



15 January 2013

Mr Mathew Schroder
General Manager
Fuel, Transport & Prices Oversight Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Mr Schroder,

**Brisbane Airport Runway Demand Management Scheme
Submission to the ACCC by the Regional Aviation Association of Australia**

Executive Summary

- The design of the new Runway Demand Management Scheme at Brisbane Airport raises a competition issue that affects 7 of the 10 operators who currently conduct charter and freight services out of Brisbane Airport and reduces customer choice from 10 operators to 3 operators (only one of which is an independent regional operator).
- This Submission outlines the particular element of this scheme that is causing the competition impact and explains the specific nature of the problem.
- Attempts have been made to raise this problem with Brisbane Airport Corporation but there has been no success in getting the problem addressed, as detailed in this Submission.
- The Regional Aviation Association of Australia has therefore taken the step of raising this matter with the ACCC. It is an important matter of principle which affects regional airlines and the people and businesses of regional and remote Australia.

1. Introduction

1.1 The Regional Aviation Association of Australia (RAAA) is a not-for-profit organisation formed in 1980 as the Regional Airlines Association of Australia to protect, represent and promote the combined interests of its regional airline members and regional aviation throughout Australia.

The Association changed its name in July 2001 to the Regional Aviation Association of Australia (RAAA) and widened its charter to include a range of membership, including regional airlines, charter and aerial work operators, and the businesses that support them.

Serving regional aviation, and through it, the people and businesses of regional Australia

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The RAAA has 29 Ordinary Members (AOC holders) and 67 Associate/Affiliate Members. The RAAA's AOC members directly employ over 2,500 Australians, many in regional areas. On an annual basis, the RAAA's AOC members jointly turnover more than \$1b, carry well in excess of 2 million passengers and move over 23 million kilograms of freight.

RAAA members operate in all States and Territories and include airlines, airports, engineering and flight training companies, finance and insurance companies and government entities. Many of RAAA's members operate successful and growing businesses providing employment and economic sustainability within regional and remote areas of Australia.

- 1.2 This Submission to the ACCC raises a concern the RAAA has with the competition impact of the new Runway Demand Management Scheme at Brisbane Airport, and specifically the consequences for regional aviation, regional airlines, and the people and businesses of regional Australia.

The RAAA would welcome the opportunity to meet with the ACCC to discuss these concerns in more detail and to explore how the ACCC can assist in addressing the competition issue raised in this Submission.

2. The Brisbane Airport Runway Demand Management Scheme

- 2.1 Brisbane Airport Corporation (BAC) has introduced a Runway Demand Management Scheme (RDMS) to operate from the start of the Northern Winter 2012 scheduling season until such time as the new parallel runway is completed (anticipated to be 2020) or possibly longer. The RDMS will be administered by Airport Coordination Australia (ACA).

The rationale for the RDMS is to maximise the capacity of the existing runway system at Brisbane Airport and better manage congestion and schedule disruption.

Under the RDMS, all operators using the main runway system (01/19) will require a slot allocation from ACA for flights in and out of Brisbane Airport.

Whilst the RDMS does not technically apply to the secondary runway system (14/32) due to the inability to reliably schedule to the secondary runway, all flights arriving or departing Brisbane airport still require a slot. Further information related to the secondary runway is contained in section 4.5 of this Submission.

- 2.2 The RDMS is based on IATA's Worldwide Slot Guidelines (WSG) subject to some modifications including 'Local Guidelines' which are set out in Part 4 of the RDMS. A copy of the RDMS including these 'Local Guidelines' is contained in Attachment 1 to this Submission.

The essence of the RDMS is that slots will be allocated firstly on the basis of *historic precedence*. However, the Local Guidelines limit the eligibility of 'Non-RPT Operations' (defined in paragraph 4 of Part 4 of the RDMS) to secure historical precedence. Non-RPT Operations include fly-in fly-out (FIFO) services, charter and freight operations.

- 2.3 Under the Local Guidelines, Non-RPT Operations using aircraft with less than 50 seats are eligible to secure historical precedence only for *scheduled charter operations* and only where the operator has an *existing binding contract* with a third party (ie customer).

This means that upon expiry of existing scheduled charter contracts, operators using aircraft with less than 50 seats will lose eligibility to secure historical precedence. Further, operators using aircraft with less than 50 seats have no eligibility to secure historical precedence for *any new work*.

In relation to freight, BAC has confirmed that aircraft will be treated on the basis of the number of seats if configured for passenger operations. So operators using aircraft with less than 50 seats in passenger configuration have no eligibility to secure historical precedence for their freight work.

