access to the Market

The Council understands that in order to have access to the Sydney and Melbourne International Airports, certain regulations of the FAC are required to be met. The FAC is currently considering options for the introduction of additional CTO and ramp handling service providers at Sydney International Airport.

The Council also notes that a new entrant has been approved by the FAC to provide on-airport CTO services at Melbourne Airport. It is also understood from the FAC at Melbourne that entrants to the CTO market would not also be given access to the ramp services market through the provision of their own ramp services. The FAC has advised that it prefers to retain the option of providing ramp services itself.<sup>57</sup>

In considering the impact of access to the services provided by the FAC on the market for ramp services and CTO services, the Council has noted the comments made in the Vaile Report. The Vaile Report concluded that the gains of increased competition may not eventuate if existing barriers to market access continue despite the entrance of a new cargo terminal operator.<sup>58</sup> Clearly, that Committee considered that the removal of the barriers to both markets would be required to improve competition in the CTO market.

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<sup>50</sup> FAC Meeting, Melbourne Airport, 5 March 1997

<sup>51</sup> TNT, p.1

<sup>52</sup> AFIF, p.3

<sup>53</sup> TNT, p.2

<sup>54</sup> CCW, p.3

<sup>55</sup> Qantas, p.8

<sup>56</sup> Other Submissions include AFIF, Fedex, and TNT as well as the Vaile Report

<sup>57</sup> FAC Meeting, Melbourne Airport, 5 March 1997

<sup>58</sup> Vaile, p.9

This conclusion was supported by the AFIF submission. AFIF found that if an independent operator must depend on the existing ramp operators to provide services to international airlines, it stands to reason that such an operator would not be able to enter the CTO market in the manner required.<sup>59</sup>

### Price Competition

In terms of price competition, the Council notes that a number of the submissions pointed to a lack of price responsiveness on behalf of the current ramp and CTO service providers. For example, TNT noted that it has observed “no price competition ... and any service differentiation is extremely limited”.<sup>60</sup>

This view was supported by the AFIF which noted that:

the current CTOs have increased charges to freight forwarders dramatically in the past six months with no service improvement.<sup>61</sup>

This observed increase in prices may be due to the constrained capacity of the existing providers relative to the requirements of the users. New entrants, providing increased capacity, are likely to encourage providers to relate their prices more closely to costs.

### Service Competition and Differentiation

Many of the submissions noted that the service provided by the existing CTOs was poor and that the major benefit of access would be improvements in quality as well as incentives to tailor ramp and CTO services to meet customer needs.

The AFIF submission noted that it saw considerable scope for CTO competition to yield price competition, improved CTO services, service innovation, increased CTO infrastructure. It noted that the quality of service from the current CTO’s is low and erratic/unreliable.<sup>62</sup>

AFIF submitted that the poor ramp and CTO service is the result of the current service providers having priorities other than the effective provision of these ramp and CTO services to client airlines.<sup>63</sup> CCW reiterates this point by noting that “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 and Ansett might be capacity constrained in their ability to provide the Relevant Services”.<sup>64</sup>

In its submission to the Vaile Report, BOC noted that the current structure with Qantas and Ansett as sole handlers of freight allowed restrictive practices in terminals. This led to poor service for the exporter, a lack of freedom to do anything about it and limited incentives for passenger airlines to invest in improvements to increase throughput.<sup>65</sup>

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<sup>59</sup> AFIF, p.3

<sup>60</sup> TNT, p.1

<sup>61</sup> AFIF, p.2

<sup>62</sup> AFIF, p.2

<sup>63</sup> AFIF, p.3

<sup>64</sup> CCW, p.6

<sup>65</sup> BOC Submission to Vaile Committee, p.2



The same submission also noted that “lift capacity is inhibited by the under-performance and limited throughput capability of the existing CTO’s, who are not competent in the specialist needs of perishables traffic”.<sup>66</sup>

The TNT submission is also persuasive:

the entry of new players ... would enable freight forwarders a genuine choice of CTO or to use different CTOs for different classes of freight or destinations.<sup>67</sup>

### Investment in Facilities

A number of the submissions to the Council criticise the current performance standards of the CTO market, and attribute the lack of investment as one of the reasons for the poor performance.

The submission from Qantas states that “the present CTOs are becoming capacity constrained in some major ports, particularly Sydney and Melbourne”.<sup>68</sup> However, Australian Air Express strongly dispute that they are constrained in the way that is suggested by the application.<sup>69</sup>

A number of submissions suggested that access would see an increase in investment in these types of facilities.<sup>70</sup>

### **Freight Forwarders and Airlines**

Several submissions suggested that access to the services could also lead to increased competition between freight forwarders, and between airlines. This may occur as a result of freight forwarders being able to provide different mixes of price and quality services.

AFIF argues:

there would be important flow on effects from other Operators being awarded airport access. These include the probability that improved CTO services would enable our members to compete more vigorously. So long as poor service from the existing CTO’s persists it will remain difficult for high quality freight forwarders to distinguish themselves.<sup>71</sup>

FedEx noted:

that increased choice and competition in ramp handling and CTO services should allow express freight companies to more easily differentiate themselves (particularly if self handling is allowed) by providing:

- a generally higher level of service to customers; and
- differentiated service levels at different price points.<sup>72</sup>

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<sup>66</sup> BOC Submission to Vaile Committee, p.3

<sup>67</sup> TNT, p.1

<sup>68</sup> Qantas, p.8

<sup>69</sup> AAE, p.1

<sup>70</sup> These submission include FedEx, and AFIF. Additional investment is being planned by James Transport Co. Pty Limited.

<sup>71</sup> AFIF Submission, p.4

<sup>72</sup> FedEx Submission, p.9

## **ARGUMENTS THAT ACCESS WOULD HAVE NO EFFECT ON COMPETITION**

Several submissions argue that access to the services would not promote competition, or only promote a trivial increase in competition.

### **Unsuitable Providers would Gain Access**

Several submissions<sup>73</sup> argued against providing access to others on the basis that their methods of operation were unknown or unproven and the submissions apparent lack of confidence in the applicant's ability to provide an effective service.

The Council considers that user needs are likely to be best met where they have access to a range of providers offering a range of services. Where a provider does not meet the standards required of the user, their entry to the market is unlikely to be successful.

Further, the above arguments appear to ignore differentiation and innovation which have the prospect of improving ramp and/or CTO services, so that what is unsuitable to one provider may be the preferred method of operation for another.

### **Unsuccessful Entry will Deter Investment**

Two submissions argued that the outcome of an unsuitable provider gaining access would be a disincentive to future investment in ramp and/or CTO services<sup>74</sup> by current providers or other, more suitable entrants.

The Council considers that this may only be the case where there is restricted access to the market, which imposes inordinate costs on the entry or exit from the market, for example where fixed start up costs are inordinately high, and not easily converted to other uses.

On balance the Council considers that there is little evidence to establish that costs of entry are particularly high. Through access the costs of establishing on-airport facilities can be delayed until there is evidence that investment in on-airport facilities is justifiable. For example, a firm could provide off-airport CTO services prior to investing in more expensive on-airport facilities.

### **Congestion Costs of Access**

Several submissions noted the possible effects of congestion, caused by too many entrants to this market, on the overall efficiency of the airport and the freight delivery system. A typical comment was:

the consequence of allowing the thousands of national road network users to congest the limited airport groundspace could be a deterioration between the connecting supply chain participants and a reduction in the quality of Australia's airfreight capabilities.<sup>75</sup>

The Council notes that the effects of congestion on the airport can be managed by the owner of the services establishing appropriate methods and procedures to limit congestion costs and increase available capacity.

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<sup>73</sup> Qantas Submission, p.9; CSC, p.2; and BOC p.2

<sup>74</sup> BOC, p.2; and FAC Melbourne Airport, p. 41

<sup>75</sup> BOC, p.2

Further, the Council notes that access to the services the subject of the applications cannot be enforced where there is no capacity available for use, or potential for increases in capacity. Congestion is further addressed under criterion (d).

### **Scarcity of Land Limits Access**

There is concern that land restrictions impose an absolute constraint on available capacity, in addition to the congestion of aprons and hard stands. The scarcity of land at Sydney International Airport make this issue of greater concern than at Melbourne airport.

The Council is aware that there is limited space at Sydney International Airport for the construction of on-airport CTOs and for storage of the requisite ramp services equipment.<sup>76</sup> While the submission from James Transport, proposing the connection of nearby land to the airport via a series of bridges, holds the prospect of increasing the availability of on-airport land, there is no agreed timeframe to progress the project at this stage.

Further, the Council is confident that providing access to the services which are the subject of the applications will permit appropriate management strategies to be implemented. These may include increased use of off-airport CTOs, and the development of pricing arrangements which allocate airport land to its highest value use.

### **Airline Alliances**

The CCW submission noted that given the alliances between international airlines and Qantas and Ansett, that “it is unlikely that independent CTO and ramp handling service providers will be in a position to market their services to airlines already aligned”.<sup>77</sup> Further, “the number of non-aligned foreign airlines is low and that it is unlikely that any of the aligned airlines will disassociate themselves from Qantas and Ansett”.<sup>78</sup> The FAC estimated that only 30% of the freight moving through Sydney International Airport was contestable<sup>79</sup> and 50% at Melbourne Airport.<sup>80</sup> CCW also noted that, in certain circumstances, non-aligned airlines could be subject to another airline’s market power in the provision of some aircraft and freight handling services but the possibility of this was limited since freight charges are regulated by the International Air Transport Association.<sup>81</sup>

CCW also argued that while the market appears concentrated, countervailing power is available to airlines which provide services to Qantas or Ansett at other airports.<sup>82</sup> They suggest that this countervailing power limits the abuse of any market power which the incumbents might have.

Airline alliances are primarily a feature of passenger airline operations, while freight airlines are able to more easily contract their needs independently.

If the current CTOs are capacity constrained, as evidenced by Qantas Freight recently divesting itself of some handled carriers<sup>83</sup> and indicated by a general lack of CTO capacity, then even those airlines

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<sup>76</sup> FAC Sydney International Airport, p.39

<sup>77</sup> CCW submission, p.3

<sup>78</sup> CCW, p.4

<sup>79</sup> FAC Sydney International Airport Submission, p.16

<sup>80</sup> FAC Melbourne Submission, p.15

<sup>81</sup> CCW, p.3

<sup>82</sup> CCW, p.3

<sup>83</sup> Qantas Submission, p.8

which are presently aligned may need to search outside their alliances for their freight needs to be met.

The Council considers that declaration of the services provided by the facilities the subject of the applications will not inhibit the capacity of airlines to join with other airlines to form alliances. However, the Council notes that significant participants in the airline market are unaligned, and are likely to benefit from competition in the ramp services and CTO markets.

### **Entrants should Provide a Full Range of On-Airport Services**

Qantas submitted that in order to provide a competitive service in the ramp services market “a full and complete range of ramp services would need to be offered to affect competition” and these services would need to include loading/unloading aircraft, baggage handling, mail handling and accordingly the degree of competition may not be different if CTOs are not on-airport.<sup>84</sup> The full range of services are usually provided through standardised comprehensive agreements between airlines and the provider.

The Council considers that there is no requirement that potential entrants should have to compete in all the services that airlines might require in respect of preparing their aircraft for turnaround, as this would forego the possible benefits of specialisation. The Council notes that the ACIL report found that British Airways was currently contracting out its ground handling needs rather than meeting them in-house as they had done previously.<sup>85</sup>

Further, the Council notes that the ACIL report into the viability of ramp service providers and CTOs did not identify the existence of a need to provide a full range of the services in order to be viable.

### **THE COUNCIL’S ASSESSMENT**

It is the Council’s assessment that access to the services provided by the FAC facilities will result in improved competition in, at least, the markets for ramp services and CTO services. Concentration of market share in a few firms, combined with barriers to entry, can result in weak competition. The Council was persuaded that a high degree of concentration exists within the CTO and ramp services markets, and that access to the services provided through the FAC facilities would facilitate entry into the CTO and ramp services markets by the Applicant (and possibly others) resulting in increased rivalry between firms in those markets.

The Council considers that the principal barrier to entry to the CTO and ramp services markets is access to the services provided by the facilities owned by the FAC. The Council is persuaded that while restricted market access is available, at least at Melbourne Airport, the benefits of competition, including the increased threat of competition, will be maximised when access is increased.

The benefits of increased competition have variously been described as:

- increased cargo volumes, increased efficiencies and lower costs;<sup>86</sup>

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<sup>84</sup> Qantas, p.9

<sup>85</sup> ACIL Report, p.8

<sup>86</sup> Vaile Report, p.9

- choice to airlines and forwarders which will encourage improvements in service and potentially lower prices;<sup>87</sup>
- “planes being loaded and unloaded in a more timely manner”;<sup>88</sup> and
- “considerable scope for CTO competition to yield price competition; improved CTO services; service innovations; increase CTO infrastructure” and “considerable potential for increased trade efficiency”.<sup>89</sup>

In making these conclusions, the Council has not made a comparative judgment between declaration and other proposals to promote competition made to the Council. The Council considers that the public interest criterion of section 44G(2)(f) is the appropriate stage to consider the merits of differing proposals for improving competition.

## **CONCLUSION**

The Council considers that all six applications meet this criterion. The Council finds that declaration of the services the subject of the applications would promote competition in markets other than the market for the service. That is, access to the services would promote competition by reducing a barrier to entry to the ramp service and CTO markets, with the result of increasing rivalry between existing firms within those markets as they respond to firms entering the markets or threatening entry to the markets.

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<sup>87</sup> Vaile report, p.9

<sup>88</sup> CCW, p.6

<sup>89</sup> AFIF, p.2

## 3.2 DUPLICATING THE FACILITY

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

The related criterion to subsection 44G(2)(b) is subsection 44F(4). It provides “[i]n deciding what recommendation to make, the Council must consider whether it would be economical for anyone to develop another facility that could provide part of the service. This subsection does not limit the grounds on which the Council may decide to recommend that the service be declared or not be declared”.

The Council has considered these two subsections together; the issue being whether the facilities providing the services are uneconomic to duplicate. The Council has taken the approach of identifying those features of the facilities providing the services which make it difficult for anyone to achieve viable economic returns on another investment providing the services. The Draft Guide identifies natural monopolies as a situation where this is likely to be the case.<sup>90</sup>

The Council has examined whether the facilities could be duplicated to provide either all or part of the services the Applicant has sought access to.

### DUPLICATION OF THE FACILITIES

The facilities are:

- S1 and M1: the freight and passenger aprons and hard stands at Sydney and Melbourne International Airports;
- S2 and M2: space within the airport perimeter at Sydney and Melbourne International Airports (which may include, but is not limited to, freight and passenger aprons and hard stands); and
- S3 and M3: an area suitable for the construction of a CTO, within the airport perimeter at Sydney and Melbourne International Airports.

In considering whether other facilities could be developed to provide the services, the Council has initially considered the potential to sever the above, or some of the above, facilities from the airports as a whole. The PSA Inquiry into the Aeronautical and Non-Aeronautical Charges of the Federal Airports Corporation (the PSA Report) considered that one of the services provided by airports is the loading and unloading of freight,<sup>91</sup> and viewed those services, along with others, as part of the package of services provided by airports.<sup>92</sup>

Hard stands are those areas of an airport which have been surfaced and reinforced to be able to carry the weight of an aircraft. Aircraft are parked on hard stands after landing pending future take-off. Freight and passenger aprons are contingent surfaced areas that have not necessarily been reinforced to be able to take the weight of an aircraft. These areas abut the hard stands and constitute the access routes used to provide ground services to aircraft, including ramp services, catering, maintenance etc. Currently at both Sydney and Melbourne International Airports, ramp services

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<sup>90</sup> The National Access Regime - A Draft Guide to Part IIIA of the Trade Practices Act, p.22

<sup>91</sup> PSA Report No. 48, p.62

<sup>92</sup> PSA Report No. 48, p.59

operators store much of their equipment on the freight and passenger aprons, within designated areas.

Hard stands and freight and passenger aprons are not clearly distinguishable from each other in the day to day operation of the airports. All are used in combination by operators providing services to aircraft. They form an essential part of the airports' infrastructure.

The Council considered that there is an inherently strong connection between the services provided by the facilities the subject of the application and the other services provided by airport infrastructure, such as runways. Accordingly, the Council considers that in order to duplicate facilities such as the aprons and hard stands, any duplicated facilities must have those characteristics of airports which attract international passenger and freight aircraft. In short, in order to duplicate those facilities to provide the services as are intended to be provided by the Applicant, the Council considers that it would be necessary to duplicate the Sydney and Melbourne International Airports.

The Council is not convinced that another facility could not be developed to provide the service, or part of the service, that is the subject of applications S3 and M3, ie an area to build a CTO. This issue is discussed further, below.

The Council has considered whether it is economic to either develop a new international passenger and freight airport or a freight only airport, or whether substitutes are currently available. Freight only airports have been considered in respect of developing another facility that may provide part of the service.

The discussion under criterion (a) concluded that there is very limited competition between Sydney and Melbourne International Airports as they serve specific key passenger and freight destinations. Existing airports are likely to have several key advantages over new airports serving the same destination.

The Council has said that:

Certain infrastructure may have monopoly characteristics because of natural, economic or technological advantages associated with the initial establishment of the infrastructure facility. These advantages could be "absolute" in the sense that new businesses may be unable to access the same advantages as the incumbent. For example, land may be unavailable to build another infrastructure facility economically. Hence, the existing operator may have monopoly power, even though establishing multiple infrastructure facilities is feasible.

One particular case where this may happen is where there are "network externalities". Network externalities arise where the benefits consumers get from being linked to a network depends on the number of other consumers linked to it. A telephone network is an obvious example. In such cases, the first business to establish and build a network may gain a competitive advantage over potential rivals. This is because it would be hard to persuade consumers to hook-up to a new network which had few other customers linked to it.

