



Productivity Commission Inquiry into the Economic Regulation of Airports

ACCC submission in response to the
draft inquiry report

March 2019

1. Key points

The ACCC appreciates the opportunity to respond to the Productivity Commission's draft report into the economic regulation of airport services. The information provided in this supplementary submission is intended to build on the views contained within the ACCC's primary submission that was provided to the Productivity Commission on 17 September 2018.

In this supplementary submission, the ACCC has focused on the major airports of Sydney, Melbourne, Brisbane and Perth. As the four largest airports in Australia, these airports are the most relevant in terms of market power and the welfare gains from having an appropriately designed regulatory framework. The ACCC is also most familiar with these airports as they are the four airports currently subject to the ACCC-administered airport monitoring regime.

The key views in this submission are:

- The major airports exhibit strong natural monopoly characteristics and therefore face very little competition in the supply of aeronautical services. As recognised by the Productivity Commission, this provides them with strong market power. Based on the ACCC's experience from its regulation across the infrastructure sector, unconstrained monopolies that possess market power will use that power.
- While not conclusive, much of the information before the Productivity Commission suggests that there is a problem with airports using market power. Aeronautical revenue per passenger has increased significantly over the past decade to 2017-18. The increases at the four monitored airports range from 56.9 per cent at Sydney Airport to 137.2 per cent at Perth Airport.¹ The growing charges have enabled the monitored airports to consistently earn higher profits in aeronautical services. Increases in aeronautical profit over the past decade have ranged from 50.6 per cent at Melbourne Airport to 133.4 per cent at Perth Airport.²
- The current airport monitoring framework consists of ACCC monitoring, periodic reviews by the Productivity Commission and possible declaration under the National Access Regime. While this framework may have constrained airport behaviour in the past because of the threat of regulation, there are good reasons to consider that it is no longer posing the same threat to airports today, and will be less credible as a threat in future.
- Based on its experience, the ACCC does not believe that monitoring alone can constrain monopolies from using their market power to the detriment of consumers. However, the ACCC is either supportive of, or comfortable with, the specific draft recommendations with the goal of improving the monitoring regime. This goal would be further improved in relation to landside access services if the government provided a formal direction to the ACCC to monitor these services.
- Providing airlines with access to arbitration would provide a constraint on the monopolist airports' market power without jeopardising investment. We have not argued for price regulation that applies to other monopoly infrastructure in Australia or to airports in other jurisdictions. A commercial arbitration regime would be a pragmatic and flexible solution under which both airports and airlines can seek arbitration if negotiation between the two parties break down due to the exercise of market power. It is likely that having recourse to arbitration will be enough of an incentive to come to an agreement in negotiations, meaning that in practice few parties will seek to initiate arbitration.

¹ ACCC, Airport monitoring report 2017-18, p.17

² Ibid, p. 20

- The National Access Regime under Part IIIA of the *Competition and Consumer Act 2010* is not an effective constraint on the market power of the monopolist airports. It was initially designed for addressing access issues in vertically integrated industries. Whilst the ACCC believes that the regime is capable of dealing with monopoly pricing issues, the recent amendments to the declaration criteria and their interpretation may have increased the threshold for declaration to a point that it would be very difficult for an airport to be declared, and the declaration process remains lengthy and unwieldy.
- The Productivity Commission has said that it is not easy to distinguish between locational rents and market power, yet largely attributes car parking prices to the value that airport users place on convenience and proximity to the terminals. Dismissing the role of market power in this manner could provide the airports with greater confidence that they can increase prices without risk of condemnation in future reviews by the Productivity Commission.
- The ACCC supports the Productivity Commission's recommendation to remove clauses that it considered to be anti-competitive from airport contracts. These clauses include those which prevent airlines from seeking the declaration of airport services under the National Access Regime.
- The Productivity Commission's proposed modifications to the price notification regime for regional services at Sydney Airport appear reasonable. These changes could potentially give Sydney Airport more flexibility in its ability to manage slots and facilitate commercial negotiation between the airport and airlines.