On the other hand, Non-RPT Operations using aircraft *with 50 seats or more* in passenger configuration are eligible to secure historical precedence when renegotiating scheduled charter contracts, as well as for new regular charter work and freight work.

- 2.4 This Submission is not challenging the introduction of the RDMS.

The issue raised in this Submission is the way the RDMS departs from accepted international practice through a 'local guideline' that introduces a *50 seat threshold* for eligibility to retain slots in relation to the renegotiation of scheduled charter contracts, tendering for new scheduled charter work and freight work.

3. The impact of the 50 seat threshold on Non-RPT Operations

- 3.1 Currently there are 10 operators conducting Non-RPT Operations at Brisbane Airport.

In relation to these, only 3 of the 10 operators use aircraft with 50 or more seats – being Qantas, Virgin / Skywest and Alliance. The other 7 operators, who are directly affected by the 50 seat threshold, are: Pel-Air (part of the Rex Group, 34 seats), Skytrans (36 seats), Brindabella (30 & 19 seats), JetGo (30 seats), Sharp Aviation (19 seats), Corporate Air (<19 seats) and Great Western Aviation (<19 seats).

- 3.2 All these 10 operators compete for the same customers (ie operators with <50 seats and operators with >50 seats compete in the same marketplace). In deciding which operator to use, the customer will consider a range of factors including its requirements (eg passenger numbers, frequency etc) and the size of aircraft that best fits those requirements.

Customer requirements are not cut and dried and will change over time. This is illustrated in an example given to the RAAA by one of its members, Pel-Air.

The experience of Pel-Air is that its Saab aircraft are best suited where the customer wishes to transport between 20 and 34 passengers. If its requirements change and the customer now has 40 passengers to transport, a larger aircraft is likely to be more suitable.

Pel-Air operated a scheduled charter service between Brisbane and Emerald, originally with a 12-month agreement to operate 3 x weekly Brisbane – Emerald (overnight) – Brisbane services from the end of 2011. However, in May 2012, the customer started to ramp up travel on the route and wanted a larger aircraft, as it faced problems managing travel on a Pel-Air charter and separately on RPT services. Pel-Air lost the work to Alliance which operates a larger 100 seat Fokker 100 aircraft on the route now.

The reverse situation could easily happen, especially as economic conditions wax and wane. A customer ramping down its travel may look to switch to a smaller aircraft to manage its requirements more efficiently.

However, this is where the RDMS Local Guidelines will have an impact because, for scheduled charter work, slot certainty is a critical factor for the customer as it goes to the ability of the operator to deliver the service at the time of day and day of week to meet the customer's business requirements.

In particular, mining companies by the nature of their operations find it essential to have very reliable services at defined times of day and days of the week, and the possibility of losing slots (or not gaining them in the case of a tender) and thereby not being able to guarantee service integrity will have a significant effect on the ability of operators with <50 seats to compete for or to retain FIFO contracts. Mining companies are not wedded to accepting the lowest price if that means a lesser service in terms of service delivery and schedule integrity.

So a customer whose requirements would be more efficiently managed by an operator with smaller aircraft could end up with no choice but to award its contract to a more expensive operator with larger (>50 seats) aircraft simply because the operator with larger aircraft can guarantee ongoing access to slots and the operator with smaller aircraft cannot provide such certainty due to the RDMS Local Guidelines.

- 3.3 The important point that the RAAA wishes to make is that the customers who need charter services to regional locations should be able to decide what is most efficient for their needs rather than having their choices dictated by the arbitrary 50 seat threshold for slot certainty chosen by the capital city airport.

The RAAA is concerned that the 50 seat threshold adopted in the RDMS Local Guidelines changes the mix of aircraft at Brisbane Airport regardless of what is efficient for customers and regional business needs.

This casts doubt on the ability of operators to win and retain work and compete in the marketplace because an arbitrary dividing line is drawn between one group of operators with eligibility to secure and retain slots and another group without that certainty. The RAAA is monitoring this situation but it should not be the case that RAAA members have to actually lose significant volumes of work before the ACCC takes any action. The RAAA is seeking timely action now (while operators are currently negotiating for new work and contract renewals) before irreparable damage is done.

To put this in terms of the number of competitors, suddenly customer choice for businesses who need charter services to regional and remote locations is reduced from 10 operators to 3 operators. If this were to occur through merger activity, it is something the ACCC would want to examine carefully from a competition perspective.