Again, the Council would need to carefully consider the impact on incentives to innovate and incentives for other operators to establish another infrastructure facility when assessing whether it is in the public interest to recommend declaration of the relevant service.<sup>93</sup>

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<sup>93</sup> Draft Guide, p.24

It is likely that airport owners benefit from the strong network externalities available. For example, airline users at Heathrow have reported several major advantages associated with other airlines' use of the facility. These include, the number of potential passengers for which Heathrow is the most convenient airport, as well as the number of destinations served and the frequency of service. These factors provide benefits to passengers starting or finishing their journeys and to passengers transferring between flights.<sup>94</sup>

These advantages are also likely to exist at Australian airports. Federal Express (FedEx) noted that the major airlines' public commitment to the Sydney International Airport suggests that the new Sydney airport may not gain sufficient passenger traffic to become economic.<sup>95</sup>

Submissions noted that these network advantages extend to freight where airports have high passenger aircraft traffic. Qantas stated that:

in terms of the international freight carried into and out of Sydney and Melbourne, by Qantas, almost all of that freight (approximately 92%) is carried on board passenger aircraft, [and]

passenger movements are dictated by passenger preferred destinations. Freight therefore must 'work around' passenger demands.<sup>96</sup>

The House of Representatives Standing Committee on Microeconomic Reform's report into time sensitive freight (the Vaile Report) goes further:

the availability of air freight services for export is determined by passenger services and air freight imports. Passenger services and air freight imports have a major impact on what is able to be exported, when, at which rate and from which gateway.<sup>97</sup>

The PSA Report noted that the advantages held by airports, were:

- economies of scale in the provision of airport services and significant economies of utilisation;
- significant barriers to entry; and
- significant barriers to exit, due to large sunk costs.<sup>98</sup>

The PSA Report identified barriers to entry as deriving from the costs of acquiring large tracts of land close to the city and the development of supporting infrastructure, especially for intermodal transport connections.

The PSA concluded that the airport service markets are largely non-contestable and can be considered local monopolies.<sup>99</sup>

The Council has been persuaded that Sydney and Melbourne International Airports have characteristics which give them significant market power and natural monopoly characteristics. The Council recognises that this conclusion has a temporal element and considers the situation as it exists

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<sup>94</sup> MMC Report, BAA plc - economic regulation of the London airport companies, 1996, p.9

<sup>95</sup> FedEx Submission, p.14

<sup>96</sup> Qantas Submission, p.10-11

<sup>97</sup> Vaile report, p. 6

<sup>98</sup> PSA Report, p.47 and 62

<sup>99</sup> PSA Report No. 48, p.47-48



now may not be sustained. As either airport reaches capacity, it is possible that the conditions that need to be considered would have altered.

The Council considers that declaration of the services is unlikely to affect incentives for operators to build a new airport or to find alternative methods of operation.

The Council has addressed arguments that declaration is likely to deter new investment under criterion (f).

## **DUPLICATION OF PART OF THE FACILITY**

Submissions have identified a number of ways in which part of the facilities could be duplicated:

1. freight only airports;
2. extension to freight apron and hard stands;
3. the construction of equipment storage areas; and
4. cargo terminals facilities off-airport.

Each of these options has been considered.

### **Freight Only Airports**

In respect of freight only airports, submissions identified the possible alternatives to Melbourne International Airport as Avalon and Essendon Airports, and for Sydney International Airport, the establishment of a freight airport at Parkes.

FedEx doubted the economic viability of freight only airports without a large scale passenger terminal operation.<sup>100</sup> The reasons include insufficient demand for dedicated charter flights for perishable freight, and strong competition from freight carried on passenger services which benefit from significantly cheaper rates due to the marginal cost pricing of freight carriage. The introduction of wide bodied passenger aircraft capable of carrying more freight was also thought likely to reinforce the disadvantages of freight only international airports.

The submission from Corrs Chambers Westgarth (CCW) also noted that it would be uneconomical for cargo and passenger service to be desegregated.<sup>101</sup>

The Vaile Report also considered the possibility of airfreight airports located at Avalon and Parkes. In respect of the Avalon airport proposal, the Report found that a freight only airport would have several disadvantages. A new airport would have to withstand vigorous competition from Melbourne Airport, which is located relatively close by, has considerable under utilised capacity and would be drawing freight from the same geographic regions. The Report also noted that airlines are unlikely to change airports as they have considerable existing capital investment committed to the existing international airport infrastructure.<sup>102</sup>

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<sup>100</sup> FedEx, p.14

<sup>101</sup> CCW, p.7

<sup>102</sup> Vaile report, 1996, p.63

In respect of the Parkes Freight Airport proposal, the Vaile Report identified several concerns.<sup>103</sup> The first was that a dedicated freight facility would have difficulty securing sufficient freight from its catchment area as it would face strong competition from international passenger airlines using the existing airports offering lower freight carriage rates. The second was the lack of inbound freight to subsidise outbound freight rates, as occurs now at each of the international airports. The third concern was that these freight only airports could not attract in-bound freight without significant and potentially further uneconomic investments. For example, it is not likely to be economic to have specialised trucks carrying time sensitive freight over long distances to these regional airports, especially when there is little opportunity for return freight.

The Vaile Report concluded that the economic viability of freight airports required sufficient volumes of products over a sustained period of time with high value products a prerequisite. It concluded that this was likely to be difficult to establish given the overwhelming importance of the export of perishable products being driven by high value air freight imports and passenger services.<sup>104</sup>

The Council endorses the conclusions of the Vaile Report, and considers that the duplication of freight airports to provide the services or part of the services, would not be economic.

### **Extensions to Existing Facilities**

The FAC, in its submissions, reported that the duplication of aprons and other hardstand areas occurs from time to time.<sup>105</sup> Also, the FAC has recently announced that the BOC will be allowed to provide freight services at Melbourne Airport with the FAC constructing additional facilities including aprons and hard stands. The Victorian Government submission has noted that it disagrees with the Applicant's assertion that individual freight apron spaces are uneconomical to develop.

The Council sees the extension of the existing facilities as too narrow an approach to the criterion. The criterion contemplates the development of *an additional* (ie another) facility which could provide the service rather than the extension of the existing facility. The Council considers that the facilities such as the hard stands and aprons need to be considered in the context of the airport as a whole. While it may be possible to duplicate the facilities within the airport, duplication of the airport as a whole is not economically feasible.

The FAC also identified purpose built bypass facilities that would control and manage containers between aircraft and off-airport CTOs as alternatives to on airport facilities providing the types of services the Applicant is seeking access to.<sup>106</sup>

By-pass facilities as described by the FAC would not be a substitute for the facilities that are necessary to operate a ramp service. They do perhaps, represent an alternative method to operate an off-airport CTO, in that they provide a different way, from that described in the applications, for the ramp services to interface with the CTO services. However, the creation of by-pass is only one option being considered by the FAC and is totally within its control to bring about or reject. The Council is of the view that the potential existence of a by-pass facility at Sydney International Airport at some unspecified time in the future, does not materially alter the consideration of these applications. Even with the existence of a by-pass type facility, the Applicant would still require access to the services provided by the hard stands and aprons etc in order to provide a ramp service.

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<sup>103</sup> Vaile report, 1996, p. 65-67

<sup>104</sup> Vaile report, 1996, p. 65-66

<sup>105</sup> FAC Sydney submission, p.41

<sup>106</sup> FAC Call for Expressions of Interest, p.9-11

The Applicant may not require the same amount of area to transfer freight from ramp equipment to trucks, if a by-pass facility existed to which the Applicant had access. These details are more appropriately dealt with between the parties in negotiating the terms and conditions of access, or in default, through arbitration.

### **Equipment Storage Facilities**

Applications S2 and M2 request the declaration of the services provided by facilities to allow for the storage of ramp services equipment. The Victorian Government submission noted that a decision to the store equipment within the airport perimeter should constitute more than just a convenience factor in order to satisfy this criteria.<sup>107</sup>

The Council notes that applications S2 and M2 also include the loading and unloading of freight from trucks to ramp equipment, which is considered in conjunction with off-airport CTOs. This aspect of applications M2 and S2 has not been commented upon by submissions.

The FedEx submission noted that off-airport storage was technically possible but not feasible. The submission noted three reasons:

- the equipment is not designed for road transport, and this would impose additional costs;
- off-airport storage would require greater vehicular access to the airport; and
- off-airport storage would reduce the flexibility and efficiency of new providers.<sup>108</sup>

The Council was not convinced that it would be economic for anyone to develop another facility to provide the storage of equipment, identified in the applications S2 and M2.

### **Off-Airport CTO Facilities**

The Council notes that while different access seekers are likely to have different methods of operation, the criteria should only be applied to the facts relating to the application at hand. Applications by other access seekers for declaration of certain services are not excluded by any decisions made on the basis of the current applications.

The Council agrees that on and off-airport CTOs are substitutes, although likely to be imperfect substitutes. The Applicant also considers on and off-airport CTOs as substitutes:

[i]n making this application ACTO reserves the right to continue to operate an off airport cargo terminal in both centres in view of the benefits associated with doing so.<sup>109</sup>

The report by ACIL found that off-airport operators of CTO were viable and a common practice at several major overseas airports, and that they could be competitive with on-airport CTOs depending on the decisions taken by the airport owner.<sup>110</sup> However, off-airport CTOs suffer disadvantages in double handling of freight, and in trying to meet 2 hour cut-off limits imposed by airlines relative to on site CTOs.<sup>111</sup>

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<sup>107</sup> Victorian Premier and Cabinet submission, p. 8

<sup>108</sup> FedEx, p. 15

<sup>109</sup> ACTO, p.1

<sup>110</sup> ACIL Report, p.14

<sup>111</sup> ACIL Report, p.15

However, the Australian Federation of International Forwarders Ltd (AFIF) submission notes that even though the CTO warehouse and associated functions can be carried out off-airport the on-airport interface between the ramp operator and the CTO must still occur. AFIF noted that:

a large proportion of a CTO is space and labour intensive - these functions need not be on airport. Some CTO functions must be on airport for the purpose of receiving and delivering freight to the ramp operator.<sup>112</sup>

The ACIL report noted that this interface could also take the form of direct handling from trucks to deckloaders by off-airport CTOs on the airport.<sup>113</sup>

The Council considers that it is economic to duplicate the facility on which to build the cargo terminals covered by applications S3 and M3, off-airport. However, the Council considers that it is not possible to duplicate the interface between off-airport CTOs and ramp handling services which is included within applications S1, M1, S2 and M2.

### **Existing On-Airport Facilities as Duplicates**

Several submissions suggested that the facilities of the existing CTO and ramp service providers were evidence of the ability to economically duplicate the facilities which are the subject of the application.

The FAC argued that the incumbent providers operate facilities through which ACTO could gain effective access to the airport, and that

ACTO itself has acknowledged in the separate applications in respect of the Qantas and Ansett facilities that use of the facilities is an alternative to the Applications.<sup>114</sup>

CCW also noted that

use of the services provided by the Ansett and Qantas facilities could offer an alternative to ACTO in the operation of its business.<sup>115</sup>

The FAC goes on to conclude that these operations are evidence that the FAC does not hold a natural monopoly position over its own facilities.<sup>116</sup>

The FAC's argument relies on the services from its facilities (the airport services provided by the freight apron and land at the airport) being the same as the services from the facilities of the incumbent freight service providers (the ramp and CTO services).

The Council does not consider that the existence of the facilities of the incumbent providers are evidence of the ability to duplicate the facilities to provide the services provided by the FAC, as different services are provided. The different services operate in distinct functional markets. Further, the current CTO and ramp service providers already enjoy the advantages of access to the

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<sup>112</sup> AFIF, p.5

<sup>113</sup> ACIL, p.15

<sup>114</sup> FAC Sydney Submission, p.41, and Melbourne submission, p.42

<sup>115</sup> CCW, p.8

<sup>116</sup> FAC Sydney submission, p.41, and Melbourne submission, p.43

service provided through the FAC facilities. Ansett has noted that its arrangements with the FAC do not entitle it to exclusive use.<sup>117</sup>

## **CONCLUSION**

The Council considers that in respect of S1, S2, M1 and M2, it would be uneconomical for anyone to develop another facility to provide the services the subject of the applications. In respect of S3 and M3, the Council is of the view that another facility could be developed to provide those services or part of those services.

However, the Council considers that it is uneconomic to duplicate the interface between an off-airport CTO and the freight aircraft, as specified in applications M3 and S3. The Council notes that this interface is likely to be provided by S1, M1, S2 and M2.

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<sup>117</sup> Ansett, p.1-2

### 3.3 NATIONAL SIGNIFICANCE

(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.*

The criterion of national significance must apply separately in relation to Sydney and Melbourne International Airports.

A preliminary issue is how broadly the criterion of national significance should be applied - should the criterion apply to the international freight handling facilities referred to in the application (the hard stand, freight and passenger apron, and space to provide storage and enable loading and unloading), or should the criterion apply more broadly to the airport?

While the wording of the section indicates that the facilities specifically required to provide the service should be considered separately, it is not specified how their significance should be measured. One approach would be to strictly quarantine the assessment of the significance of the freight handling facilities from the fact that they are located at Sydney and Melbourne International Airports. A second approach would be to assess the significance of the facilities in part on the basis of their location.

The FAC argued for the first approach. It said that the crucial issue was whether:

access or increased access as envisaged by ACTO to the undefined parts of the apron, hard stand etc. [is] of national significance. ... The FAC does not accept that undefined parts of the hard stand, freight apron, and areas to provide storage and enable loading and unloading are of national significance<sup>118</sup>

The Council accepts the second approach. It believes that that these facilities acquire greater significance than they otherwise would because of their co-location with the other facilities of these airports. This is because freight is generally carried in the belly-holds of passenger aircraft, and as a result freight destination tends to be dictated by passenger destination preferences.

The submission from Federal Express supports this view:

Freight handling facilities on their own are unlikely to be economically feasible, and they need to be constructed as part of a large-scale passenger terminal operation ... [because]:

- at present 90 percent of air freight transported to and from Australia on scheduled services is carried in the belly of passenger services;
- freight rates are significantly cheaper on scheduled passenger services because of the marginal cost nature of pricing; and

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<sup>118</sup> FAC, Sydney general release submission, p.V. Please note that the order of the sentences has been reversed

- the new generation of wide-body aircraft being developed by Boeing and Airbus suggest that increased cargo capacity will naturally evolve in the coming years, reducing the need for the more expensive dedicated cargo charter services.<sup>119</sup>

Therefore, the Council believes that the issue to be considered is whether the freight handling facilities at Sydney International Airport and Melbourne International Airport are nationally significant, but applying measures which take account of their location at Sydney and Melbourne International Airports.

The criterion is satisfied ~~iff~~ one or more of the three conditions of the criterion are met, namely that the facilities are nationally significant in terms of:

- the size of the facility; or
- the importance of the facility to constitutional trade or commerce; or
- the importance of the facility to the national economy.

There is significant overlap between these conditions.

As a preliminary point, the Council notes that under section 44B, “constitutional trade or commerce” includes “trade or commerce between Australia and places outside Australia”. Thus, trade which is facilitated by international air freight clearly falls within the second condition of the criterion.

## **THE ROLE AND IMPORTANCE OF SYDNEY AND MELBOURNE INTERNATIONAL AIRPORTS**

Submissions from the AFIF, TNT, the Federal Department of Transport and Regional Development, ACCI, the NSW Department of State and Regional Development, and Federal Express supported the position that the international freight handling facilities at Sydney and Melbourne International Airport were nationally significant. On the other hand, Qantas adopted a neutral position, while only the FAC was of the view that these facilities were not nationally significant for the reasons stated earlier.

The submissions in support of the position that the freight handling facilities are nationally significant raised a number of broadly similar arguments. The three themes in these arguments were:

- the volume of trade argument: in terms of volume and value, international trade conducted through freight handling facilities at Sydney and Melbourne International Airports contribute significantly to Australia’s economy;
- the strategic importance argument: freight handling facilities at Sydney and Melbourne International Airports are a strategically vital, non-avoidable, and non-duplicable link in the international air freight chain;
- the micro-economic argument: the performance of freight handling facilities at Sydney and Melbourne International Airport significantly influences the performance of industries reliant on international air freight; for example, markets such as the market in time-sensitive goods and high value goods, and industries which rely on “just-in-time” inventory management.

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<sup>119</sup> FedEx, p.14

All three of these themes are encapsulated in ACCI submission:

these two airports account for 70 per cent of Australia's trade by air; there is no practical alternative to the two major international airports in these cities; and some 20 per cent of Australia's trade by value takes place by air freight and is particularly important for businesses involved in, or using, express shipments, overseas air mail, and/or just-in-time type commercial or industrial activity.<sup>120</sup>

### **The volume of trade argument**

A number of submissions referred to trade statistics to support the volume of trade argument. ACTO's application claimed that 70% of international air freight is routed through facilities at Sydney and Melbourne International Airports. The Federal Department of Transport and Regional Development supported this claim with the statement in relation to Sydney International Airport, "Some \$21.2 billion of air freight passed through Sydney International Airport..., accounting for 51 percent of our air freight market, 11 per cent of our international trade in goods and services, and 4 per cent of GDP." The Department elaborated on this claim in relation to total trade through Sydney and Melbourne International Airports:

in the 1995/96 financial year, \$32.2 billion of exports and imports (\$29 billion on ABS figures, which may be too low) passed through Sydney and Melbourne airports. This 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.<sup>121</sup>

On the Department's figures, therefore, Melbourne International Airport accounts for \$11 billion in air freight, 27% of the international air freight market, 5% of international trade in goods and services, and about 3% of GDP. Federal Express' submission argued that although Melbourne International Airport carried less freight than Sydney, it was significant as an export hub for more valuable goods, particularly valuable export goods.

The FAC in its "Call for Expressions of Interest for International Cargo Terminal Operations, International Ground Handling Services at Sydney Airport" in March 1997, stated that:

Sydney Airport in 1996 generated approximately 195,174 tonnes of import and 191,445 tonnes of export international air freight, a total of 386,619. The forecast growth for Sydney Airport is expected to be approx. 8% per annum. It is envisaged this growth will be predominantly met by the belly space on the international passenger system.

Sydney Airport handles over 50% of the national volume of international air freight with approx. 800 international arrivals and departures weekly. This includes an average 20 scheduled pure international freighter flights per week or 4% of the total number of movements. The value of goods moving by air freight and entering and leaving Australia through Sydney Airport is significant in terms of Australia's economy;

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<sup>120</sup> ACCI, p.1.