2. Regulatory oversight of aeronautical services

2.1. Overview

The Productivity Commission's draft report into the economic regulation of airports found that all of the four monitored airports (Sydney, Melbourne, Brisbane and Perth) have market power in aeronautical services provided to airlines.

This is not surprising. The major airports exhibit strong natural monopoly characteristics and therefore face very little competition in the supply of aeronautical services. Even in south-east Queensland where there are airports located at Brisbane, the Gold Coast and Sunshine Coast, the majority of passengers would have no effective option than to use the airport located closest to their origin or destination.

The report also said that the market power held by the major airports created a *prima facie* case for regulatory intervention. As recognised by the Productivity Commission, firms operating in a market without effective competition can seek to raise their profitability by setting excessively high charges, operating inefficiently or making inefficient investment decisions.³ Regulatory intervention can help to protect the community's interests by constraining the firm from acting in this manner.

However, the Productivity Commission did not support any form of regulatory intervention in its draft report. This conclusion was informed by its view that the 'mere fact that an airport has market power is, of itself, insufficient to justify a change to the regulatory regime'.⁴ Rather, the Productivity Commission sought to assess whether the airports were actually using this market power. After looking at the airports' operational and financial performance, and the manner in which they conduct negotiations with airlines, it concluded that the four

³ Productivity Commission (PC) (2019) *Inquiry into the economic regulation of airports – draft report*, p. 64

⁴ PC (2019), p. 7

monitored airports have not systematically exercised their market power to the detriment of the community.

The ACCC considers that there is merit in assessing whether firms are using their market power. We attempt to do this each year as part of our role in monitoring the performance of the four airports. Furthermore, this assessment can also help to determine the level of regulatory oversight that would be appropriate for the industry under consideration.

As set out in our primary submission, the information provided under the airport monitoring regime does not allow for a conclusive assessment of the appropriateness of airport profitability. This is mainly because the various indicators and measures the ACCC uses to report on prices, costs and profits are based on historical accounting data. Furthermore, the ACCC has a number of concerns with the specific approach adopted by the Productivity Commission in its draft report, and the conclusions it has reached.

Even putting aside the limitations of the data, much of the information before the Productivity Commission suggests that there may be a problem with airports using market power. As set out in the ACCC's primary submission and its 2017-18 Airport Monitoring Report, aeronautical revenue per passenger has increased significantly over the past decade to 2017-18. The increases at the four monitored airports range from 56.9 per cent at Sydney Airport to 137.2 per cent at Perth Airport.⁵ The growing charges have enabled the monitored airports to consistently earn higher profits in aeronautical services. Increases in aeronautical profit over the past decade have ranged from 50.6 per cent at Melbourne Airport to 133.4 per cent at Perth Airport.⁶ Sydney Airport has accumulated over \$3.2 billion in operating profit from aeronautical services over this period. Moreover, data suggests that charges at Australian airports are relatively high compared with other airports internationally that face some constraint via regulation or government ownership (see Chart 1 in section 2.4).

In concluding that the major airports are not exercising their market power, the Productivity Commission has determined that the existing regulatory framework must be constraining airport behaviour. In the ACCC's opinion, there are strong reasons to question why airports would be effectively constrained by any of the ACCC monitoring, the periodic reviews by the Productivity Commission or the potential applicability of the National Access Regime. While these tools may have posed some threat of regulation in the past, it is highly unlikely for this to be true today, and would be even less likely in the future.

In the ACCC's opinion, the scenario facing the Productivity Commission and ultimately government is that:

- the major airports clearly have market power in the supply of aeronautical services
- there is inconclusive information about whether the airports are exercising this market power and
- there are strong reasons to consider that the regulatory framework is increasingly less effective in providing a constraint on airport behaviour.