- 3.4 In relation to the impact on freight, currently freighter aircraft with a capacity of 42 and 19 seats are operated out of Brisbane Airport by Toll Aviation and freighters with a capacity of 34 seats are operated from Brisbane by Pel-Air on behalf of Australian Air Express (AAE)¹.

Both Toll and AAE have access to larger Boeing 737 freighter aircraft but these are not economical on the smaller freight runs so aircraft with a <50 seat capacity are used. If slots were to become unavailable for current or future freight operations for smaller freighter aircraft it would force the freight companies to use their larger uncompetitive aircraft or to abandon the smaller routes (for example, the Mackay – Rockhampton – Brisbane service operated by Pel-Air for AAE).

- 3.5 Whilst there are legitimate reasons for introducing a demand management scheme, the drawing of such an arbitrary dividing line in relation to slot certainty is unjustified and unnecessary. This is because the standard WSG ‘use-it-or-lose-it’ provisions adequately deal with the issue.

For example, if customers decide that larger aircraft are more efficient, then operators with smaller aircraft will lose their slots to operators with larger aircraft under the standard WSG ‘use-it-or-lose-it’ provisions.

Even where slot ring-fencing occurs – for example the ring-fencing of NSW regional slots at Sydney Airport – the accepted practice elsewhere is for the standard WSG provisions to apply within the ring-fenced pool (ensuring aircraft mix reflects customer choices).

4. Brisbane Airport’s response to these concerns

- 4.1 The RAAA was alerted to these concerns by the Rex Group which had raised them with BAC but had been unable to make progress in getting BAC to address them. Attachment 2 contains a chronology of the Rex Group’s attempts to raise the issue with BAC and copies of the correspondence referred to in this chronology are attached.
- 4.2 BAC has stated that the intent is to ensure “operators in a similar class are dealt with in a consistent and transparent way” (see the 4 September 2012 BAC letter to Rex). However, classifying operators by aircraft size is meaningless; the point should be that operators competing for *similar work* (ie in the same market) should be dealt with in a consistent way.

BAC has recognised this issue for *existing scheduled charter contracts* by providing that Non-RPT Operations using aircraft with less than 50 seats are eligible to secure historical precedence for the balance of the term of these contracts.

¹ In October 2012, Qantas reached agreement to acquire the remaining 50% of AAE from Australia Post (giving it full ownership) and to sell its 50% interest in StarTrack to Australia Post: see <http://www.aae.com.au/our-company/news/?show=10>. The ACCC conducted an informal review of Australia Post’s acquisition of the 50% interest in StarTrack (ref 49844 not opposed 1 November 2012).

However, that makes it all the more nonsensical to remove the 50 seat threshold for existing contracts but maintain this threshold for contract renewals and new work.

- 4.3 BAC's view seems to be that there is no *current disadvantage* in applying a 50 seat threshold in relation to slot certainty for contract renewal and new work. Its position (see the 31 October 2012 BAC letter to Rex) is that any "future and potential" commercial impact can be addressed when the RDMS is reviewed in consultation with industry after the initial one or two seasons of operation.

However, this will be too late for operators who in the meantime may have lost contracts or failed to win new work due to the impact of the 50 seat threshold in the Local Guidelines.

Rex has attempted to explain to BAC that the impact is not "future and potential" but rather "current and real" (see the 15 November 2012 Rex letter to BAC), but has received no response to this explanation. As a result, the RAAA has now taken up this issue on behalf of all affected regional operators.

- 4.4 The point the RAAA wished to make is that if BAC genuinely believes that eligibility for slot certainty is not needed for negotiating contract renewal and tendering for new work, then on the principle of consistency and transparency, make *all* Non-RPT Operations (regardless of aircraft size) eligible to secure historical precedence for existing contracts only.

If doing that would have a real and present impact on the ability of operators with >50 seat aircraft to negotiate contract renewals and tender for new work (which is assumed to be the rationale for conceding historical precedence to these operators), then by definition the current position has a real and present impact on the ability of operators with <50 seat aircraft to negotiate contract renewals and tender for new work up – especially as they are doing so up against operators with >50 seat aircraft who are eligible for slot certainty.

- 4.5 The RAAA understands that BAC has suggested two alternatives for operators with <50 seat aircraft – but these do not answer the competition issue.

First, BAC has suggested Non-RPT Operations using <50 seat aircraft can use other airports in the South East Queensland region such as Gold Coast and Sunshine Coast Airports. However, as has been explained to BAC, the customers in regional locations do not require services to these other airports; they require services to Brisbane. Clearly, such a move would render those operators with <50 seat aircraft uncompetitive as against operators with >50 seat aircraft who can offer services to Brisbane.