<sup>121</sup> DTRD, p.7



<b>Outbound</b>		
Total air freight Australia	\$17.2 billion	
Sydney Airport	\$6.35 billion	36.9% of national outbound value

  

<b>Inbound</b>		
Total air freight Australia	\$24 billion	
Sydney Airport	\$14.8 billion	61.66% of national inbound value

  

Total Australia	\$41.2 billion	
Sydney Airport	\$21.15 billion	51.33% of national total value

One of the keys to the importance of Sydney Airport as the primary international air freight hub for NSW and Australia, is the amount of passenger aircraft cargo capacity available throughout the year. The passenger system accounts for approx. 80% of the volumes handled through Sydney Airport. Sydney is also a natural tranship point for cargo arriving and departing Australia through both the international freighter and passenger system.<sup>122</sup>

Similar statistics were quoted by the FAC in their submissions to the Council.

In relation to Melbourne International Airport, the FAC's submission to the Council stated that:

In 1995/96, MA handled 90,000 tonnes of international import freight and 97,000 tonnes of export freight, providing an annual total of 187,000 tonnes or approximately 3,600 tonnes per week of air freight handled. The forecast growth for MA is expected to be in the range of 5.2 to 7.0% per annum with projections to 2015/16 at between 520,000 and 730,000 tonnes. It is envisaged that this growth will be predominantly met by the space on the international passenger system.

MA handles 26% of the national volume of international freight with approximately 182 international passenger and freighter arrivals weekly. This includes an average 14 scheduled pure freighter flights per week or 8% of the total number of movements.

One of the keys to the importance of MA as the primary air freight hub for Victoria, is the amount of passenger aircraft freight capacity available throughout the year. The passenger system accounts for approximately 80% of the volumes handled through MA.<sup>123</sup>

Another factor which indicates that the freight handling facilities at these airports are significant is the high predicted growth rate in freight tonnage over the next twenty years. Submissions suggested that this rate of growth will increase the importance of the freight handling facilities over time as it takes a greater share of total trade. Federal Express' submission argued that air cargo transport is growing rapidly in response to meet the needs of new production methods, changing patterns of industrial location, and different product mixes. This submission cited a 1994 report of the

<sup>122</sup> FAC, Call for Expressions of Interest for International Cargo Terminal Operations, International Ground Handling Services at Sydney International Airport, March 1997, p.7-8.

<sup>123</sup> FAC, Melbourne submission, p.14.

International Civil Aviation Organisation, “*The World of Civil Aviation 1993-96*, which projected 7% worldwide annual growth in international air freight between 1992 and 2003. The submission argued that Trans-Pacific traffic represents the fastest growing share of world growth in traffic, suggesting that annual growth in Australia may outstrip 7%.

In a 1993 report, the Bureau of Transport and Communications (BTCE) paper, *Adequacy of transport infrastructure - Airports* (Working Paper 14.4) predicted more modest growth. According to the BTCE report:

Air cargo volumes are expected to grow by an average of 2.79 per cent per annum [over the period 1995-6 to 2014-15]. International air cargo represents the largest component of total air cargo throughout the period and is expected to experience the strongest growth ... 2.96%.<sup>124</sup>

However, the BTCE’s figures are older and therefore less reliable than the figures supplied by the Federal Department of Transport and Regional Development and the FAC. Growth since the time of release of the BTCE report has significantly outstripped the predictions in the report.

This argument relates generally to all three of the conditions of national significance.

### **Strategic Importance argument**

This argument depends on the view that Sydney and Melbourne International Airports are a vital link in the air freight chain.

It is clear from the analysis under statutory criterion (b) that Sydney and Melbourne International Airports are not capable of full duplication at this time. The Council does not see that sea transport provides significant intermodal competition to Sydney and Melbourne International Airports for freight that is time-sensitive, or valuable. Therefore, the Council concludes that these airports cannot feasibly be bypassed by freight forwarders operating within the geographical area served by these airports. As ACCI noted, “there is no practical alternative to the two major international airports in these cities”.<sup>125</sup>

On the basis that there is no threat of bypass, it would seem clear that the performance of freight handling facilities at these airports directly and inevitably affects the overall performance of the freight chain in the supply of goods.

One submission argued that the market in goods which are time-sensitive or valuable is growing rapidly, thus increasing the strategic importance of the airport:

The nature of the goods for which air cargo has a comparative advantage, namely high value/low bulk commodities, means that aviation is inevitably taking an increasing share of the value of goods shipped.<sup>126</sup>

The submission from the NSW Department of State and Regional Development endorsed this argument in relation to Sydney International Airport:

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<sup>124</sup> BTCE, p.34-5

<sup>125</sup> ACCI, p.1

<sup>126</sup> FedEx, p.16

The KSA [Kingsford Smith Airport at Sydney] represents a most strategic piece of transport infrastructure for NSW and its efficient operation and future capabilities should provide the State and its fast growing export sector with maximum benefits through significantly increased efficiencies from world best management practices in both passenger and cargo handling services. ...<sup>127</sup>

The Council believes that the reasons stated by the NSW Department of State and Regional Development about the strategic importance of Sydney International Airport apply equally well to Melbourne International Airport.

This argument relates chiefly to the issue of whether the facilities are nationally significant in terms of their importance to constitutional trade or commerce.

### **Micro-economic argument**

This argument proceeds on the basis that the performance of international air freight handling at Sydney and Melbourne International Airports has a significant impact on other markets, thus magnifying the effect of any inefficiencies. The issue is whether it is possible to establish a link between the performance of international air freight handling at Sydney and Melbourne International Airports and other markets.

The submission from the Federal Department of Transport and Regional Development argued for such a link:

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.<sup>128</sup>

The NSW Department of State and Regional Development supported this contention with its submission that:

The sustainable economic development of much of regional Australia depends on the exports of selected perishable commodities in the rapidly expanding South East Asian markets and cargo terminal services is [sic] a critical link in the export chain of such commodities.<sup>129</sup>

This argument relates mainly to the issue of whether the facilities are nationally significant in terms of their importance to the national economy.

### **CONCLUSION**

The Council finds the arguments in favour of national significance persuasive in respect of Sydney and Melbourne International Airports. In the Council's view, the freight handling facilities at both airports meet the conditions for national significance specified in the criterion.

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<sup>127</sup> SRD-NSW, p.1

<sup>128</sup> DTRD, p.8

<sup>129</sup> SRD-NSW, p.1

The Council believes that whether international air freight handling facilities are considered separately from other airport facilities or partly on the basis of their location to Sydney and Melbourne International Airports, the facilities meet the criterion.

Accordingly, the Council concludes that the international freight handling facilities the services of which are sought by ACTO in its application for declaration are nationally significant.

### 3.4 HEALTH AND SAFETY

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

Human health and safety is a key concern in relation to airports because of the significant potential for accidents. In the context of ACTO's application for declaration, the issue under this criterion is whether a third party's mode of CTO and ramp handling operations are likely to unacceptably increase the risk of accidents. In examining this issue, the Council has been mindful of ACTO's proposed method of operation, although in a strict sense, declaration would open the path for other interested third parties to seek access. The Council has adopted this approach because ACTO's proposals span a range of methods, which include most of the available options for CTO and ramp handling operations. Other methods of operation would need to be subject to negotiation between the airport owner and the third party at the time that access was being negotiated.

#### SAFETY REGULATIONS

In the view of the ACIL consultancy report commissioned by the Council, there were a number of legislative and regulatory provisions governing safety at Sydney and Melbourne International Airports:

With regard to the safety regulations at Australia's international airports for example, the situation is complex and involves many administering parties. They include FAC By-laws - largely Part IVB (airside safety and aircraft parking), Part IVF (airside vehicle control) and the newly introduced Part IVG (public order at federal airports). Nominally these are overseen by the Department's Aviation Policy Division (under the Federal Airports Corporation Act) and soon they will be mirrored by regulations for the new leaseholders to obey (under the Airports Act). There are also the Civil Aviation Regulations overseen by CASA (eg Regulation 89C). In addition, there are aspects of the security regulations (again FAC By-laws, but overseen by the Aviation Security Branch under the Air Navigation Act) which can be seen to have a safety dimension.

It is probably fair to say that the main safety provisions are the airside vehicle controls and the associated Airside Vehicle Control Handbook.<sup>130</sup>

In the view of the FAC, the legislative and regulatory provisions governing safety at airports are:

Entry to and movement on the airside of Federal Airports is regulated by the FAC, the Department of Transport and CASA through the FAC Act, the *Air Navigation Act* and the *Civil Aviation Act* respectively. ... The Air Navigation Regulations and the Civil Aviation Regulations also make specific provision for safety and security, including the safety and security of international cargo under the Air Navigation Regulations.

The FAC has also made provision in its By-laws for the maintenance of public safety and order at Federal airports or Federal airport development sites, as envisaged by section 72(1) of the FAC Act. Parts IVD and IVG of the By-laws deal with airside security and public order. The FAC also provides for airside safety in the Airside Vehicle Control Handbook ...<sup>131</sup>

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<sup>130</sup> ACIL, Cargo Terminal Operations and Ramp Handling: A descriptive report based on overseas and local inquiries for the National Competition Council, April 1997, p.6.

<sup>131</sup> FAC Sydney general release submission, p.4

Further to this, and as noted in the Corrs Chambers Westgarth and Qantas submissions, new *Airports (Airside Movement) Regulations* are currently being developed under the overview of the Federal Department of Transport and Regional Development. ACIL states that, “There are no grounds for expecting [the Regulation’s] release to represent a policy shift”.<sup>132</sup>

Ramp handling and CTO operations are currently being performed by a number of participants, chiefly Qantas and Ansett, without any issue being raised in the submissions that these operations are too dangerous to be continued. It is therefore clear that these type of operations can be conducted without undue risk to human health and safety, and ACTO has accepted in its applications the necessity of meeting on-airport safety requirements and its willingness to comply fully with them. The issue, therefore, becomes whether:

- the CTO or ramp handling operations that ACTO is proposing are significantly different to those of current operators, *and* the proposed operations are likely to increase the rate of accidents; or
- the presence of another ramp handler or CTO operator in itself is likely to increase the rate of an accidents.

### **ON-AIRPORT VERSUS OFF-AIRPORT CTO OPERATIONS**

ACTO seeks in its application declaration of services to enable both on-airport and off-airport operation. If all of the services which it seeks to have declared were declared, then ACTO could operate an on-airport CTO and ramp handling operation. If only some of the services were declared, then ACTO may be limited to operating an off-airport CTO operation with its involvement on-airport being constrained. The significance in this latter case is that if ACTO operates an off-airport CTO, then this has implications for the manner of its provision of ramp handling services, with in turn requires a different examination of health and safety issues.

If ACTO operates from an on-airport CTO, then it could conduct operations equivalent to Qantas and Ansett - that is, freight would be taken from the on-airport CTO by dollies or forklifts to aircraft and loaded using Main Deck Loaders (MDLs) for freighter aircraft and Lower deck loaders (LDLs) for passenger aircraft. In this case, the major issue that arises is whether there is increased congestion around aircraft leading to increased accidents. This issue is examined below.

If ACTO is operating from an off-airport CTO warehouse, then ACTO has proposed three alternative types of operation. For all three types of operation, freight is consolidated off-airport (where it is cleared by Customs), is transported by trucks to the airport and then either

- unloaded from the trucks on to the apron and moved by fork-lift to main deck loaders or MDLs (for freight aircraft) and lower deck loaders or LDLs (for passenger aircraft); or
- unloaded from the trucks on a hard stand away from the aircraft on to dollies (lowset roller-beds on wheels), which are then towed to the MDLs and LDLs; or
- unloaded from the trucks directly on to MDLs and LDLs beside the aircraft.

The FAC objects to all three of these operations on the following grounds:

- the FAC would lack management control over the flow of freight and traffic to and from airside. If there are delays in loading aircraft (in the case of export) or loading trucks (in the case of

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<sup>132</sup> ACIL report, p.12.

import) this may lead to the build-up of freight on the apron. If freight were to build up on the apron, the result could be congestion, and the potential for freight to be blown across the airport and onto live runways;

- transfer by fork lift is not an accepted equipment handling method and is not permitted by many foreign carriers due to the propensity for damage to containers and freight on pallets;
- direct loading between trucks and freighters presents dangers. The weight of air cargo needs to be properly distributed around the aircraft, a process called trimming. If trucks unload directly on to MDLs and LDLs, it is difficult to sequence the trucks so that cargo is loaded in the correct order. There is no room to resequence trucks due to limited space between parked aircraft; and
- trucks have large turning circles, and so cannot manoeuvre around aircraft in the same way as dollies.

In summary, the FAC argues against permitting trucks on or near the airport tarmac except in rare circumstances, and wishes to minimise the use of forklifts on the tarmac. It considers that these operations pose serious occupational health and safety concerns and increase congestion around aircraft. The FAC's concerns are supported by the submissions from the Australian and International Pilots Association (AIPA), Qantas, and others.

## **BY-PASS FACILITIES**

Importantly, the FAC does not deny that it is possible to conduct ramp handling operations which interface with an off-airport CTO operation. The FAC considers that a minimum requirement for safe CTO and ramp handling operations would be a by-pass facility. In March, 1997, the FAC called for expressions of interest from industry to construct International Cargo Terminal Operations. One of the concept options in which it was seeking interest was the construction of a common-user facility, possibly including a by-pass facility. If this facility was constructed and did include a by-pass facility within it, this would enable the establishment of off-airport CTOs. In the FAC's view off-airport operations could be conducted safely through a by-pass facility due to the way that freight from off-airport would be handled. Under the by-pass concept, freight is consolidated at the off-airport CTO, and transported by truck to the by-pass facility, located on the airport perimeter. The freight is then cleared by Customs at the by-pass facility, loaded on to dollies and moved to the MDLs and LDLs for loading on aircraft.<sup>133</sup>

The advantages that the FAC sees in such a facility are:

- it would represent a control point to enable the FAC (and Customs) to track freight;
- it would store freight off-tarmac in cases where the freight was not immediately moved off airport/loaded on an aircraft from the facility; and
- it would eliminate the need for trucks to drive on the tarmac. Instead the trucks would unload at the by-pass facility, and freight would be taken to the aircraft on dollies.

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<sup>133</sup> The Call for Expressions of Interest states at p.10, "While the concept of using purpose built vehicles capable of interfacing directly with aircraft has not been eliminated from consideration, for the purpose of this overview the usage of traditional tugs and dollies is envisaged as the primary airside freight transportation for ULDs [Unit Load Devices, which include MDLs and LDLs]"

The FAC argues that a common-user facility which included a by-pass facility would increase competition while overcoming the main concerns about health and safety posed by ACTO's operations.

The FAC appears to favour the concept of a by-pass facility, although it has not committed itself to this option. It has informed the Council that rather than endorsing the by-pass option at this stage, it intends to see what the industry response is to its call for expressions of interest (EOIs) for the provision of facilities to increase freight handling capacity at Sydney International Airport. The response to this EOI process will be a crucial input in determining the type of facility constructed.

ACTO has criticised elements of the by-pass concept as proposed by the FAC. In a meeting with the Secretariat of the Council, it said that it was concerned that the by-pass facility as envisaged by the FAC might entrench the competitive advantage of on-airport CTOs by not giving off-airport CTOs the opportunity to compete on an equal footing. The FAC acknowledged certain of these concerns in its call for expressions of interest. ACTO's concerns are:

- in cases where freight is stored at the facility, there may be double-handling, imposing extra costs on off-airport CTOs. Further, in the case of tranship (where freight is shipped through Sydney International Airport on its way to another destination), freight would often need to be taken away from the airport and brought back again.
- for Customs clearance reasons, freight from off-airport CTOs (including tranship freight) would be subject to an earlier cut-off time (probably two hours earlier) than freight handled by an on-airport CTO. This time requirement could be a significant discouragement given that airfreight typically is highly time-sensitive.
- there is no specific proposal for a by-pass facility at Melbourne (at this stage it appears that the BOC facility at Melbourne will not be a by-pass or common user facility.)
- most importantly, CTO operators would not be allowed past the point of the by-pass facility and on to the airport. Competition in ramp handling services would remain restricted, permitting, in ACTO's view, existing ramp handlers to retain their oligopoly. ACTO argued that unless third parties are able to compete in both the CTO and ramp handling steps in the freight process, ramp handlers could charge monopoly prices for ramp handling services and could favour freight from their own CTO operations and on-airport CTOs over freight consigned by independent CTOs. (Qantas has appeared to lend some support to this argument by arguing that a CTO operator would need to offer ramp handling services in order to be competitive.<sup>134</sup>)

On the other hand, ACTO believed that, if modified, a common-user facility could work. Rather than constituting a warehouse where freight is stored, the 'facility' could consist of a space where trucks are unloaded on to dollies. Customs checking would occur at the off-airport warehouse of the CTO operator so as to prevent congestion arising from delay at the bypass site while freight is cleared. ACTO argues that this option, equivalent to the first method of operation proposed by it, would meet the FAC's health and safety concerns while at the same time increasing competition in ramp handling operations, obviating expensive investment, and reducing the cost disadvantages experienced by off-airport operations in comparison to on-airport operations.

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<sup>134</sup> Qantas, paras 4.7.1 to 4.7.3, p.9



The Council accepts ACTO's argument that if a space was designated on the airport but away from aircraft for the purpose of unloading freight from trucks onto dollies, then this would meet all of the FAC's health and safety concerns, except the concern related to management control of the flow of trucks onto the airport. The Council has doubts about the strength of that concern given that Customs and AQIS concerns can be satisfied through direct clearance of freight at off-airport facilities.