In this context, it is appropriate to consider whether there are regulatory tools available to address the concern of market power. As set out in our primary submission, we consider that providing the parties with access to arbitration would provide a constraint on the airports' use of market power. A commercial arbitration regime would be a pragmatic and flexible solution under which airports and airlines can seek arbitration if negotiation between the parties break down due to the use of market power. It is likely that having recourse to arbitration

⁵ ACCC, Airport monitoring report 2017-18, p.17

⁶ Ibid, p. 20

would be enough of an incentive to come to an agreement in negotiations, meaning that few parties would seek to initiate arbitration.

The rest of this section examines aspects of the ACCC's view in more detail:

- the challenges with using monitoring data to conclusively determine whether an airport has exercised market power in relation to earning excess profits (section 2.2)
- specific concerns with the way in which the Productivity Commission conducted its profitability assessment (section 2.3)
- specific concerns with the way in which the Productivity Commission conducted its benchmarking of airport performance (section 2.4)
- the concern that the Productivity Commission is not justified in concluding that airlines can choose not to pay charges set by airports (section 2.5)
- why the existing regulatory framework does not provide a meaningful constraint on the behaviour of the major airports (section 2.6) and
- why an arbitration regime would be a flexible and pragmatic solution to addressing the market power held by major airports (section 2.7).

2.2. ACCC monitoring data does not enable a conclusive assessment of airport profitability

A key element of the Productivity Commission's assessment of whether airports are exercising their market power was an analysis of whether the monitored airports' profitability is above an efficient level. The Productivity Commission said that 'if an airport's risk profile is not changing and capacity expansions are possible, then any persistent increase in profitability above an efficient level may be the result of airports exercising market power.'⁷ The Productivity Commission has primarily focused on assessing the return on aeronautical assets (ROAA) measure in ACCC airport monitoring reports.⁸

The ACCC reiterates that its monitoring data does not enable a conclusive assessment of the appropriateness of profitability of monitored airports.⁹ In particular, the ROAA measure in ACCC airport monitoring reports, which the Productivity Commission has used in its assessment, is derived from accounting data and represents accounting rate of return rather than economic rate of return.

There is a large body of literature on why accounting rate of return is not a meaningful proxy of economic rate of return and should not be relied upon for analysis of monopoly profits (for example see Harcourt (1965),¹⁰ Solomon (1970),¹¹ Fisher and McGowan (1983)).¹²

Fisher (1984)¹³ provided a clear description of the main conceptual issue with using accounting rate of return rather than economic rate of return. The economic rate of return (typically measured by internal rate of return (IRR)) is a measure relating to a stream of

⁷ PC (2019), p. 163

⁸ The Productivity Commission draft report also includes some analysis of airports' profit margin. The Productivity Commission however did not consider profit margin a suitable measure for profitability and did not focus on that in its assessment.

⁹ For example see ACCC *submission to the Productivity Commission inquiry into the economic regulation of the airports*, September 2018, p. 13–14. Also see discussion of this issue in annual ACCC airport monitoring reports.

¹⁰ Harcourt, G. C. (1965), The accountant in a golden age, *Oxford Economic Papers* 17, 66–80.

¹¹ Solomon, E. (1970), Alternative rate of return concepts and their implications for utility regulation, *Bell Journal of Economics and Management Science* 1, 65–81.

¹² Fisher, F. M. and McGowan, J. J. (1983), On the misuse of accounting rates of return to infer monopoly profits, *American Economic Review* 73, 82–97.

¹³ Fisher, F. M. (1984), The misuse of accounting rates of return: reply, *American Economic Review* 74, 509–517.

profits to the investment that produces it. On the other hand, accounting rate of return is a ratio of current profits to current capitalisation.¹⁴ To put it simply, accounting rate of return does not measure the same thing as economic rate of return.