Second, BAC has suggested Non-RPT Operations using <50 seat aircraft can use the secondary runway, which is expected to return to service in February 2013. However, without going into too much detail, there are fundamental reasons why the secondary runway cannot be a solution to the issue raised with BAC.

Importantly, simultaneous runway operations are not allowed at Brisbane Airport. This means that if the main runway is being fully utilised, as would be the case if all slots were taken, then the secondary runway would be of little use. Additionally the secondary runway does not have instrument landing systems meaning that it is not usable in bad weather.

BAC noted in its briefing to airlines/operators about the RDMS on 6 August 2012 that there is “an inability to schedule reliably to the secondary 14/32 Runway”. Put simply, this means that the secondary runway is only suitable for managing overflow from the main runway and for ad hoc movements on the day (and then only if operational conditions are favourable).

As such, operators with <50 seat aircraft cannot bid for regular scheduled charter contracts on the basis of assuming use of the secondary runway to meet the customer’s required schedule.

Consequently, the core slot issue raised in this Submission with respect to historic precedence and the 50 seat threshold does not change.

5. Being vigilant to protect competition in regional aviation

5.1 Although the direct impact of the 50 seat threshold only affects Non-RPT operations, there is a broader impact for regional airlines, and the people and businesses of regional and remote Australia. This is why the perspective of the RAAA can assist the ACCC in understanding the special characteristics and needs of regional aviation.

5.2 For regional aviation, there is often no clear line between regional RPT and charter work.

For example, some customers such as mining companies may utilise a mixture of block purchase seats on RPT plus a scheduled charter contract to best meet their needs.

From an airline perspective, combining regional RPT and charter may maximise the use of assets in both activities and provide efficiencies across the full range of regional work.

For regional communities and businesses, there may be no RPT service available to a particular location or there may be a limited flight schedule that is not suitable for particular requirements, so there may be a need to rely on charter services that differs from the capital city experience.

5.3 Protecting competition in regional aviation means being vigilant about rules based on aircraft size or type, especially in the current climate.

The importance of regional operators to have secure access to capital city airports was highlighted by the Federal Minister at the RAAA convention in October 2012 – see press report extract below. That means *all* regional operators including both *independent* regional operators and the regional arms of the two main domestic carriers.

Albanese warns regional sector to remain vigilant (Australian Aviation, October 12, 2012)

The Federal Minister for Infrastructure and Transport has warned regional airlines they must remain vigilant as access to major airports continues to be under pressure. Addressing the RAAA convention today, the Minister said that although he would work to retain access to major city airports for regional airlines, major airport operators were continuing to press for change. He cited a recent representation from Sydney Airport in which the desire to remove regional airlines from the airport remains palpable. "So be vigilant. The threat is there. There is no second airport [and there is] increased pressure," Albanese cautioned, while urging regional operators to continue to work with the Government to push against ongoing pressure from major airports, particularly Sydney.

Albanese said the recent expansion of services by Rex and Virgin Australia between regional centres and major cities in Queensland, South Australia and New South Wales highlighted the critical ongoing need for regional carriers to continue to have access to capital city airports. "I again state this Government's support for regional airlines to be able to use major airports including during peak times. This is absolutely vital to Australia. ..."

- 5.4 The principle is that there is no need or justification for an arbitrary seat threshold in a demand management scheme. Its effect is disproportionate between the two main domestic carriers and the independent operators who are vital to healthy regional aviation. The RAAA notes that Alliance, the only independent operator with aircraft above the 50 seat threshold, supports the RAAA position on this issue because of the need to be vigilant in protecting regional aviation.
- 5.5 The RAAA seeks the ACCC's assistance in looking into the competition issue raised in this Submission and would welcome an opportunity to meet with the ACCC as soon as possible.

Yours sincerely,



Paul Tyrrell
Chief Executive Officer

ATTACHMENTS:

Attachment 1: Information Pack regarding the RDMS (zip file)

Contents of zip file –

- BAC letter to Operators 10 August 2012
- BAC Information Sheet
- RDMS Version 1.3
- BAC 6 August 2012 presentation
- ACA timeline details
- Cost details

Attachment 2: Rex correspondence with BAC (pdf file)

Contents of pdf file –

- Rex letter to BAC 20 August 2012
- BAC letter to Rex 4 September 2012
- Rex letter to BAC 14 September 2012
- Rex letter to BAC 22 October 2012
- BAC letter to Rex 31 October 2012
- Rex letter to BAC 15 November 2012