Another issue is the extent to which operations objected to by the FAC are in fact being carried out by ramp handlers at present. The Council notes that on tours by the Secretariat of Sydney and Melbourne International Airport, fork lift operations were carried out on the apron near aircraft, and that some trucks were loaded and unloaded on the apron by fork-lift. The FAC's Operation Safety policy for apron operations at Melbourne International Airport makes provision for some operations that it objects to ACTO providing. For example, the policy provides for vehicle access to the apron:

only to vehicles picking up or delivering cargo that cannot be handled across the loading dock (ie. livestock, overweight or overheight cargo, full container loads, or cargo that requires special handling)<sup>135</sup>

Further, the policy states that:

[b]ecause of the nature of freight operation forklifts are used extensively in the freight area. Used properly the forklift makes life easier and helps streamline the cargo operation. There are however a number of things to bear in mind to ensure that operators of the forklifts do not create hazards to other apron users.<sup>136</sup>

The Council decided during consideration of this criterion to seek information from overseas about experience in the operation of off-airport CTOs and ramp handling operations. It commissioned a consultancy report by ACIL into overseas experience with various methods of CTO and ramp handling operation. Part of ACIL's task was to examine "the management of health and safety standards at international airports which have non-airline aligned providers of ramp services and cargo terminal operations (CTO)"

The report found that off-airport CTOs and ramp handling could be performed safely together. Analysing the Australian and overseas experience in airside health and safety, the ACIL report states:

There has been no evidence in trade journals ACIL has seen or in conversations with contacts in the UK, Brussels or the US, that any special health and safety arrangements are in place at airports where independent ground handlers operate.<sup>137</sup>

The specific findings of the ACIL report are:

(1) It is not obvious on what basis permitting an extra operator to compete for business would lead to the greater crowding considered to be dangerous - in ramp handling at least. There may be some validity in the FAC's suggestion that with more contestants there must be some operators who are less experienced than if only the incumbents were still operating. However, it must also be said that it will be the frequency of flights which determines how crowded aprons become, not the number of

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<sup>135</sup> Operational Safety Manual - Freight Apron Operations, p.3

<sup>136</sup> Operational Safety Manual - Freight Apron Operations, p.5

<sup>137</sup> ACIL report, p.11

parties permitted to bid for the loading and unloading task. The safety basis for restricting contestability is not clear.<sup>138</sup>

(2) None of the critics of the idea of a CTO gaining a right to compete for ramp handling have presented the data to support their cases. .. The FAC did not respond to a request we put ... for such information, although we are aware that it had recently engaged a Sydney firm to assess the safety implications of its proposed Olympics expansion.<sup>139</sup>

(3) Around the world airports have demonstrated an ability to cope with increased contestability for CTO and ramp handling services using operational systems which seem very similar to Australia's. In particular (and in specific answer to the Pilots Association expressed fears [in the AIPA submission]), although it is not the rule, there are instances where non-airline ramp handling is safely executed overseas - the protection for users in these cases comes from a combination of airport-administered standards, incentives for care provided by insurers, and, perhaps most important of all, the jealous guarding by the firm of its reputation in a fiercely competitive environment.<sup>140</sup>

(4) It is significant that British Airways, long the UK's largest airline and ramp handler, is said to be in the throes of contracting-out its British ramp handling requirements in order to focus better on its core business. It has already given up self handling at Johannesburg. Direct links between ramp handler and airline are evidently a secondary consideration for BA.<sup>141</sup>

(It should be noted in addition, that almost all overseas airlines which fly Australian routes are serviced by Qantas or Ansett, and that Qantas and Ansett are serviced by third parties in overseas airports. This supports the argument that aircraft can be safely serviced by third parties.)

(5) [A] distinction ... can be drawn between risks on the one hand and safety on the other - an event which raises risks may not, if responsibilities are clear and incentives to take care are harnessed, lead to an increased accident rate. Government safety regulations and standards can play a useful supplementary role, but will not be the only mechanisms at work.<sup>142</sup>

The fifth observation is important. It effectively says that if the incentives to take care are sufficiently strong, then CTO and ramp handling operations will increase their level of care in any case where the background risks rise. The ACIL report goes on to explain why it considers that the introduction of a new ramp handler would not increase accident rates. In its view, since the introduction of a new player does not change the rules concerning liability for accidents, the new player will have the same incentives to take care as existing players. If the new player is subject to the same rules of liability as existing players, then is no basis for arguing that it will take less care or cause more accidents.

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<sup>138</sup> ACIL report, p.12

<sup>139</sup> ACIL report, p.13

<sup>140</sup> ACIL report, p.13

<sup>141</sup> ACIL report, p.13

<sup>142</sup> ACIL report, p.18

(6) Direct trucking to the side of the aircraft, a procedure already common with dedicated freighters and routinely seen at Heathrow and San Francisco, is another bypass option.<sup>143</sup> ... CSC's trucks can go straight from its shed to plane side for ramp handling.<sup>144</sup>

## THE PROBLEM OF CONGESTION

As stated above, one argument raised by the FAC and other submissions is that declaration would increase congestion on the freight apron.

The evidence would suggest there may already be significant congestion with only two participants in the market, and this is in the face of the fact that the market is tipped to grow at 8% per annum.

Qantas' submission warns of an impending problem in meeting demand for transport by airfreight, "As freight volumes increase and airlines multiply, the present CTOs are becoming capacity constrained in some major ports, particularly Sydney and Melbourne."<sup>145</sup>

ACTO's view of current congestion is:

the FAC has presided over a great deal of congestion in the current operations. Qantas and Ansett use the freight apron to store ULDs and equipment which creates congestion and is a safety risk by the FAC's own admission. Live animal handling occurs on the freight apron which has proven to be a safety risk. Customs and the FAC have repeatedly complained to the current CTOs that they are leaving full and empty ULDs on the perimeter road which is a safety issue. Customs has complained that the current CTOs leave freight on the tarmac to the extent that shipments are being lost for lack of supervision.<sup>146</sup>

The site visit by members of the Secretariat of the Council to both Melbourne International Airport and Sydney International Airport appeared to confirm the ACTO submission (although it is acknowledged that each airport was only visited once).

Qantas's submission argues that entry of a new participant may alleviate rather than add to congestion, "Any entry by 'new players' may have the effect of not so much improving competition but of alleviating congestion".<sup>147</sup>

Allowing other parties to engage in ramp handling may simply result in one ramp handler doing the work of another, with no overall net increase in the amount of equipment or number of personnel located airside. ACTO contends that this is the case.

ACIL's consultancy report argues that it is not the number of parties permitted to bid for the loading and unloading task, but the frequency of flights which determines how crowded aprons become. In its view, the safety basis for restricting contestability is not clear.<sup>148</sup>

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<sup>143</sup> ACIL report, p.20

<sup>144</sup> ACIL report, p.9

<sup>145</sup> Qantas, p.8

<sup>146</sup> ACTO response to submissions, March 6 1997, p.10

<sup>147</sup> Qantas, p.8

<sup>148</sup> ACIL report, p.12

The Council agrees with this view. In its view, congestion is not a function of the number of players but a function of the amount of freight multiplied by the amount of time that the freight spends on the freight apron or in common-user CTO warehouses. If freight can be more efficiently moved on and off-airport to and from freight forwarders, then congestion will be alleviated. In the Council's view, greater competition will lead to better resource allocation and usage, leading to greater efficiency in freight clearance from the freight apron. On this basis, to the extent that ACTO provides a competitive operation, the natural consequence of its entry will be more efficient operation and reduced congestion.

## CONCLUSION

On the basis of the submissions, its own observations, and a consideration of the ACIL consultancy report, the Council concludes that the service could be provided without undue risk to human health or safety. The Council does not believe that any of the health and safety objections raised presents a bar to entry to a new party into either the CTO or the ramp handling market. This is because the Council does not see that ACTO's proposed methods of operation pose additional safety concerns to those that are inherent in CTO and ramp handling operations whoever provides those services.

The Council does accept that there are preconditions to safe operation. In this regard, it endorses the submission from TNT to the effect that "all operators would need to be required to meet the same health and safety requirements and to be subject to a non-discriminatory operational and safety regulatory framework".<sup>149</sup> It notes the ACIL report finding that all participants have incentives to conduct safe operations for the reasons stated in finding (3) above.

In terms of management of risks at Sydney and Melbourne International Airports, the submission from Corrs Chambers Westgarth argues:

... 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;
- all equipment used must be properly 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.<sup>150</sup>

The Council accepts that safety requirements of this type could adequately deal with safety concerns. In this regard, ACTO acknowledges, "ACTO will of course operate within the on airport vehicle operating guidelines prescribed by the FAC".<sup>151</sup> The FAC could seek to impose such conditions as part of the terms and conditions of access contracts with third parties such as ACTO.

The Council finds that the each of the six applications for declaration meets this criterion.

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<sup>149</sup> TNT, p.4

<sup>150</sup> CCW, p.9-10

<sup>151</sup> ACTO response to submissions, March 6 1997, p.9

### 3.5 EFFECTIVE EXISTING ACCESS REGIME

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

Submissions make reference to three sets of arrangements operating in respect of one or both of Sydney and Melbourne International Airports which could amount to effective access regimes. The arrangements are:

- the current administrative arrangements under which the FAC grants access to certain facilities to existing freight handlers. The FAC is empowered to create arrangements for access at each airport;
- future arrangements in respect of Sydney International Airport arising out of the FAC's call for Expressions of Interest in the construction and operation of an International Cargo Terminal; and
- the future access regime arising out of the provisions of Part 13 of the *Airports Act*.

#### Current Administrative Arrangements

Under section 8 of the *Federal Airports Corporation Act 1986 (FAC Act)*, the FAC is empowered to make arrangements in respect of access to airport facilities. Under section 9(2) the FAC's powers include, "the power to give a person authority to use an area, a building, or a part of a building, at a Federal airport .. [for a purpose which may include] delivery at the airport ... of any goods or services.

Under section 72, the FAC may make by-laws to control use of facilities, and regulate or prohibit access to Federal airports. The FAC has established by-laws under the *FAC Act*, including promulgation of the *Airside Vehicle Control Handbook*.

The applicant, ACTO, has contended that the FAC By-laws are not:

based on a policy which sets out the criteria for providing on airport services or the kinds of organisations which are permitted to apply for such access. These regimes simply state that organisations are required to gain security passes and on airport vehicle drivers licenses.<sup>152</sup>

The submission from Federal Express supported ACTO's view, "While analysis of ss. 8 and 9 shows that the FAC has the power to provide access, there is no legislative access regime per se. ... any process for determining access is entirely administrative and within the discretion of the FAC". This submission went on to argue that to be effective, arrangements would need to have a legislative rather than administrative basis.

The FAC did not contend in their submission to the Council that the current administrative arrangements do constitute an effective access regime.

The Council takes the view that the arrangements simply give the FAC power to make arrangements for access to and control of the airport sites, and are not intended to form the basis for a regime of access. One hallmark of an effective access regime is the enforceable right to negotiate terms of access (see clause 6(4)(a) to (c) of the Competition Principles Agreement). However, by their nature administrative arrangements give the FAC an unfettered discretion to negotiate or decline to

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<sup>152</sup> ACTO application, p.13

negotiate terms of access. The Council concludes that although current administrative arrangements authorise the FAC to control access they do not to provide for a regime of third party access.

## **FUTURE ARRANGEMENTS ARISING OUT OF THE CALL FOR EXPRESSIONS OF INTEREST**

Possible future arrangements cannot form the basis of an effective access regime, since arrangements would need to be 'effective' at the time of consideration by the Council in order to constitute an effective access regime. The Council notes that the FAC is awaiting the outcome of the EOI process before endorsing any particular concept or facility for international freight handling operations.

The Council has taken account of the EOI process under the public interest criterion.

## **FUTURE ARRANGEMENTS UNDER PART 13 OF THE *AIRPORTS ACT***

Part 13 of the *Airports Act* creates a scheme for the Federal Minister for Transport and Regional Development to declare 'airport services' at Sydney and Melbourne International Airports. The scheme provides that the Minister shall declare airport services 12 months after leasing, unless the airport owner or lessee has in the meanwhile given the ACCC an undertaking in relation to the services.

It would appear that the leasing of Melbourne International Airport is likely to be complete by around mid-1997. At Sydney International Airport, leasing has been deferred indefinitely pending resolution of noise issues.

### **Threshold issues**

In considering the application, the Council came to the view that there were a number of threshold issues which it would have to consider before it could proceed to assess the effectiveness of the arrangements under the *Airports Act*. The Council had to consider whether the operation of the *Airports Act* excludes or restricts the jurisdiction of the Council to deal with the applications.

In order to determine these threshold issues, the Council sought and received a legal opinion on the following issues:

- Do the services sought by the ACTO applications come within the definition of "airport service" in the *Airports Act*?
- If so, would the Council be precluded from considering an application for such services after an airport had been leased?; and
- If a service was declared under Part IIIA of the *Trade Practices Act*, what effect, if any, would that have on the operation of the *Airports Act*, eg in relation to a new owner seeking to give an undertaking, or the potential for the Minister to declare the service under the *Airports Act*?

The legal opinion firstly examined the question whether the service sought by ACTO was an "airport service". It noted that the definition of airport service in the *Airports Act* contains two elements: (i) whether the service is "necessary for the purposes of operating and/or maintaining civil aviation services"; and, (ii) whether the airport service is provided by facilities which are significant and cannot be economically duplicated. The opinion concluded that "civil aviation services", by industry usage and practice, included air freight services, and that access to the airport hard stand and apron was necessary in order to carry out these services.

The legal advice declined to reach a conclusion about the second element of the definition of ‘airport service’, namely, whether the service “is provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated”. However, the Council sees these tests as no more stringent than the tests in section 44G(2)(b) and (c). To the extent that the application meets these criteria, the Council concludes that the service meets the requirements of the second element of the definition of “airport service”.

On this basis, the Council concludes that the services sought by ACTO do come within the definition of “airport service” in the *Airports Act*.

The legal opinion then examined whether the Council was precluded from dealing with the application after the leasing of an airport. It advised that after leasing the Council retained its jurisdiction to consider applications for declaration. In its view nothing in the *Airports Act* excluded the operation of Part IIIA of the *Trade Practices Act*. The opinion noted, however, that there may be practical considerations to take into account.

The legal opinion then examined the issue of the effect of declaration under Part IIIA. It advised that declaration would preclude any new owner or lessee of an airport from offering an undertaking. The Minister could still declare the airport under the *Airports Act*, although this would have little or no effect in view of declaration under Part IIIA.

The Council accepts this legal opinion. It therefore concludes that it currently has jurisdiction to declare the services of facilities at Melbourne and Sydney International Airport, and that it will continue to have jurisdiction after leasing of these airports. As to:

- any practical difficulties posed by the interrelationship between the *Airports Act* and Part IIIA of the *Trade Practices Act*; and
- the fact that declaration would deprive the new owner of the right to offer an undertaking;

the Council determines that it is most appropriate to consider these matters under the public interest criterion.

### **Effective Access Regime**

Having determined that the Council has jurisdiction, the next issue that the Council must consider is whether the arrangements under the *Airports Act* constitute an effective access regime.

The *Airports Act* provides that the services of an airport are declarable 12 months after leasing unless prior to this date the private owner/lessee has lodged an undertaking with the ACCC and had it accepted. It is anticipated that Melbourne International Airport will be leased by around the end of June 1997.

A preliminary issue is whether the access regime under the *Airports Act* could be considered effective as from the date of leasing, or whether it could only be effective from the date that the Minister for Transport and Regional Development is required (in the absence of an undertaking) to declare “airport services” under the *Airports Act*.

Australian Airline Services put the argument that:

In relation to Melbourne Airport, once an airport is leased under the *Airport[s] Act* 1996, an effective access regime will be in place in so far as Division 2 of Part 13 of that Act makes specific provision for the application of Part IIIA of the *Trade Practices Act* 1974

to that airport. ... The fact that the regime does not operate [until 12 months after lease] does not derogate from the effectiveness of that regime.<sup>153</sup>

The Council does not accept this view. In its view, the access regime could only be effective after the Transport Minister's declaration, because prior to this time third parties do not have a right to negotiate access with the owner of the airport.

The Council does not need to determine the effectiveness of the regime under the Airports Act at this stage, since the regime could not be effective until 12 months after leasing.

## **CONCLUSION**

The Council concludes that there is no effective access regime in relation to the six services which ACTO seeks to have declared.

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<sup>153</sup> AAS, p.7-8



### 3.6 PUBLIC INTEREST

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

The major public interest issues cited by submissions *against* declaration were:

- the interrelationship between the *Airports Act* 1996 and Part IIIA of the *Trade Practices Act*;
- the impact of the Call for Expressions of Interest in construction of international freight facilities at Sydney International Airport on competition in the markets in which the services sought to be declared by ACTO are provided;
- that declaration would undermine the investment environment necessary for significant competition; and
- the potential for declaration to interfere with planning processes at both Sydney and Melbourne International Airports.

These issues were raised in a number of submissions, principally the submission from the FAC. Mr Barry Murphy, Managing Director and Chief Executive of the FAC, reiterated these issues in a meeting with the President of the Council.

Public interest considerations raised by submissions *in favour of* declaration included the greater economic efficiency flowing from increased competition in the international freight handling market.

Other public interest issues raised in the course of the submission were:

- bilateral international air services agreements;
- security; and
- compensation for ‘acquisition’ through declaration.

#### **INTERRELATIONSHIP BETWEEN THE AIRPORTS ACT AND PART IIIA**

An issue is whether it would be inadvisable or impractical to declare services at Melbourne International Airport due to the impending leasing of Melbourne International Airport, and declaration of such services under the *Airports Act* after 12 months. Submissions on this issue raised a number of points:

- that the access regime under the *Airports Act* should be allowed to work. Under the *Airports Act* the services must be declared by the Federal Transport Minister 12 months after leasing unless, prior to that, an undertaking has been lodged with and accepted by the ACCC.
- declaration would deprive the new owner/lessee of the opportunity to lodge an undertaking with the ACCC; and

As the leasing of Sydney International Airport has been postponed indefinitely, this issue is less significant in relation to it.

The Federal Department of Transport and Regional Development argued in its submission against declaration of Melbourne International Airport at this stage. It submitted that:

- the FAC would not be able to conduct negotiations as the long term operator of the airport;
- any terms entered into with ACTO may have to be conditional;
- a new operator should not be disadvantaged by the negotiating position of the FAC; and
- the fact that declaration would deprive the new owner of the opportunity to lodge an access undertaking.<sup>154</sup>

Qantas noted in its submission that declaration would deprive the new owner/lessee of Melbourne International Airport of the opportunity to lodge an undertaking with the ACCC since section 44ZZB provides that the ACCC cannot accept an undertaking if the service concerned is a declared service.