Table 1 below provides a simplified example to show the fundamental differences between these two concepts of rate of return.¹⁵ Given a hypothetical project which requires an initial outlay of \$100 and has net cash flow over its lifetime as shown in the table below, its economic rate of return (IRR) is 20 per cent over the life of the project. However, its accounting rate of return fluctuates between periods, and does not match the IRR. The table shows that under straight-line depreciation (\$25 in each period), its accounting rate of return ranges between -13.0 to 88.2 per cent. Further, if a different differentiation schedule is employed for the same project, the accounting rate of return may change even though its IRR will remain at 20 per cent.¹⁶

Table 1: Accounting and economic rates of return of a project

(\$)	Period				
	0	1	2	3	4
Net cash flow	-100	12	43.2	69.12	41.47
Accounting depreciation		25	25	25	25
Accounting profit		-13	18.2	44.12	16.47
Book value at beginning period		100	75	50	25
Return on investment (accounting rate of profit)		-13.0%	24.3%	88.2%	65.9%
Return on investment (economic rate of profit)					20%

Notes: Accounting rate of profit=accounting profit/book value at beginning period

Economic rate of profit is the discount rate that makes the net present value of the project equal to zero

Fisher (1984) further pointed out that this defect of accounting rate of return cannot be corrected by averaging it over a period of time. In the example above, the average of accounting rate of return over the life of project is 41.3 per cent compared with an IRR of 20 per cent.

However as Fisher noted, it is the economic rate of return which provides signals to firms' investment decisions and should be used in economic analysis of monopoly profits.¹⁷

In addition to this fundamental conceptual difficulty, there are also well-known measurement problems with accounting rate of return that would need to be addressed if it is used in analysis of monopoly profits. An example of this is the asset valuation issue, which is discussed below (see Bain (1941) for an in depth discussion of measurement issues¹⁸).

Given that the Productivity Commission has relied on the ACCC monitoring data (in particular, its ROAA measure), the Productivity Commission's analysis of airport profitability would be constrained by these limitations and, therefore, is unlikely to provide a conclusive assessment of the appropriateness of airport profits.

¹⁴ An alternative measure of account rate of return is current profits divided by shareholders equity.

¹⁵ This example is taken from Edwards, J., Kay, J. and Mayer, C. 1987, *The Economic Analysis of Accounting Profitability*. Oxford: *Oxford University Press*, Table 2.3, p. 19.

¹⁶ This is explored in Solomon (1970), which also shows that in addition to method of depreciation, accounting rate of return can be influenced by a range of other factors such as average productive life of assets and growth rate of firms.

¹⁷ See for example Fisher (1984).

¹⁸ Bain, J. (1941), The profit rate as a measure of monopoly power, *The Quarterly Journal of Economics* 55, 271–293.

2.3. The Productivity Commission's assessment of airport profitability

In this section, the ACCC offers its observations on a number of specific issues relating to the approach adopted by the Productivity Commission to assess airport profitability.

The Productivity Commission's draft report concluded that except for Sydney Airport, none of the other three major airports' profitability is consistent with the exercise of market power.¹⁹ While the Productivity Commission noted that Sydney Airport's profitability could be cause for concern, it nevertheless considered such concerns are ameliorated by a number of factors.²⁰

2.3.1. The Productivity Commission relied solely on trend analysis in its assessment of airport profitability

In order to assess the appropriateness of ROAA for each of the monitored airports, it would be useful to compare their ROAA with their weighted average cost of capital (WACC), which provides an estimate of the expected rate of return required from investors who provide funds to the airports.²¹

While the Productivity Commission acknowledged WACC as a reference point for assessing whether profitability is excessive, it did not consider it would be 'desirable to estimate a precise regulatory WACC for the current inquiry'.²² Instead it compared relative trends in the WACC for other infrastructure services and the airports' ROAA over the period of 2007–08 and 2016–17.

The ACCC questions whether a trend analysis alone can conclusively inform whether the airports' ROAA is appropriate. While an airport's ROAA may exhibit similar trends as its WACC, it would be impossible to determine from trends alone whether that airport's ROAA is either higher or lower than, or consistent with the WACC. For example, while an airport's ROAA and WACC may both decline over a period, its ROAA could be consistently above or below its WACC throughout the entire period.

2.3.2. The Productivity Commission's profitability measures are based on book value of assets

The Productivity Commission has relied on profitability measures derived from accounting data in its analysis. Specifically, the ROAA measure it used (which is sourced from the ACCC monitoring data) is based on book values of assets.²³ The Productivity Commission did not use a ROAA measure based on the economic value of airport assets, noting that seeking to estimate regulatory asset bases (RABs) for the airports would be 'inconsistent with the light-handed approach to airport regulation'.²⁴

As discussed in section 2.2, there are a number of measurement issues with using accounting rate of return in analysis of monopoly profits, which include determining asset bases. While book values may be sufficient for ongoing monitoring purposes, it would be useful to estimate economic valuation of assets when undertaking a robust economic analysis of profitability as part of a Productivity Commission review.

¹⁹ PC (2019), Figure 5.2, p. 136.

²⁰ PC (2019), p. 170–171.

²¹ It should be noted that higher ROAA than WACC (particularly over short periods) does not necessarily indicate exercise of market power. However ROAA consistently being above WACC would be cause for concern.

²² PC (2019), p. 163.

²³ The ACCC adopts a line-in-the-sand approach. See ACCC airports monitoring report 2017–18, Box 3.3.2, p. 23.

²⁴ PC (2019), p. 166.

Relying solely on accounting based asset values could potentially produce misleading results. For example, if the purchase price (book value) of an asset reflects a degree of monopoly rent, including the full purchase price in the asset base would result in ROAA being under-stated. On the other hand, if the book values of assets are below their economic values (for example, the book value of land can be lower than its economic value), it could lead to ROAA being overstated.

It should be noted that it is common for economic regulators of monopoly infrastructure to establish a regulatory asset base (RAB) for firms, underpinned by economic valuation of assets. The RAB is typically rolled forward periodically (accounting for investment and depreciation) and is used to derive the level of revenue required to appropriately compensate cost of capital.

2.3.3. High airport charges at Sydney Airport are not solely reflective of scarcity rent

The Productivity Commission considered that the WACC for the monitored airports has likely declined by 3 percentage points over the 10-year period to 2016–17.²⁵ While it noted that Sydney Airport's increasing ROAA in the same period raises some concern relating to exercise of market power, it considered that the concern could be ameliorated by a range of factors.²⁶ In particular, the Productivity Commission appears to consider that high passenger growth has likely resulted in scarce capacity at the airport and a potential need for the airport to ration demand with high prices. It noted that high prices 'would not be caused by an exercise of market power by the airport (or airlines), but by 'scarcity rents' that are created by regulations, to the detriment of passengers'.²⁷

This argument requires careful analysis. Typically capacity constraints would be a more relevant issue for an airport during peak periods due to airlines' preference for their flights to arrive/depart in those periods. In such a case, efficient prices should reflect airlines' willingness to pay (see PC (2019), p. 70). This would suggest the potential for adoption of some form of peak pricing, whereby airport charges are used to ration airline demands for slots in peak periods. However it would not be efficient to levy the peak prices for non-peak periods where there is no capacity constraint.

Over the 10 year period (2007–08 to 2016–17) examined by the Productivity Commission, Sydney Airport saw significant growth in both aircraft movement (23.3 per cent) and passenger numbers (28.5 per cent). While the airport may be approaching or has reached capacity constraints in peak periods, it is likely that there remains capacity available outside the peak periods. This would then suggest that efficient pricing at Sydney Airport should involve staggered rates for peak, shoulder-peak and non-peak periods.