Qantas argued that airport bidders may be concerned about the loss of the right to lodge an undertaking. This was because:

- an undertaking gives them a degree of certainty;
- an airport-lessee may win better terms than through a negotiation and arbitration process; and
- lodging an undertaking avoids the possibility of time consuming and expensive disputes with third parties about the terms and conditions of access.<sup>155</sup>

On the other hand, Qantas recognised that undertakings have certain disadvantages. From its perspective, these disadvantages were:

- undertakings involve a public process;
- the process of accepting undertakings might involve public disclosure of confidential or commercially sensitive material; and
- undertakings could be time consuming to prepare and process.<sup>156</sup>

The Council accepts that, in relation to Melbourne International Airport, there is some substance in these concerns. In responding to these concerns, the Council has two options:

- it can decline to recommend declaration; or
- it can recommend declaration for a short period only in order to allow an undertaking to be lodged within the timeframe contemplated by the *Airports Act*, that is about 12 months after the airport is leased.

The Council believes that allowing parties to lodge undertakings may, in many circumstances, be preferable to declaration. However, the Council is concerned about the possibility that undertakings might not be lodged for a period of up to 12 months after the leasing of Melbourne International Airport. Such a delay could potentially prevent competitive third party access at Melbourne International Airport despite the negative impact that delay could have on the Australian economy.

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<sup>154</sup> DTRD, p.2-3

<sup>155</sup> Qantas, paras 2.21 to 2.22, p.4

<sup>156</sup> Qantas, para 2.23, p.4-5

Given that the services will be declared at any rate 12 months after leasing, the Council believes that the case for postponement of declaration is weak. Overall, the Council is of the view that the second option above avoids the disadvantages of declaration raised by Qantas.

The Council therefore concludes that these considerations should not prevent recommendation of the services sought by ACTO at either Sydney or Melbourne International Airport. However, at Melbourne International Airport, the duration of the declaration should be for a short period only. The actual period of declaration is discussed in the section dealing with the duration of the declaration at the end of this statement of reasons.

## **CALL FOR EXPRESSIONS OF INTEREST - SYDNEY INTERNATIONAL AIRPORT**

The FAC has stated that Sydney International Airport is moving towards a more open and competitive environment for the provision of CTO and ramp handling services. As part of this process the FAC has commissioned the “KSA Freight Study” to examine options for freight handling at Sydney International Airport. The FAC says that it should be allowed to implement the report, and that this will result in greater competition. It argues that declaration would interfere with the implementation process and may undermine the FAC’s attempts to foster greater competition in freight handling.

The FAC gave information about the KSA Freight Study to the Secretariat of the Council at a meeting in March 1997. At the meeting, the FAC said that the KSA Freight Study had recommended the construction of a common-user facility to handle specialist freight (eg livestock, perishables, valuable freight, express freight). The report recommended that the common-user facility could possibly include in its design a by-pass facility with the capability to act as a warehouse, management control point for the FAC, and transfer point for off-airport CTO operators.

It says that, after receiving the study in early 1997, the Board of the FAC gave in-principle endorsement to the recommendations, and in March 1997 called for expressions of interest (EOIs) for the construction and operation of a international cargo terminal. However, the FAC said that the EOI would seek industry input into the appropriate type of facility to construct and would not dictate any design must include a bypass facility. The FAC explained this by saying that the FAC did not wish to commit itself to any particular position without first seeking interest from industry in what form of facility should be built.

The FAC has submitted that this approach will lead to the opening up of competition for the provision of CTO operations by enabling competition from off-airport CTO operators. However, the Council notes that the final form of the proposed facility has not been agreed by the FAC, and that the by-pass facility may not eventuate.

The Council is not persuaded by the FAC’s arguments. In the Council’s view:

- it would be inappropriate to decline to recommend declaration when the final form of any common-user facilities has yet to be finalised and is completely at the discretion of the FAC;
- it is not clear that the proposed facility would contribute to greater competition in the CTO market or the ramp handling market because of its competitive disadvantages compared to on-airport CTOs. These competitive disadvantages are stated in the criterion dealing with health and safety in the discussion about by-pass facilities;
- even if a common user facility does enable greater competition in the CTO market by enabling off-airport CTOs, it would not increase competition in the ramp handling market. Qantas has

argued in its submission that a CTO operator that did not offer full ramp handling services would not be viable;<sup>157</sup>

- declaration would in any case not prevent the FAC from continuing with its plans to construct a common user facility, but it might require that the facility be designed in a way which is responsive to user demands; and
- a common user facility may not be operational for a number of years, while competition in the short term may be viable immediately upon declaration. The FAC advises that it is planning for commencement of construction on 1 December 1997, but that the date is subject to change.<sup>158</sup>

## **EFFECT OF DECLARATION ON THE INVESTMENT ENVIRONMENT**

### **CTO and Ramp Services**

The FAC argued, both in its submission, and during meetings with officers of the Secretariat to the Council, that declaration would undermine the incentives of independent CTO operators and ramp handlers to invest in significant new infrastructure at Sydney and Melbourne International Airports.

Cargo Service Centre (CSC), which has signalled its intentions to begin operations at Sydney International Airport in 1998, put the argument that:

unbridled competition may negatively affect quality, security and utilisation of the limited available land at Sydney airport. .. Cargo handling requires know-how and significant investments, both in equipment and in training; as a result, a level playing field among competitors is a must in order to justify such long term investments.<sup>159</sup>

This argument was backed up by BOC, which is planning to begin CTO operations at Melbourne International Airport this year:

A severe disincentive to invest will exist in an aviation environment where the cost of world standard air cargo facilities and equipment is a competitive financial disadvantage compared to an operator who only has a truck on airport.<sup>160</sup>

The FAC adopts a similar position:

Declaration of the services by the Minister may prevent the emergence of a real long term alternative to the current CTO and ramp operators. The proposals contained in the Applications offer neither the quality of service, nor the volume of service which will result in anything but a marginal impact upon competition. At the same time, it is possible the very existence of such marginal (quick fix) operations will discourage the investment required for the entry of a strong, viable, and effective competitor at the airport.<sup>161</sup>

The issue raised by these submissions is whether declaration would undermine investment that is necessary for strong and effective competition.

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<sup>157</sup> Qantas, paras 4.7.1 to 4.7.3, p.9

<sup>158</sup> letter to Council, 16 April 1997.

<sup>159</sup> CSC, p.2

<sup>160</sup> BOC, p.2

<sup>161</sup> FAC Sydney submission, p.III

The Council fails to see the force of the argument put by the FAC, BOC, and CSC. The Council believes that it is contradictory for the FAC to maintain on the one hand that entry into the market by ACTO following declaration would have only a marginal impact on competition, and yet at the same time would undermine investment. The Council sees that if ACTO is an ineffective competitor, then its presence would not discourage investment in on-airport facilities. On the other hand if ACTO is an effective competitor operating from an off-airport CTO facility then investment in on-airport facilities may not be necessary for effective competition.

The Council does not see it as appropriate to judge the comparative advantages of one mode of business over another. These judgments should properly be made by the market participants in a competitive market. If a third party entrant wishes to set up an off-airport CTO operation, then consumers will be able to make choices between price/quality trade-offs, and market forces should decide whether that operation will survive.

Further, BOC and CSC may have a commercial motive to oppose declaration. BOC and CSC have both signalled their commitment to open *on-airport* facilities. BOC has been chosen by FAC management at Melbourne International Airport to begin CTO operations<sup>162</sup> (not ramp handling), while CSC has expressed interest in bidding for the right to construct and operate a by-pass facility at Sydney International Airport.<sup>163</sup> It may not be in BOC's and CSC's commercial interests to have to compete with off-airport CTOs.

Finally, the Council notes that ACTO wishes to set up an on-airport CTO operation, and has made application to the Council for a recommendation to declare land on-airport for the purposes of erecting such a facility. As it is clear that ACTO does wish to operate from an on-airport site, but has been prohibited from doing so by the FAC, it is difficult to see that it is open to the FAC to argue that off-airport operations by ACTO are undermining on-airport investment.

## **INVESTMENT IN NEW INTERNATIONAL AIRPORTS**

As discussed under criterion (b), the services provided by the FAC to facilitate competition in CTO and ramp services markets are inextricably linked with other services provided by international airports. As a result, investment in a new international airport would be required to provide an effective alternative to the services that are the subject of these applications. For example, investment in the new Sydney West International Airport may provide an effective alternative to the services currently provided by Kingsford Smith International Airport.

Under criterion (b), doubts were raised whether a new international airport could provide effective competition due to the absolute advantage of the existing airport. As outlined in the Council's Draft Guide on pages 30-31, any consideration of these doubts should take into account the likely impact on incentives to innovate and incentives to duplicate the infrastructure.

The Council considers that opportunities to innovate in international air freight services are limited by the reliance on international passenger aircraft services. Further, because investment decisions concerning international airports are overwhelmingly determined by passenger service demand, declaration of the services the subject of these applications is unlikely to hinder new investment.

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<sup>162</sup> "BOC to start operations at Melbourne" by Corey Bousen, Lloyd's List Australian Weekly, March 10 1997, p.5.

<sup>163</sup> "BOC to start operations at Melbourne" by Corey Bousen, Lloyd's List Australian Weekly, March 10 1997, p.5.

## EFFECT OF DECLARATION ON PLANNING PROCESSES

A public interest consideration cited against declaration was that declaration would effectively deprive the FAC or any private owner or lessee of an airport of the ability to plan the most efficient use of airport land. According to this argument, declaration would have the potential both to increase congestion and to reduce the efficiency of land use.

The FAC, the Federal Department of Transport and Regional Development, and ACCI made submissions in support of this argument.

In their submission in relation to Melbourne International Airport, the FAC stated that:

The application may, if successful, take away from the FAC its ability to manage the airport, the scope and nature of activities conducted on airport land and its ability to implement its reforms. ... Managing Melbourne airport is a complex and sophisticated exercise requiring the balancing of a multitude of different uses and potentially conflicting interests. .. On our view of the applications, ACTO is not seeking access to a service at all. Rather it is seeking to tell the FAC what type of service should be provided with no regard to the other considerations that the FAC must take into account.<sup>164</sup>

The FAC made an equivalent submission in relation to Sydney International Airport.

The submission of the Federal Department of Transport and Regional Development made a similar argument:

[when considering economic efficiency], the 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.<sup>165</sup>

The ACCI was broadly supportive of contestability in the provision of CTO and ramp handling services. However, it felt that “because of capacity constraints in land-space at KSA [Kingsford Smith Airport in Sydney], this may mean prescribing the number of CTOs allowed at this airport, although the regulatory regime per se should not define who they should be”.<sup>166</sup>

The core of these submissions is that freight handling is one of a number of uses of airport land within a matrix of competing possible uses of land, and that all possible land uses must be carefully planned in a coordinated and integrated way in order to optimise the overall efficiency of airport land usage.

In response, the Council makes a number of observations about the relationship between freight handling services and other airport services:

- there is a large degree of overlap between planning for passenger and for freight operations, since each set of operations involves use of a number of the same facilities, in particular the airport

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<sup>164</sup> FAC, Melbourne submission, p.46

<sup>165</sup> DTRD, p.4

<sup>166</sup> ACCI, p.5

apron and hard stand. Consequently, planning for freight handling services and other airport services are strongly complementary; and

- planning issues can be addressed during negotiations between the parties.

To the extent that there is a concern that planning controls might break down, leading to increased congestion, the Council observes that:

- the supplementary submission from ACTO note that the major driver of congestion is the number of flights coming in to the airport, not the number of CTO operators and ramp handlers;
- the close connection between passenger and freight services means that congestion relating to freight from passenger and freight aircraft cannot be effectively separated; and
- currently there are few competitive incentives to increase the rate of freight clearance from the freight apron.
- greater competition is likely to ease congestion since it would increase freight handlers' incentives to lift the rate of freight clearance from the airport.

These arguments have also been addressed in the Council's consideration of the congestion issue in the criterion dealing with health and safety.

On balance, the Council does not accept that the case against declaration based on interference with planning processes has been established. The Council recognises that declaration under Part IIIA inevitably constrains to some degree the power of a service provider to deal with a declared facility. Some special interference to planning processes would need to be demonstrated before the Council could accept this argument.

The Council is particularly persuaded in this matter by the observation that declaration is only the first step in gaining access. Third parties seeking access would still need to negotiate the terms and conditions of access. There are a number of safeguards in the process to protect existing users, such as the requirement that if negotiations over access go to the ACCC for arbitration, the ACCC cannot make an order "preventing an existing user obtaining a sufficient amount of the service to be able to meet the user's reasonably anticipated requirements ... [or] depriving any person of a protected contractual right".<sup>167</sup>

It is important to recognise the extent of declaration. Declaration only opens the way for third parties to negotiate reasonable terms and conditions of access. The airport operator may include provisions to protect existing uses.

## **BILATERAL INTERNATIONAL AIR SERVICE AGREEMENTS**

The submission from the Department of Transport and Regional Development noted that Australia is obligated under bilateral air service agreements to permit international airlines to perform their own ground handling (including freight handling) or to contract with the agent of their choice. The submission noted that these agreements generally have treaty status. Under the agreements, the only restrictions on this freedom are those arising from security concerns (addressed below).

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<sup>167</sup> section 44W(1)(a) and (c), *Trade Practices Act*

Currently international airlines contract ground handling to Australian providers. However, it is possible in the future that international airlines may seek to provide their own ground handling services or appoint an agent of their choice.

While these agreements do not require airports to permit third party access as sought by the application for declaration, the agreements are consistent with the notion of liberal arrangements for access for ground handling. In the event that the services sought by ACTO were not declared, it would be open to ACTO (or another party) to gain access by persuading an international airline to nominate it as the airline's choice for provision of freight handling services. If an international airline did nominate ACTO (or another party) as its preferred party to provide freight handling services, Australia would have an international treaty obligation to ensure that ACTO obtained access.

## **SECURITY**

The public interest issue of concern is whether declaration could potentially lead to a significant compromise of security, either by posing a threat to the security of personnel (such as passengers, airport and airline staff), increasing the probability of theft of freight, or increasing the risk of transport of dangerous or illegal freight.

This discussion does not examine health and safety issues, as these have been considered under the human health and safety criteria.

Two parties made submissions in relation to these security and related issues. The Australian Customs Service made a submission on the need to maintain adequate Customs controls. The Federal Department of Transport made a more general submission concerning on-airport aviation security. Other parties, including the Federal Airports Corporation, Qantas, and Ansett, did not make submissions in relation to these issues.

The submission by the Australian Customs Services examined the issue of maintenance of Customs regulatory controls. The submission concentrated on the Customs arrangements issue arises if ACTO were to adopt an off-airport CTO service. Under this type of operation, freight would be received by ACTO at a warehouse off the airport, built up or broken down at that location, and then transported to the airport to be transferred to ramp handlers.

The Customs Submission stated that it is prepared to consider applications by parties to operate from off-airport CTOs if certain conditions are met. These conditions relate to the place where the off-airport CTO operations are to be carried out (the 'approved place'), the method of operation, and interfaces with Customs systems. To quote from the submission, the conditions were:

- the appointed place is located within a reasonable distance from the airport ...;
- that all cargo discharged must be reported ... via the Customs air cargo automation system (ACA);
- that contingency arrangements are in place to facilitate alternative ACA cargo reporting in circumstances of CTO system failure;
- that all pallets and loose pieces are checked in at aircraft side and immediately transported to the approved premises; or that all pallets and loose pieces are discharged across existing CTO roller beds, checked in and immediately transported to approved premises;



- that the approved place meets the general criteria for approval of a place for examination of goods under Section 17(b) of the Customs Act;
- that any cargo requiring to be held for Customs examination airside can be securely dealt with; and
- that any regional-specific conditions are met.

Mr Arthur, a Customs official, clarified the intent behind these principles in oral evidence to the Vaile Inquiry:

On the discussions about off-airport CTOs or additional CTOs, we developed a number of principles which we would require any operator to meet. They are not designed to be restrictive in the sense that we are trying to block any player out of the process, but they are simply arrangements which we believe are necessary in order for us to meet our statutory obligations.<sup>168</sup>

The Vaile report went on to say that “Mr Arthur added that ACS faced ‘no philosophical disagreement’ concerning off-airport CTOs”<sup>169</sup> and that “A similar response was provided by Mr William Hetherington, ... AQIS.”

The Customs submission noted that a business associate of ACTO, Tasman Freight Services, has satisfied these conditions at Sydney International Airport. However, business associates of ACTO at Melbourne International Airport had been unable to meet the conditions. The submission did not state specifically the conditions that had not been met at Melbourne International Airport. ACTO stated during an interview with members of the Secretariat to the Council that, in relation to Melbourne International Airport, that the ‘regional-specific conditions’ imposed by Customs included that the FAC had granted access to the airport. As that is the objective of the ACTO application for declaration, ACTO did not feel that Customs approval at Melbourne International Airport would not continue to be withheld if the relevant services at Melbourne International Airport were declared.

In summary, the Council notes that the Australian Customs Service does not see any in-principle reason why ACTO operations both on and off-airport would breach Customs requirements. Therefore, the Council concludes that security issues should not be a bar to access to the airport for the purposes of carrying on the types of operations proposed by ACTO in their applications and supplementary material.

The submission by the Federal Department of Transport and Regional Development commented generally on the issue of maintenance of on-airport security. It stated that the Department was responsible for administering an aviation security code in compliance with a Standard of the International Civil Aviation Organisation (ICAO). This ICAO standard requires each nation to establish appropriate security controls for cargo, courier and express parcels and mail intended for carriage on passenger flights, and recommends that nations establish measures to ensure that known shippers account for the security of each consignment.

The Department has implemented the ICAO Standard by requiring freight forwarders and courier companies to join a register of Regulated Agents. In order to join this register, these companies must demonstrate that they will operate in accordance with an approved security program. The program

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<sup>168</sup> Transcripts, p.364, quoted in Vaile Report, p.10

<sup>169</sup> Transcripts, p.365

covers “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”. The Department states that ACTO would be welcome to apply for registration as a Regulated Agent, and that “[b]ased on information previously supplied by ACTO, the Department expects that an application by ACTO would be accepted”.

Under the Air Navigation Regulations, airports are given responsibility for security of the airport. They must maintain a security program under which access to areas designated as security restricted areas (SRAs) must be controlled. These SRAs include the airport aprons. Effectively these regulations would require that staff of parties seeking access to the apron would need “to be briefed on their responsibilities and issued with Aviation Security Identity Cards by the FAC, after appropriate background checking”. In order for ACTO to operate an off-airport CTO operation, it would be need to “make use of the existing secure entrances and be subjected to the security constraints imposed on all traffic to and from SRAs. These constraints include inspection of vehicles and Aviation Security Identity Cards.” It does not appear that these requirements are onerous or difficult for ACTO or any other third party user of services to comply with. None of the submissions suggested that ACTO would not be able to comply with the requirements of the Air Navigation Regulations.

The Council accepts the statement by the Department that it cannot see any reason why, following declaration, the applicant (or another party) could not obtain registration as a Regulated Agent, or why applicant’s method of operations could not meet security requirements. The Council concludes that declaration of the services sought by ACTO at Sydney or Melbourne International Airports would not affect security.

## **COMPENSATION FOR ACQUISITION**

Australian Airport Services submitted that declaration would amount to an acquisition of land, and that as such the Commonwealth would be required under Section 44ZZN of the *Trade Practices Act* to pay the owner of the facilities reasonable compensation.

The Council is of the view that declaration does not amount to an acquisition of land. Any issue of compensation that arises following a grant of access can be addressed through the arbitration process conducted through the ACCC.

## **CONCLUSION**

The Council concludes that access to the services applied for in applications S1, S2, M1 and M2 would not be contrary to the public interest.

In respect of applications S3 and M3, the Council concludes that access would be contrary to the public interest, as the applications have not met all of the other criteria in sections 44F(4) and 44G(2).

## 4. DURATION OF DECLARATION

If the Commonwealth Treasurer declares the services, he is required under section 44H(8) to specify the expiry date of the declaration. The Council considers that it is appropriate for it to make a recommendation in relation to the duration of the declaration.

Submissions made to the Council on this matter emphasised two points:

- the need for new entrants to recover capital outlays, and for all industry participants to operate in a stable regulatory environment; and
- the interrelationship between declaration and any undertakings offered either by the FAC or, after leasing, by a private operator.

According to submissions in favour of ACTO's application, declaration should endure for at least five years or until an undertaking was given by the owner of the facility. AFIF noted that the:

duration of the declaration must be sufficient to enable new entrants to be unencumbered by the limitation. New entrants face significant barriers. They must not also face the restriction of having a limited time frame within which to demonstrate their value.<sup>170</sup>

TNT noted that declaration did not automatically enable entry to the market. After declaration, a new entrant would need to negotiate terms of access with the service provider, and either party could seek arbitration before the ACCC. TNT argued that the:

duration of the declaration should be designed to ensure that any new entrant is neither advantaged or disadvantaged relative to Ansett and Qantas.<sup>171</sup>

ACTO, in a meeting with the Secretariat of the Council, suggested that a five year period for declaration would be necessary in order to allow ACTO to recover its initial capital outlays incurred in entering the market. The submission from Federal Express also suggested a time period of five years.

Submissions against declaration did not address the issue of the duration of declaration.

The Federal Department of Transport and Regional Development raised the issue of the interrelationship between the *Airports Act* and Part IIIA of the *Trade Practices Act* in the context of the leasing of Melbourne International Airport. It is expected that Melbourne International Airport will be leased by the end of the 1996/1997 financial year. The Department argued that if Melbourne International Airport were declared just prior to its leasing, then 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".<sup>172</sup>

Further, upon leasing, the new operator has 12 months in which to put in place an approved master plan and environment strategy. The Department's submission argued that these planning documents "should be coordinated with the terms of any access undertaking (including the siting and pricing of

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<sup>170</sup> AFIF, p.7

<sup>171</sup> TNT, p.5

<sup>172</sup> DTRD, p.3

facilities to provide access to airport services)”. In the Department’s opinion, 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”.<sup>173</sup>

DTRD noted that the Government has stated that Sydney International Airport will not be leased until noise issues have been addressed. Therefore, in its view, the *Airports Act* considerations are not as immediate as is the case with Melbourne International Airport, but may be a factor depending on the duration of any declaration of services at Sydney International Airport.

The Council has considered the issue of the interrelationship between the *Airports Act* and Part IIIA under the public interest criterion. Under that criterion, the Council addressed the concern that declaration might distort planning decisions by the FAC or a new owner. In the context of duration, the issue faced by the Council is whether the duration of declaration should, in itself, take account of the leasing process.

In this context, the Council does not see that there is cause for concern about a possible clash between declaration under Part IIIA and declaration under the *Airports Act*. The effect of declaration under the *Airports Act* is to bring the declared services under Part IIIA - see section 193 of the *Airports Act*. Therefore, there is no practical scope for a clash.

On the other hand, the Council does see cause for some concern about a possible clash between declaration under Part IIIA and the undertaking process provided for by section 192 of the *Airports Act*. The Council notes that declaration of the services sought by ACTO at Sydney and Melbourne International Airports would deprive the FAC or a new private owner or lessee of the opportunity to give an undertaking - see section 44ZZB of the *Trade Practices Act*. The Council there may good reasons why the undertaking process under the *Airports Act* should be given an opportunity to work.

However, the Council is concerned at possible delays in relation to access in the case of both Sydney and Melbourne International Airport. Under the *Airports Act*, undertakings must be lodged within 12 months of leasing. This means that in the case of Melbourne International Airport, which, according to the Department of Transport and Regional Development is likely to be leased by the end of June 1997, an undertaking would need to be approved by the end of June, 1998. In the case of Sydney International Airport, where leasing has been delayed indefinitely, it is not clear when an undertaking would need to be approved. It is also possible that the new owner/lessee of Melbourne International Airport may elect not to lodge an undertaking.

The Council believes that concerns about a possible conflict between declaration under Part IIIA and an undertaking can be addressed by declaring the services at Melbourne International Airport for a short period expiring just in time to give the new owner the opportunity to lodge an undertaking.

## **SYDNEY INTERNATIONAL AIRPORT**

On balance, the Council recommends declaration of the services at Sydney International Airport for five years.

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<sup>173</sup> DTRD, p.3

## MELBOURNE INTERNATIONAL AIRPORT

In relation to Melbourne International Airport, the Council considers that the key issue in the duration of the declaration is the impending leasing of the airport. Under the Airports Act, 12 months after leasing, the Transport Minister is required to determine “as soon as practicable” whether to declare airport services for the purposes of Part IIIA. The Transport Minister cannot declare the services if the new owner has lodged an undertaking which has been accepted by the ACCC.

The Council is recommending declaration of the services, but in a way which preserves the right of the new owner to lodge an undertaking. The Council recommends that the declaration should be set so that it expires 12 months after leasing. In this way, if the new operator wishes to lodge an undertaking with the ACCC, it could do so prior to expiry of declaration, and the undertaking could then be accepted on the expiry of the declaration under Part IIIA, but prior to the determination by the Transport Minister under section 192.

The Council notes, that in accordance with legal advice, declaration must be for a specific date, and could not be linked to the happening of an event. As a consequence, the Treasurer could *not* specify, eg, ‘declaration until 12 months after the leasing of the airport’. If the Council’s recommendation is accepted, the Commonwealth Treasurer will need to estimate the date of the leasing of Melbourne International Airport, and specify a date 12 months after this date for expiry of the declaration.

## CONCLUSION

In conclusion, the Council recommends declaration of the services at Sydney International Airport for a period of five years, and declaration of the services at Melbourne International Airport such that declaration expires 12 months after leasing. A particular date would need to be specified in respect of both declarations.

The Council has reached these conclusions on the understanding that the Minister for Transport, under the *Airports Act 1996*, has no discretion and their determination under section 192 of the *Airports Act* declares all ‘airport services’ at a leased core-regulated airport. If the determination by the Minister for Transport did not declare the services the subject of applications S1, S2, M1 and M2 because s/he was of the view that they were not ‘airport services’ within the meaning of the *Airports Act 1996*, the Council is of the view that the services would then still be subject to Part IIIA of the TPA. It would be open to the Council to declare the services again, possibly through an expedited process.

## 5. CONCLUSION

The Council has considered each of the applications made by Australian Cargo Terminal Operators Pty Ltd against each of the criteria in sections 44F(4) and 44G(2). It is the Council's view that four of the applications meet all of the criteria, S1, S2, M1 and M2, and that two of the applications fail to meet criteria, S3 and M3.

The Council recommends that the Treasurer **declares** the following services at Sydney International Airport for a period of five years:

- the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Sydney International Airport ('S1'); and
- the service provided by the use of an area at the airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at Sydney International Airport ('S2')

The Council recommends that the Treasurer **declares** the following services at Melbourne International Airport for a period ending twelve months after the leasing of Melbourne Airport:

- the service provided through the use of the freight aprons and hard stands to load and unload international aircraft at Melbourne International Airport ('M1')
- the service provided through the use of an area at the airport to: store equipment used to load/unload international aircraft; and to transfer freight from the loading/unloading equipment to/from trucks at Melbourne International Airport ('M2')

The Council recommends that the Treasurer **not declare** the following services:

- the service provided by use of an area to construct a cargo terminal at Sydney International Airport ('S3')
- the service provided by use of an area to construct a cargo terminal at Melbourne International Airport ('M3')

## 6. REFERENCES

### REPORTS

Barrett, S.D., *Flying High: Airline Prices and European Regulation*, The Adam Smith Institute, Aldershot, 1987.

Bureau of Transport and Communications Economics, *Deregulation of Domestic Aviation - the first year*, Report No. 73, Australian Government Publishing Service, 1991.

Bureau of Transport and Communications Economics (Russ Reynolds), *Adequacy of Transport Infrastructure - Airports (Working Paper 14.4)*, December 1994.

Bureau of Transport and Communications Economics (Sue Elderton), *Techniques for Managing Airport Runway Congestion (Working Paper 27)*, September 1996.

House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform, *Jet Fresh: paddock to plate - An inquiry into air freight exports of perishable and time sensitive products*, Australian Government Publishing Service, 1996.

*Independent Review of Economic Regulation of Domestic Aviation*, Vol 2, Australian Government Publishing Service, 1986.

Industries Assistance Commission, *Travel and Tourism*, Report No. 423, Australian Government Publishing Service, Canberra, 1989.

Industry Commission, *Intrastate Aviation*, Report No. 25, Australian Government Publishing Service, Canberra, 1992.

McDermott Farigay Group Ltd, *Airfreight Capability - Implications for New Zealand Exporters: Production and Airfreight Exports*, Ministry of Foreign Affairs and Trade, May 1993.

Mcgowan, F. and Trengove, C., *European Aviation: A Common Market?*, Institute for Fiscal Studies and Monash University, London, 1986.

Monopolies and Mergers Commission, *BAA plc - A report on the economic regulation of the London airports companies*, Presented to the Civil Aviation Authority, June 1996.

NZ Ministry of Foreign Affairs and Trade, *New Zealand Airfreight Exports: Constraints and Opportunities*,

Prices Surveillance Authority, *Inquiry into the Aeronautical and Non-Aeronautical Charges of the Federal Airports Corporation*, Report No. 48, 1993.

Prices Surveillance Authority, *Regulation of Airport Pricing - Is the New Zealand Approach Applicable to Australia?*, Discussion Paper, 1995.

### MISCELLANEOUS MATERIAL

ABS Statistics Services, *Exports by Air and Imports by Air: By Tonnage and Value (FOB)*, February 1997.

ACIL Economics and Policy Pty Ltd (Greg Cutbush), *Cargo terminal Operations and Ramp Handling: A descriptive report based on overseas and local inquiries for the National Competition Council* (“ACIL consultancy report”), April 1997.

Western Global Pty Ltd, *International Freight Handling Study for Sydney (Kingsford Smith) Airport*, (“KSA Freight Study”), Final Version: March 1997.

Federal Airports Corporation, *Call for Expression of Interest for International Cargo Terminal Operations, International Ground Handling Services at Sydney Airport*, March 1997.

National Competition Council, *The National Access Regime: A Draft Guide to Part IIIA of the Trade Practices Act*, August 1996.

#### **NEWSPAPER ARTICLES:**

- author unidentified, “BOC Invests in Melbourne, ‘Airfreight Capital of Australia’”, *Air Cargo News*, March 21, 1997, p. 34.
- Corey Bousen, “Terminal Delays as Christmas Rush hits hard”, *Lloyd’s List*, December 23, 1996, page unknown.
- Corey Bousen, “Forwarder body supports CTO bid for airport access”, *Lloyd’s List Australian Weekly*, March 3, 1997, page number unknown.
- Corey Bousen, “FAC in Sydney and Melbourne reject idea of opening freight facilities: No access for off-airport cargo terminal operators”, *Lloyd’s List Australian Weekly*, March 10, 1997, p. 5.
- Peter Harbison, “CTOs: FAC, NCC and ACTO, ACT 1”, *Payload Asia*, February 1997, p. 28.
- Kathy MacDermott, “Airport park gets the bug for export”, *Australian Financial Review*, 11 March 1997, p. 43.
- Richard Noonan, “End for airfreight terminal duopoly?”, *Daily Commercial News*, date unknown, p. 1.
- Richard Noonan, “Independent air cargo terminal for Melbourne”, *Daily Commercial News*, date and page number unknown.
- Richard Noonan, “FAC spends up to expand Vic Freight”, *Daily Commercial News*, 17 February 1997, page number unknown.
- Richard Noonan, “BOC Distribution Services to take ‘non-predatory stance’: Qantas, Ansett welcome CTO Competition”, *Daily Commercial News*, 1 April 1997, p. 5.



## **7. APPENDICES**

Appendix 1      List of Submissions

Appendix 2      ACIL Report

## APPENDIX 1

### LIST OF SUBMISSIONS REGARDING ACTO PTY LTD'S APPLICATIONS FOR DECLARATION OF CERTAIN FAC AIRPORT SERVICES

<i>No</i>	<i>Company/Entity</i>	<i>Contact</i>	<i>Date Rcvd</i>
1.	Australian Cargo Terminal Operators Pty Ltd	Tim Edwards, Managing Director	15/1
2.	James Transport Co. Pty Limited	Brian James, Managing Director	3/2
3.	Cargo Service Center, The Netherlands	Hugo van Berckel, Managing Director	5/2
4.	Australian and International Pilots Association	Rod Cork, Assistant Secretary	6/2
5.	Qantas Airways Limited	Murray Deakin, Minter Ellison	10/2
6.	Corrs, Chambers, Westgarth	Andrew Lumsden	10/2
7.	Australian Airport Services	Brent Fisse, Gilbert Tobin	10/2
8.	Australian air Express International	Wayne Dunne, GM International Services	10/2
9.	SA Department of Transport	R J Payze, CEO	10/2
10.	BOC Cargo Services Aust. P/L	Steve Howe, Business Development	10/2
11.	Ansett Australia	J V Kimpton, Manager, Aviation Policy	11/2
12.	Peter Young (private citizen)	Peter Young	13/2
13.	Federal Airports Corporation	Murray Hundleby, General Counsel	14/2
14.	State and Regional Development, NSW	Warwick Glenn, Director, Industry	17/2
15.	Australian Chamber of Commerce and Industry	Brent Davis, Director, Trade and Policy Research	17/2
16.	Federal Department of Transport and Regional Development	Daryl Quinlivan, Assistant Secretary	18/2
17.	Australian Federation of International Forwarders Ltd	Brian Lovell, CEO	18/2
18.	Federal Express	Jeremy Pooley, Coopers & Lybrand	18/2
19.	TNT Australia Pty Limited	Geoff Clarke, National Line Haul and Service Quality Manager, TNT Express Worldwide	21/2
20.	Australian Customs Service	Les Jones, Border Management Division	3/3
21.	Victorian Department of Premier and Cabinet	Dr. David Briggs, Director Reform Policy Unit	27/3

**APPLICATIONS FOR DECLARATION  
OF CERTAIN AIRPORT SERVICES**

**AT SYDNEY AND MELBOURNE  
INTERNATIONAL AIRPORTS**

**REASONS FOR DECISION  
APPENDIX 2**

# CARGO TERMINAL OPERATIONS AND RAMP HANDLING

A descriptive report based on overseas  
and local inquiries for

**The National Competition Council**

April 1997



**ACILECONOMICS & POLICY PTY LTD**

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## **I. INTRODUCTION**

### **A. The declaration application**

This report has been prepared to assist the National Competition Council (ie “the Council” or “NCC”) with its consideration of a matter relating to access conditions for inputs to cargo handling at two of Australia’s international airports.

On 6 November 1996, the Council received applications from Australian Cargo Terminal Operators Pty Ltd (ACTO) for the declaration of services under the access provisions of Part IIIA of the Trade Practices Act. The application was for the declaration of services:

- provided through facilities owned by the Federal Airports Corporation (FAC) at Tullamarine International Airport (Melbourne Airport or “MA”) and Kingsford Smith International Airport (Sydney Airport or “KSA”);
- provided through facilities owned by Qantas at MA and KSA; and
- provided through facilities owned by Ansett at MA and KSA.

More specifically, the NCC’s interpretation is that ACTO has applied to have three services declared at each of MA and KSA. These services are:

#### **Sydney**

- use of the freight apron and hard stand to be able to load and unload international aircraft (S1);
- use of an area within the airport perimeter to store the equipment required to load and unload international aircraft and to transfer the freight to and from trucks to and from the equipment used to load and unload international aircraft (S2); and
- use of an area within the airport perimeter to construct a cargo terminal (S3).

#### **Melbourne**

- use of the freight apron and hard stand to be able to load and unload international aircraft (M1);
- use of an area within the airport perimeter to store the equipment required to load and unload international aircraft and to transfer the freight to and from trucks to and from the equipment used to load and unload international aircraft (M2); and
- use of an area within the airport perimeter to construct a cargo terminal (M3).

In its December 1996 Issues Paper,<sup>1</sup> the NCC explained that the applications relate to different ways ACTO could run its business — that is, providing cargo terminal services to international airlines by breaking down and building up freight and transferring that freight, on pallets and in unit load devices, to and from international aircraft

In the Issues Paper, submissions were called for by 7 February 1997. The NCC said its intention was to forward its recommendation to the Treasurer by 11 April 1997.

## A. rt1 **The brief for this consultancy**

### **.1 This report**

The brief for this report is reproduced at **Attachment 1**. Interpreting a little, it seeks information on two subjects concerning international airports that have arisen in submissions:

- whether health and safety can be satisfactorily managed where there are non-airline aligned providers of ramp handling services; and
- how the commercial viability of off-airport CTOs and ramp handling compares with their on-airport counterparts.