It is unclear however whether aeronautical charges at Sydney Airport are consistent with this approach.²⁸ The Productivity Commission noted that Sydney Airport charges a flat rate for aeronautical charges regardless of demand. If this flat rate does reflect peak pricing, then it is likely that charges for flights outside of peak periods could be excessive. Further, given that Sydney Airport, like some of the other major airports, has in place a flight coordination scheme, which could be used to ration peak period demand,²⁹ airport charges might not have been used as a primary demand rationing tool. In that context, it would be useful to note that Sydney Airport's charges have been consistently higher than the other major

²⁵ PC (2019), p. 165.

²⁶ PC (2019), p. 170-171.

²⁷ PC (2019), p. 171.

²⁸ The pricing information collected by the ACCC in its monitoring typically relates to the 'rack rates' at the monitored airports.

²⁹ Slot coordination at Sydney Airport is governed by a specific set of rules in the *Sydney Airport Demand Management Act 1997 (Cwlth)* and associated legislative instruments.

airports since privatisation but have not risen as fast (15.3 per cent in 2007–08 to 2016–17),³⁰ which appears to suggest that its high airport charges do not solely reflect scarcity rent.

2.4. The Productivity Commission's approach to international benchmarking is problematic

An important component of the Productivity Commission's assessment involves comparison of the performance of major airports in Australia with airports overseas. Specifically, it compared the major Australian airports with other airports on the basis of three sets of indicators: aeronautical revenues and charges, operational efficiency, and profitability.

While the ACCC recognises the value of benchmarking, care needs to be applied to assessing the significance of the results where the airports being compared are largely heterogeneous. International comparisons of performance in most sectors is difficult, and particularly so in the case of the airport sector as airports differ on a wide range of factors such as size, throughput capacity, ownership, degree of government subsidy, effectiveness of regulation, service quality, level of congestion, and so on.

This is, to an extent, recognised in the Productivity Commission's report. The Productivity Commission notes the concerns of Airlines for Australia and New Zealand (A4ANZ) that comparisons of performance between international airports are to be 'treated with caution'. It also quotes the Australian Airports Association (AAA), which notes that 'differences in structure, operation, regulation, subsidy, etc. should be taken into account when interpreting the overall results'. The Productivity Commission agrees that 'data limitations and other factors make comparisons of airports across different countries challenging'.

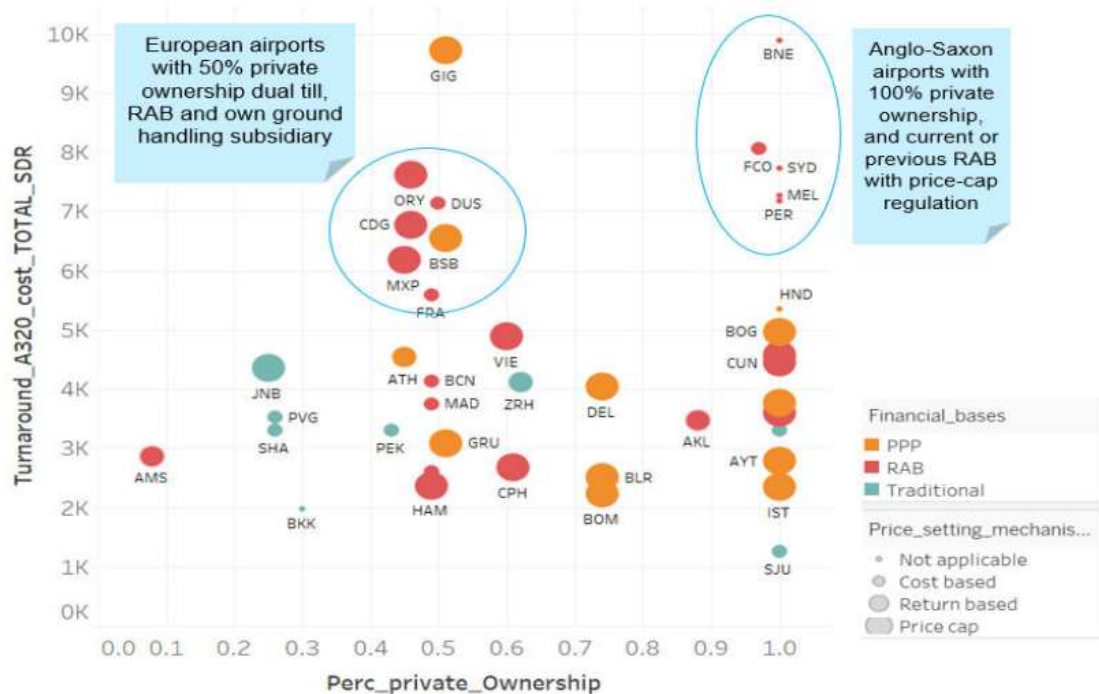
Despite these limitations and their influence on the comparative analysis results, the Productivity Commission appears to use this information to inform its conclusion that the major airports in Australia are not exercising their market power.

At a minimum, if benchmarking is going to be used, it is essential that either the comparator set is carefully chosen in order for comparisons to be meaningful, or that an approach is developed which would allow for differences in factors (such as size or service quality) to be controlled.

Benchmarking should recognise the heterogeneity of airports in terms of the varying degree of market power, public/private ownership and the prevailing regulatory regime. It is therefore most meaningful to compare the Australian airports with those that face some form of regulatory constraint, and as a result, are less likely to benefit from market power in their financial performance. For example, Chart 1 taken from the International Air Transport Association (IATA) submission to the review shows significant disparity in charges between the major Australian airports and overseas airports that face some form of regulatory or ownership constraint.

³⁰ Growth in aeronautical revenue per passenger at the other three monitored airports over the same period range from 31.4 to 58.8 per cent.

Chart 1: Turnaround cost of an A320 based on ownership and regulatory structure



Source: International Air Transport Association (IATA) submission, p. 10

2.5. Commercial negotiation between airports and airlines

The Productivity Commission has stated that commercial negotiations between airports and airlines give little cause for concern, despite finding that the monitored airports have strong market power.

The ACCC recognises that the two main domestic airline groups may have some limited countervailing power. However, it questions whether it is appropriate to conclude that there are no concerns with the ability for airlines to negotiate reasonable commercial terms.

2.5.1. Commercial agreement does not necessarily mean that a firm is not exercising its market power

In chapter 4 of the draft report, the Productivity Commission concluded that although commercial negotiations between airports and airlines are challenging, this is not unique to the aviation sector. It also concluded that ultimately 'airports and airlines have commercial and operational incentives to reach an agreement, especially given the need for new investments to meet demand growth and passengers' expectations of service quality'.³¹

The Productivity Commission went on to conclude that, commercial negotiations have typically led to formal agreements between airports and airlines. Based on this observation the Productivity Commission concluded that there is little reason for public policy concern and that market power has not been systematically exercised to the detriment of the community.

The ACCC is concerned that this conclusion could potentially be misleading. ACCC experience across a range of different sectors has found that the mere fact of reaching

³¹ PC (2019), p. 12.

agreement with a monopolist does not, in itself, indicate that market power is absent. Without recourse to enforceable arbitration, an airline may have had no choice but to take the airport's offer, and therefore has no reason to delay "agreement", even though the airport has substantial market power. It would be impossible to infer from the observation that airports have reached agreements with airlines that there are no further public policy concerns, or economic harm, experienced by the broader community.

The Productivity Commission goes further to argue that many airport operators use a BBM as a starting point for determining their aeronautical charges. The BBM is simply a tool for spreading sunk costs over time. If the inputs to the BBM are inflated, the resulting revenues and prices will be inflated. The ACCC is not aware of any regulatory restrictions which would prevent an airport from say, shifting the allocation of assets between aeronautical and non-aeronautical services, or proposing a high cost of capital. For this reason the ACCC considers that the fact that airlines make use of a BBM does not, in itself, imply that the resulting charges are cost-reflective or efficient.