---

<sup>1</sup> NCC *Australian Cargo Terminal Operators Pty Ltd Application for Declaration of Airport Services*, Issues Paper, Melbourne December 1996



Amore general issue of NCC interest, germane to both the others, is the arrangements for third party providers. The NCC was seeking a descriptive report on these issues.

As ACIL understands it, the Council needs the information to assist it to address the “human health or safety” considerations in Section 44G item (d) of the Trade Practices Act; to aid its assessment of whether existing arrangements are “effective” in terms of Section 44G item (e) of the Act; and to help it determine whether in terms of Section 44G item (b) and Sections 44F(4) and 44H(2) of the Act, it would be economical for anyone to develop another facility to supply all or part of these services in question.

Time for the report has been short. ACIL was commissioned on 7 March with an agreed deadline of 1 April 1997.

Most of ACIL's endeavours have involved contact work, via telecommunications across Australia, the US and Europe, and in person in Australia and London and San Francisco. Accounts of this contact work, which has uncovered a great deal of information, are included at **Attachment 2**.

The text of the report seeks to draw on the essence of this information and to offer a logical framework for drawing conclusions about the matters at hand.

## **.2 Definitions**

The business ACTO is interested in — that of “providing cargo terminal services to international airlines by breaking down and building up freight and transferring that freight, on pallets and in unit load devices, to and from international aircraft” — is undertaken in myriad combinations and forms around the world. However internationally, specialists use a set of standard terms to describe the steps involved and there are longstanding protocols referring to them. It has been necessary to come to grips with them to undertake the brief.

As the FAC's submissions point out, a term “ground handling services” (GHS) is used by IATA to describe the full suite of support services required to operate a passenger and freight airline. GHS includes services such as ramp, aircraft servicing, flight operations and “cargo terminal operations” (CTOs). “Ramp handling” includes the process whereby the

freight is moved to and from the aircraft to the CTO (primarily transport by dollies and the loading and unloading of the aircraft). The ramp handlers contract directly with the airlines. The FAC says there are two types of ramp activity, one to dedicated freighters and one to passenger aircraft.

The brief has required ACIL to focus on the subset of these functions concerning cargo. As ACIL understands it, this should in-principle include passengers' baggage. In the Australian context where some 80% of international freight is carried in the holds of passenger aircraft, passenger and non-passenger freight are inextricably interwoven and can rarely be sensibly viewed in isolation. Certainly it has been difficult to identify "pure" or "clean" examples involving one or the other type of freight that would be comparable with the local situation. In modern times, the most meaningful distinction may be between express and other cargo operations. ACIL has strived to avoid artificial distinctions.

## **I. KEY ECONOMIC ISSUES**

As background of the issues identified in the brief, there are a number of public policy issues concerning the management of airports which provide a useful perspective for consideration of ground handling activities on such sites. Two such subjects are discussed briefly below, one the tendency for the natural monopoly characteristics of airports to create anticompetitive conditions for on-airport operations and two, the (related) tendency of aeronautical safety management to become, to a certain extent, a pretext for certain anticompetitive ends.

### **A. Franchising of natural monopoly management**

The standard approach to management of international airports is to extend their management to a central body or firm (called an operator) and to subject it to a range of measures to control excesses in pricing or access to runways or other aircraft facilities. Sites on the airport for the management of air services, repairs, retail outlets, other ancillary functions associated with the arrival and departure of aircraft are leased by the operator to tenants. The operator is then a "landlord".

The conventional wisdom seems to be that the airport operator itself fought to maintain control of the core aspects of the airport— the runways, aprons and hard stands— which are then run as common user facilities. A franchising model is then applied, nominally to curb tenants' exercise of monopoly power; tenants are given limited length of tenure and strict operating guidelines. The tenant pays rent for a “concession” which predefines the type of business to be operated on the particular site. Lease fees might be based on so-called “market” rents determined by valuers, or as percentages of turnover.

Site occupancies may be auctioned periodically, but in Australia as elsewhere, the allocation of certain sites (such as for on-airport CTOs) is commonly achieved via “a comparative adjudicative merit selection process” (or “beauty contest”) in which, as leases finish or as new areas are opened up, bidders are invited to submit plans for the development and operation of sites. In the latter case, the bidding process can absorb (and waste) significant time and expense. Tenancy lengths might be related to the lives of the assets, or the surrender of assets to the landlord after a shorter period could become part of the in-kind consideration being tendered for the site.

Whether the operator pursues the latter approach, or chooses the alternative of permitting only brief tenancies for tenants occupying the operator's own facilities, the operator inevitably is drawn into the role of an investor which controls a stock of on-site assets as well as being entwined in “choreographing” the commercial developments on the airport. These are heavy commercial responsibilities, especially for a public body.

An accompanying feature of that scenario is that the operator may come to develop a vested interest in heightening the degree of monopoly power enjoyed by its tenants, and incidentally of the assets they occupy, by not releasing further sites and maintaining only the initial number of franchises. Imposing rules which make it difficult for off-airport service providers to offer unbundled parts of the integrated service its tenants are selling could form part of this strategy. This can be recognised as a policy akin to the restriction of taxi plates — which have a value totally dependent on the vigour with which their number is limited. Consumers, and would-be operators in the markets which the remaining taxis have tied up, suffer an income transfer, and aggregate welfare is compromised.

The above is clearly an extreme representation of the circumstances prevailing, and ACIL considers that only elements of that practice are likely to be in place at any one time. However, it has important historical relevance and would appear to characterise a number of the current airport operating environments in southern Europe described to us by European Union (EU) officials.

It is important to recognise that as commercial conditions change, and especially if an airport begins to encounter competition from other airports, the commercial balance for the operator can shift towards reversing, somewhat, the constraints on the capacity of its facilities. Reversals may be successfully resisted by incumbent tenants for a period, but ultimately new plans will be implemented. KSA and MA may now be in this phase.

## **A. Safety and security**

The incentives at work in the franchising model described above, and especially the operator's desire to support the lease value of the occupied sites, may also create pressures for the airport operator to overplay the importance of safety and security requirements when determining how ground handling operations should be organised. The documentation accompanying earlier drafts of the Commission of the EU's October 1996 Directive on Ground Handling appeared concerned to counter such tendencies.

In part, it seems the safety issue is prone to excess regulation because of ignorance and misapprehension about the role of voluntary initiatives and market processes in risk management.

As a public policy issue, risk management is largely about:

- ensuring that chains of responsibility are maintained and market-related costs of damage are sheeted home to preserve incentives to take care; and
- ensuring that parties are compensated for damages imposed on them by others.

These are functions which insurance markets work to achieve, and as will be discussed in the following section, there is evidence of active interest by the Australian insurance industry (and the Australian Aviation Underwriters Pool in particular) in promoting safe practices by

ground handling firms. The extent of such efforts and their potential for ensuring that increased inherent risks do not necessarily translate into an increased accident rate should not be overlooked.

The circumstances in Australia may have been conducive to allowing the operating rules at KSA and MA become unduly anticompetitive in the name of safety and security considerations. The situation is outlined in the notes in Attachment 2 on discussions with the Department of Transport and Regional Development about these matters.

With regard to the safety regulations at Australia's international airports for example, the situation is complex and involves many administering parties. Instruments include FAC By-laws — largely Part IVB (airside safety and aircraft parking), Part IVF (airside vehicle control) and the newly introduced Part IVG (public order at federal airports). Nominally these are overseen by the Department's Aviation Policy Division (under the Federal Airports Corporation Act) and soon they will be mirrored by regulations for the new leaseholders to obey (under the Airports Act). There are also the Civil Aviation Regulations overseen by CASA (eg Regulation 89C). In addition, there are aspects of the security regulations (again FAC By-laws, but overseen by the Aviation Security Branch under the Air Navigation Act) which can be seen to have a safety dimension.

It is probably fair to say that the main safety provisions are the airside vehicle controls and the associated Airside Vehicle Control Handbook.

ACIL was told by Department officials there have been no complaints to it, as the overseeing authority, about provisions in the Handbook, at least over the last 12 months. It appears also that in developing the equivalent of the By-Laws as regulations for leased airports, the Department is likely to adopt the wording of the existing safety By-Laws. Significantly, we were told it will not be approaching the task with a concern to rid the safety regulations of any anti-competitive aspects. Although the Department has prime carriage of the regulation-writing task, that aspect will be left for the ACCC to pick up, probably on a complaints driven basis.

The impression then, is that the Departmental oversight of the safety regulations is, as it is in relation to security, quite indifferent to competition policy issues.

## **I. GENERAL PICTURE WITH THIRD PARTY PROVIDERS OF CTO AND RAMPHANDLING**

ACIL's overseas research has uncovered evidence that at many international airports efficiency and national income are suffering because of the combination of the natural monopoly characteristics of the sites themselves and their self-interested (or pliant) management by a central body. In line with the incentives identified in the previous section, the tendencies of such bodies, or their governments, has often been to restrict competition amongst service providers in ways and to degrees that seem to go beyond any security or safety purpose.

In general, it appears that airports worldwide are run with numerous restrictions on the ability of non-airline and non home-based airlines to engage in ground handling, especially at the ramp handling end. Foreign airlines appear to be routinely put at a disadvantage and would-be independent CTO and ramp service providers are unable to contest.

Recognition of the costliness of these circumstances has underpinned the efforts of the EU Commission to promote unbundling and independent service provision, although the new (October 1996) Directive does not go as far as the originators of the reforms would like.

ACIL's investigations in the UK indicate that, while a fair degree of competition occurs amongst incumbents at UK airports, entry into ground handling is more restricted than one is first led to believe. Nonetheless, examples of non-airline off-airport CTOs can be found, and at least one delivers by truck to aircraft and ramp handles such consignments.

A breakthrough mentioned by two UK contacts (see Robinson and Ross Notes, Attachment 2) was that Customs, following the EU single market reforms of 1993, relaxed controls on the siting of smaller cargo handlers and allowed operators with computer links to locate their premises further away from airports. The approved removal locations are known as "enhanced remote transit sheds" (ERTS). Previously, Customs clearance and examination was only

conducted in airline sheds or in other bonds which had transit shed status. There was some reluctance on Customs' part about the move off-airport by Cargo Service Center (CSC), given the much larger amount of freight involved moving on public roads, but its camera surveillance system and the computer link satisfied those concerns.

The regulator, CAA, investigates complaints of unreasonable denial of access, and a few cases have been heard via a 4-week procedure with public hearings where transparency and non-discrimination are the criteria. A forwarding agents association (the British International Freight Forwarders' Association) said it favours open competition.

The CAA says nobody in the UK has complained about over-use of safety or security reasons for denial of access in recent times, although there were cases at Manchester when it had a monopoly ground handler (rather than the current five). The Cargo Development manager at Heathrow said BAA would incur the CAA's rebuke if it tried to deny offsite operators access on a safety or security pretext. Nonetheless, BAA admits the EU Directive is likely to require a review of ground handling service provider approval processes.

In general, access at the London airports is as follows —

at Heathrow:

- for the most part, ramp handling services have to be bought from one of eight big airline-linked BAA-authorized providers, though a few other airlines (eg Lufthansa and Swissair) exercise longstanding rights to ramp handle themselves and serve others using the same terminal;
- at least one of the big eight (British Airways (BA), the biggest) is said to be getting out of the ground handling business, and contracting out its needs;
- self-handling of passenger check-in is possible, but requires the ramp handler's permission, and 15 other airlines choose this approach;
- there are 17-18 sheds on-airport, some evidently run by non-airline CTOs (eg BOC Gases(?), Ogdens) that are not allowed to self ramp handle;

- along the airport perimeter at a “Cargo Village”, a large number of airline-linked and other firms run CTOs;
- off-airport, and with special Customs surveillance arrangements, at least one firm (CSC, a KLM subsidiary) runs a CTO and the BAA itself is buying land to enter the same business (the MMC reports that back in 1991 the BAA was undertaking some cargo handling through a firm called Skycare, but it has shed that interest). Off-airport CTOs are seen a little throughout the UK, but are not yet seen much elsewhere in Europe, except to a limited extent at Brussels and Charles de Gaulle, Paris;
- CSC's trucks can go straight from its shed to plane side for ramp handling.
- the firm Plane Handling (a joint venture of Virgin, Delta and NorthWest) has an on-airport shed for imports and an off-airport shed for exports. The arrangement provides "easier access for dealing with exports". (Plane Handling may have ramp handling rights, but it is not mentioned as having them in the recent MMC report).

The MMC said it had heard complaints concerning:

- the inability of independents to provide ground handling services at Heathrow except by substituting for two existing ground handlers (via the “2 for 1” policy);
- freighter aircraft being overly restricted in their choice of ground handling.

No action appears to have been recommended on either matter, although there are indications that the CAA is aware that a problem exists.

at Gatwick:

- there are just three approved full-service ground handling operators: British Airways, Gatwick Handling (or GHI, owned by two US carriers, NorthWest and Delta) and Servisair (which is independent of the airlines);



- there were four but one withdrew (or was acquired) and was not replaced (BAA says if passenger numbers, currently at 23 mpa, were 30m pa, then Gatwick "could probably have four"). Declining traffic had led to declining service quality with four;
- as at Heathrow, the Gatwick operator allows self handling at check-in if their ground handler agrees, using a 200,000 passengers a year minimum guideline;
- the same subsidiary of KLM (CSC) which has an off-airport CTO at Heathrow won a tender recently for transit shed space on-airport.

The MMC reported that it had heard a complaint that the reduction in ground handlers at Gatwick from 4 to 3 had led to price increases.

at Stansted:

- there are two independent ground handling agents, Servisair and GHI;
- UK Air self handles at check-in.

The MMC said it had heard a complaint that UK air could not ground handle third parties.

In other parts of the EU, third party CTOs and ramp handlers are less common than in the UK. It is believed that Amsterdam, Dusseldorf and, most recently, Madrid now have them and that Brussels has at least CTOs which are both independent and off-airport. A 1996 report by Cranfield University for "Aena" (the Spanish aviation regulator) was identified by ACIL (see Attachment 2 notes on discussion with Mr Stockman) which contains details of the situation at 9 European airports in relation to ramp handling. The report itself was not obtained, but Mr Stockman informed us about one curiosity — the independent consortium which has broken Iberia Airlines' monopoly in the Canary Islands includes the owner of Frankfurt airport which has a ground handling monopoly at home.

In the US, third party handlers appear to be prevalent, although ownership links with airlines can be detected in nearly all cases. At San Francisco, true independents such as Ogden are present but the nominally "independent" CTOs include Nippon Cargo (Nippon Airlines do not fly to that airport) and Gateway Freight Services (which turns out to have KLM as a

significant shareholder). Nonetheless, as in the UK, both CTOs and ramp handlers operate alongside several competitors both at San Francisco and at Los Angeles (where the off-airport CTOs alone include Gateway, Lancom, Nighthawk, Mercury Cargo Holdings and United Air Cargo). All operate under the regulatory eye of the FAA. ACIL did not extend its inquiries beyond these airports, but has no reason to suspect that conditions are not much the same elsewhere.

## **I. MANAGEMENT OF HEALTH AND SAFETY AT INTERNATIONAL AIRPORTS WHICH HAVE NON-AIRLINE ALIGNED PROVIDERS**

### **A. Overseas**

ACIL's investigations indicate that in Europe and North America alike, health and safety concerns are managed via the same general mechanisms as apply in Australia — via general government employer insurance requirements and workplace standards legislation, backed by airport By-Laws or regulations.

However on both continents, the private sector aviation insurance industry is also active, and in the UK in particular, a private sector body known as the UK Flight Safety Committee is regarded as a pioneer in accident prevention (see Attachment 2, notes on discussion with Mr Algar).

There has been no evidence in trade journals ACIL has seen or in conversations with contacts in the UK, Brussels or the US, that any special health and safety arrangements are in place at airports where independent ground handlers operate.

### **A. Australia**

In Australia, non-airline-aligned CTOs (and the few non-airline ramp handling operators) are formally not subject to health and safety provisions that are any different to those governing the airline companies themselves. The one minor exception to this, although it is only a minor

issue in the context of the current report, is that for the purposes of Workcare in Victoria, Qantas is a “selfinsurer”, which as explained in the interview notes relating to Workcare in Attachment 2, essentially means that it is authorised subject to certain reporting rules, to find its own insurance cover for workers compensation in that State. As far as ACIL can discover, the other groundhandlers at Australian airports (or at least at KSA and MA) do not have that status.

On the basis of its investigations during the present assignment, ACIL is generally sceptical of the many objections raised in submissions on health and safety grounds to the operations that ACTO seeks to engage in. For example:

- Corrs Chambers Westgarth’s claim of the need for ground handlers to have links with Qantas or Ansett and for “overprovision” to threaten safety and security (pp3-4) seems to be a misconception of the role of competition, especially when what it could deliver in safety terms is compared with the present arrangements;
- the Pilots Association mentions two cases where poor loading caused problems (p3) — these are isolated instances on which no general case can be based;
- Qantas expresses concern about the implications of utilising fork lifts (p14) — a reasonable point, but one potential clients could readily internalise.

Incidentally, both Corrs’s and Qantas’s submissions mention the imminent release of the new Airports (Airside Vehicle Movement) Regulations. As ACIL understands it, these regulations, meant to cover the circumstances of the “privatised” airports, will mirror the current FAC By-laws as regards safety (as noted in the record of discussions with the Department of Transport and Regional Development in Attachment 2). There are no grounds for expecting their release to represent a policy shift.

There is widespread acknowledgment that ground handling activities are accident prone. Although, generally speaking, the loading of dedicated freighters is relatively safe (see Mr Algar’s advice discussed in Attachment 2) ground handling as a whole is a relatively risky

environment for workers and the equipment damage and public liability risks are high, especially in the ramp handling area. In addition third party risks to cargo in CTOs are high.

At the same time, insurance is available and underwriters are beginning to offer reduced premiums if certain safety programs are adhered to (as noted in the record of discussions with Mr Algar in Attachment 2). In mid-1996, a UK/Australian study of ramp handling risks was undertaken to develop safety programs which would be purchased by cost conscious operators. Meanwhile it is understood workcare agencies in Victoria and New South Wales are refining premium scales to reward firms for improved personal accident records. These are all voluntary responses which are likely to weaken the link between the inherent risk of CTO and ramp handling and the accident rate. The upshot is that if new entrants to the CTO or ramp handling businesses were to raise the inherent risk, given the measures being introduced there is no reason to suppose that a rise in the accident rate would necessarily follow. Voluntary avoidance measures might even allow a reduction.

An important qualification to this (as we implied above in relation to Corrs Chambers Westgarth's submission) is that it is not obvious on what basis permitting an extra operator to compete for business would lead to the greater crowding considered to be dangerous — in ramp handling at least. There may be some validity in the FAC's suggestion that with more contestants there must be some operators who are less experienced than if only the incumbents were still operating. However, it must also be said that it will be the frequency of flights which determines how crowded aprons become, not the number of parties permitted to bid for the loading and unloading task. The safety basis for restricting contestability is not clear.

What does the safety record show to be the relationship between the density of ramp operations and the accident rate? Some data are presented in Attachment 2 in the notes on BASI statistics, Worksafe and Victorian Workcare. Unfortunately, a cross-sectional comparison of the records of Australian airports on either the equipment damage or human accident sides has not been possible in the time available. Nor has time permitted a study of outcomes within airports. Although Victoria's Workcare Authority appears to have the data to enable a detailed picture of workers compensation cases at MA over time to be assembled, access to such data may take some time to organise. Interestingly, none of the critics of the idea of a

CTO gaining a right to compete for ramp handling have presented the data to support their cases. Interestingly too, the FAC did not respond to a request we put (through the NCC) for such information, although we are aware it had recently engaged a Sydney firm to assess the safety implications of its proposed Olympics Expansion (see notes in Attachment 2 on BASI discussion).

Around the world airports have demonstrated an ability to cope with increased contestability for CTO and ramp handling services using operational systems which seem very similar to Australia's. In particular (and in specific answer to the Pilots Association's expressed fears), although it is not the rule, there are instances where non-airline ramp handling is safely executed overseas—the protection for users in these cases comes from a combination of airport-administered standards, incentives for care provided by insurers and, perhaps most important of all, the jealous guarding by the firm of its reputation in a fiercely competitive environment. It is significant that British Airways, long the UK's largest airline and ramp handler, is said to be in the throes of contracting-out its British ramp handling requirements in order to focus better on its core business. It has already given up self handling at Johannesburg. Direct links between ramp handler and airline are evidently a secondary consideration for BA.

## **I. THE VIABILITY OF OFF-AIRPORT CTOs AND RAMP SERVICE PROVIDERS**

### **A. Overseas examples**

#### **.3 CTOs**

Overseas, while they do not appear to be widespread, off-airport CTOs are readily found.

For example, at Heathrow, CSC operates off-airport and ACIL was told that the airport operator, BAA plc, has bought off-airport land near CSC to pursue CTO operations itself.

In addition, at Heathrow, the firm Plane Handling (a Virgin, Delta and NorthWest joint venture) has an on-airport shed for imports and an off-airport shed for exports. Elsewhere in the UK (especially Gatwick and Manchester) airport contacts confirmed that off-airport CTOs are operated, at least to some extent, by all the firms listed in a communication from ACTO's Mr Edwards on 17 March (ie by London Air Cargo, Cargo World, Freight Air Services, Servisair, Dunwoody, Air Menzies, Concorde, Cranleigh, GT Air Services and Contract Air Transport Services).

UK sources said off-airport CTOs are not as common elsewhere in Europe, but are seen at Brussels and Paris, at least.

In the US, off-airport CTOs are also common, and ACIL spoke to two such companies at San Francisco — Mexicana and Gateway Freight Services. The latter has warehouses both on- and off-airport, and its (subleased) on-airport warehouses are used as a staging point for cargo brought from its other premises.

One reason for expecting off-airport CTOs to be close to competitive with on-airport CTOs in the normal course of events is that on-airport landlords will set their leases to ensure that this is so.

The FAC's KSA and MA submissions contain as an attachment a report to the City of Los Angeles Department of Airports by ParkCenter Realty Advisors, Appraisers and Consultants, of Santa Ana, CA. The document is a property valuer's report to the City of LA intended to set rentals for on-airport CTOs. As part of its analysis it says that having to truck to and from an off-airport site costs 1-1.5 cents per pound weight, and so on.

A question the Los Angeles report prompts is whether on-airport rental rates at airports such as Los Angeles are being set to almost fully absorb the advantages to a CTO of on-airport location. In LA it is understood there are six off-airport CTOs. One is owned by Virgin. The others are Gateway, Lancom, Nighthawk, Mercury Cargo Holdings and United Air Cargo. It can be imagined that the airport landlord might attempt to absorb all the site-rent, leaving the economics of on and off-airport activity about the same. Then, with competition the market outcome would be all CTOs earning normal profits.

#### **.4 Ramphandlers**

Off-airport-based ramp handlers are more difficult to find, but several have been identified by ACIL.

Ramp handling is undertaken by the off-airport CTO operator CSC at Heathrow. It is also undertaken by the totally airline-independent firm Concorde Express. But generally there and at other UK airports it appears non-airline CTOs (whether on or off-airport) are not allowed to ramp handle. Ogdens is an example of an on-airport CTO at Heathrow which is restricted in this way. At Gatwick an independent called Servisair provides full ground handling including ramp handling (see material on BAA plc's Condie, and Monopoly and Mergers Commission in Attachment 2.)

Ramp handling is undertaken in the US by off-airport operators, at least to the limited extent of taking dollies onto the apron. However, as in the UK the practice seems not to be common, and examples of the actual loading function being undertaken in the US were not found.

Interestingly, in view of the large dolly times and distances involved, direct handling from trucks to deck loaders is increasingly being undertaken at San Francisco, although with dedicated freighter aircraft only, as far as ACIL can tell. The firms doing this include FedEx, JAL and Nippon. Nippon has no flights of its own to San Francisco, and thus might be seen as an "independent". Notwithstanding these developments, it was said by one contact that the airport "would not entertain trucks with 53 foot trailers positioning between aircraft."

### **A. The general picture**

#### **.5 Natural commercial limits**

The general role of CTOs is clearly outlined in FAC's submissions concerning MA and KSA and a stylised view of the operation of an off-airport CTO is also given (eg MA submission pp9-10). By virtue of travel times and the need for consignments from off-airport CTOs to be "double handled" with a further clearance at the perimeter, their ability to be involved in the handling of goods in transit through Australia and time-sensitive Australian exports, especially fresh products, and perhaps express freight as-a-whole, is necessarily constrained.

At the very least, off-airport CTOs face a disadvantage meeting the 2-hour cut-off limits imposed by airlines relative to on-site CTOs<sup>2</sup>. Nonetheless there will be certain classes of freight where that is not a problem. In those cases lower overheads will enable off-site CTOs to bear the double handling and travel burden. Moreover, in certain circumstances, the double handling cost might be circumvented to some extent through the direct delivery of palletised or sealed unit freight by trucks (lorries) to the aircraft apron. In addition, as the FAC reports (eg MA Submission p10), where transshipment can be readily anticipated, and streamlined, (such as with Air New Zealand freight through KSA) and where contract arrangements with on-airport CTOs offering by-pass facilities can be made (such as between Air New Zealand and Ansett), an off-airport-CTO can be a viable option for a good proportion of that kind of freight.

ACIL's findings about the routine use of off-airport CTOs in a wide range of circumstances overseas confirms their general viability with and without streamlined clearance procedures.

As ACTO's applications point out, locally too there are numerous precedents for streamlined final clearance procedures upon entry to the airside part of airports. It can be reasonably argued (as ACTO does) that even the concept of direct delivery of material by truck from an off-airport premises to the side of an aircraft with minimal checking, is routinely observed here as elsewhere in the catering service area. "Bypass" is also an established complement to the traditional cargo assembly functions of on-airport CTOs.

In a sense, by their existence alone the James and ACTO operations attest to the viability of off-airport CTOs.

## **.6 *Effect of the regulatory regime***

Regulations are a hindrance to the current viability of off-airport CTO's; potent or not, it is they which appear to have prompted ACTO's declaration applications.

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<sup>2</sup> Some of these costs were estimated by consultants for the Los Angeles Department of Airports in 1996 (see FAC submissions, Attachment 6)



The concepts which parties opposing ACTO's proposals have raised all have commercial and economic implications and need to be considered in connection with the viability question. They do not relate solely, or even mainly, to the potential inconvenience or impracticality of securing Customs oversight of goods in-transit to enable speedy clearance at the barrier. Albeit without much information about the detail of how ACTO would operate, Customs has confirmed that it does not oppose the proposals in principle and would not anticipate that its requirements could not be met.

Security appears to be a greater concern than Customs issues, with FAC expressing anxiety in particular, but again the Department of Transport and Regional Development which is ultimately responsible for this aspect, anticipates no obstacles to ACTO's proposed off-airport CTO style operation being capable of meeting its requirements.

Admittedly, the details of what inconveniences may be imposed in order to provide the necessary security clearances that would satisfy the Department's requirements remain unclear, but so do ACTO's plans themselves.

The major potential concern raised by the Department insofar as it affects the economics of an ACTO-style off-airport CTO is the Department's insistence that:

“... it would be required to make sure of the existing secure entrances ...” (DTRD submission, p6).

If by that was meant that entrances which the incumbent on-airport CTO currently control, then this would leave ACTO (and any similar operator) in much the same situation as it is currently — ie, subject to the charging structures and timetabling constraints imposed by its competitors. ACIL's discussions with Departmental security officials have not fully clarified this point, but given the existence of other secure entrances at airports such as KSA and MA, and the apparent readiness of the Department to permit others in appropriate circumstances (eg the apparent clearance given for BOC Gases entry to the on-airport CTO business at MA), there may not be a significant impediment in this regard.

The over-riding concern expressed by opponents, and one which has proved difficult to obtain objective information about has been the safety risk issue. The term has been applied broadly to encompass both personal safety risks and the risks to property damage, and thus embraces

the “health and safety” concept which the NCC needs to concern itself with under third party access provisions of the Trade Practices Act and which were the subject of section 4 of this report.

## **I. SUMMARY AND CONCLUSIONS**

### **A. Background conditions**

As discussed in Section 2 above the background circumstances for groundhandling services at international airports are usually that:

- the airport itself (ie the passenger and freight services it provides) exhibit characteristics of natural monopoly;
- the operator of the airport can exercise market power in a number of ways over tenants, but also may choose to limit the number of tenants in order to create “quasi rents” which it can share with tenants;
- this “taxi-plate” approach may be reinforced by creating rules to artificially limit the possibility of competition from off-airport entities, including by external CTOs or by would-be ramp handlers;
- price caps and other anti-trust measures may offset these tendencies, but typically do not extend to conditions governing freight service providers. Australia is an example.

These tendencies provide explanations for some of the administrative phenomena seen at airports which are unlikely to be aired by airport operators or incumbent tenants, including on-airport ground handling firms.

Some other preliminary observations made in Section 2 which seem relevant to the current brief concern risk management. In essence they are about the distinction that can be drawn between risks on the one hand and safety on the other — an event which raises risks may not, if responsibilities are clear and incentives to take care are harnessed, lead to an increased

accident rate. Government safety regulations and standards can play a useful supplementary role, but will not be the only mechanisms at work.

## **A. Main findings**

The main findings of ACIL's investigations are as follows:

### **.7 Health and safety management**

There is widespread acknowledgment that ground handling activities are accident prone. It is a relatively risky environment for workers and the equipment damage and public liability risks are high, especially in the ramp handling area. In addition third party risks to cargo in CTOs are high.

At the same time, insurance is available and underwriters are beginning to offer reduced premiums if certain safety programs are adhered to. In mid-1996, a UK/Australian study of ramp handling risks was undertaken to develop safety programs which would be purchased by cost conscious operators. Meanwhile it is understood workcare agencies in Victoria and New South Wales are refining premium scales to reward firms for improved personal accident records. These are all voluntary responses which are likely to weaken the link between the inherent risk of CTOs or ramp handling and the accident rate. The upshot is that if new entrants to the ramp handling business were to raise the inherent risk, given the measures being introduced there is no reason to suppose that a rise in the accident rate would necessarily follow. Voluntary avoidance measures might even allow a reduction.

An important qualification to this is that it is not obvious on what basis permitting an extra operator to compete for business would lead to the greater crowding considered to be dangerous — in ramp handling at least. There may be some validity in the FAC's suggestion that with more contestants there must be some operators who are less experienced than if only the incumbents were still operating. However, it must be said that it will be the frequency of flights which determines how crowded aprons become, not the number of parties permitted to bid for the loading and unloading task. The basis for restricting contestability is not clear.

These are *a priori* arguments. In addition one can ask: what does the safety record show to be the relationship between the density of ramp operations, or eligible operators, and the accident rate? Unfortunately, a cross-sectional comparison of the records of Australian airports on either the equipment damage or human accident sides has not been possible in the time available. Nor has time permitted a study of outcomes within airports; although Victoria's Workcare Authority appears to have the data to enable a detailed picture of workers compensation cases at MA over time to be assembled, access to such data may take some time to organise. Interestingly, none of the critics of the idea of a CTO gaining a right to compete for ramp handling have presented the data to support their cases.

The final point to make on health and safety is that around the world airports have demonstrated an ability to cope with increased contestability for CTO and ramp handling services using operational systems which seem very similar to Australia's. In particular (and in specific answer to the Pilots Association's expressed fears) although it is not the rule, there are instances where non-airline ramp handling is undertaken safely and is undertaken overseas — the protection for users in these cases comes from a combination of airport-administered standards, incentives for care provided by insurers and perhaps most important of all, the jealous guarding by the firm of its reputation in a fiercely competitive environment. It is significant that British Airways, long the UK's largest airline and ramp handler, is said to be in the throes of contracting-out its British ramp handling requirements in order to focus better on its core business. It has already ceased self handling in Johannesburg.

Given the advice by insurance industry representatives that there is plenty of room for improvement in procedures in Australia; our lack of comparative physical and financial accident data; and the British and American regulators' apparent acceptance of some limitations on ramp handler numbers partly on safety grounds, ACIL cannot be dogmatic on this point. However, generally speaking, the case for restraints on the numbers of contestants (whether or not airline-aligned, and whether of off-airport or on-airport origin) on safety grounds seems weak. In short, added contestability should itself be a spur for added care, and there is every reason to believe that procedures which would enable several more operators to compete at KSA and MA for CTO and ramp handling business could be readily put in place, if they do not exist already.

## **.8 Viability**

On the subject of off-airport operator viability, there are a number of commercial advantages and disadvantages to consider. First, as regards costs, an off-airport CTO is likely to have the advantage of being able to establish premises without the tenure restrictions imposed on-airport. In this sense, regardless of nominal rental rates, premises costs are likely to be cheaper. Moreover a newly established off-airport CTO may be able to reach an enterprise bargain which circumvents the overmanning the current on-airport CTOs are said to suffer from time to time through demarcations maintained between the domains of the Storemens and Packers Union (CTOs) and the Transport Workers Union (ramp handling). Labour costs are typically as much as 40 per cent of total costs in ground handling, so savings here could be substantial.

On the debit side, an off-course CTO will face an additional haulage cost to and from the airport, although that is a cost a proportion of its clients will not now face, so the actual disadvantage this represents need not be strong. The requirement to meet the security standards demanded under Section 17(b) of the Customs Act (some of which on-airport CTOs can avoid because their generally more “secure” environment) is another cost.

Arguably the most important differential cost of all is the additional handling that will be required placing cargo on and off dollies from the vehicle used to transport the cargo to and from the off-airport CTO. This is not a cost that on-airport CTOs face and, whether or not roller beds are also used adjacent to the dollies, apart from the physical handling cost, a cargo damage risk from the extra handling will be borne.

The suitability of off-airport CTOs for time-sensitive exports and express freight may also be threatened by the need for this extra step. Much depends on the contestability of express handling facilities on the airport perimeter — the absence of independent bypass services of this type in Australia is evidently one of ACTO's concerns.

Direct trucking to the side of the aircraft, a procedure already common with dedicated freighters and routinely seen at Heathrow and San Francisco, is another bypass option. It is at this point in the discussion of cargo logistics that the question of an off-airport operation

becoming involved in ramp handling arises. Security and safety risks associated with the close proximity to aircraft of non-specialised (usually larger and less manoeuvrable) freight vehicles is the main problem. It seems unlikely that there would always be so much traffic as to warrant permanently denying this option. However, the relevance of such concerns on crowded and inherently dangerous airport aprons is conceded.

If an off-airport operator were to enter the ramp handling area, it would need specialised equipment for the purpose — a potentially important cost especially if there is little volume of business. Options include leasing from other suppliers of the service or from a leasing company which itself serves a range of others. There is no need to assume that viability would not be possible through such approaches with quite low numbers of customers.

Ramp handling by off-airport CTOs or non-airline linked operators is not common, but it is observed in the UK (for example at Heathrow by CSC and Concorde Express, and at Gatwick by Servisair) and in the US (for example at San Francisco by Gateway). (Strictly speaking, both CSC and Gateway are KLM subsidiaries, but they say they behave as independents.) In Australia, an independent ramp handler which operates at KSA was identified — South Pacific Airmotive, handling five flights a week — and there may be others.

The regulatory environments at KSA and MA have not been examined in great detail. However, it is apparent that the application of existing FAC By-Laws (and Regulations governing safety and security other than those underlying the By-Laws) at both airports is impeding the viability of off-airport CTO and ramp handling service providers. A number of sources indicate that Australian ground handling charges are high by international standards (Simons Henderson 1997, Mr. T. Edwards pers. comm., Mr Peter O'Boyle pers. comm. and Mr Harry Hoge pers. comm.), and an increase in the contestability of certain key services required for the successful operation of off-airport CTOs — especially by-pass facilities for cargo already assembled (and perhaps cleared) in Customs bonded premises off-site — would, in ACIL's view, make a significant contribution to national income.

In the ramp handling area, the key requirement for off-airport operator competition would appear to be simply permission to operate in accordance with criteria that are no more restrictive than genuine security and safety concerns require.

An interesting issue related to the identification of these requirements is whether being in the nature of “rights” they could qualify as declarable services.