Furthermore, the ACCC would like to reiterate that airline interests do not necessarily coincide with the interests of the broader community. Airlines naturally care about their own profitability which depends primarily on their position relative to their competitors. Although airlines can be expected to seek a commercial advantage in negotiations with airports they cannot be expected to seek lower prices overall for the benefit of the broader community.

2.5.2. Airlines do not have the ability to refuse to pay airport charges

A reason behind the Productivity Commission's conclusion that commercial negotiations do not raise concerns appears to be the view that airlines can refuse to pay charges at the level determined by the airport.³² The ACCC does not agree with this conclusion.

The Productivity Commission's draft report referred to various actions by Qantas Group in this regard. Firstly, it noted that Northern Territory Airports had argued that Qantas Group had refused to negotiate new long-term price agreements at Darwin and Alice Springs airports and continued to pay charges at the level of the expired agreement. Secondly, the draft report referred to Perth Airport commencing legal action against Qantas Group in December 2018 for the underpayment of charges.

However, there are arguments against readily concluding that airlines have this option. As mentioned, Qantas Group is currently facing legal action for this practice in relation to Perth Airport, while Northern Territory Airports is also contemplating taking the airline to court.

Furthermore, according to the Australian Airports Association (AAA), airport leases state that an airport may deny access in the event that an aircraft operator has failed to pay an invoice.³³ The AAA submission then went on to say that there would be some legal ambiguity about the airport establishing in court what debt was actually due.

Some uncertainty currently exists in relation to both the outcome of the court action against Qantas Group and whether airports could actually deny access to airlines. However, on balance, and from a practical perspective, there would seem to be more reason to presume that airlines will have to pay charges set by an airport than otherwise. It would be unworkable for airlines to essentially be able to choose how much they will pay for their airport services.

³² For example, see PC (2019), pp 12, 118–119.

³³ AAA submission, pp 75–76. The AAA submission said that its legal advisors have advised, based on opinion from senior counsel, that from a practical perspective the utilisation of these provisions would require first that the airport would need to establish in a court what debt was actually due.

2.6. The current framework is unlikely to be constraining airport behaviour

In its draft report, the Productivity Commission said that the monitored airports were not systematically using their market power in providing aeronautical services. The Productivity Commission has therefore determined that the framework—comprising ACCC monitoring, periodic reviews by the Productivity Commission, and the National Access Regime—is constraining airports from exercising market power.

While the framework may have constrained airport behaviour in the past because of a threat of regulation, it is unlikely to provide this threat today, and increasingly less so in the future.

2.6.1. The airport monitoring regime

As the name suggests, the airport monitoring regime does not provide a direct constraint on airport behaviour. Instead, the regime simply provides for the reporting of airport performance.

The Productivity Commission's draft report notes that the ACCC monitoring regime provides evidence to analyse airport performance and informs the assessment of market power. However, as discussed in more detail in section 2.2, data collected by the ACCC under the current monitoring regime is insufficient to make any conclusive judgement about whether the price levels observed for the monitored airports are reasonable or reflect monopoly profits.

2.6.2. Periodic reviews by the Productivity Commission

Periodic inquiries into airport regulation by the Productivity Commission are intended to provide some checks on the effectiveness of the regime and in turn some constraint on the misuse of market power by the monitored airports. While this arrangement might have done so in the past, it is much diminished today. There have now been four inquiries where the Productivity Commission has recommended against regulation. The credibility of threat has diminished each time an inquiry recommended no action. Airports would have little reason to believe that an inquiry in 2024 would lead to a recommendation for the government to regulate airports.

2.6.3. The National Access Regime under Part IIIA

In its draft report, the Productivity Commission argued that the ACCC and the airlines have failed to demonstrate why a negotiate-arbitrate framework specific to airports is needed when the National Access Regime enables airport users to seek declaration of airport services and subsequently to seek access to arbitration by the ACCC if negotiations fail.

The clearest evidence of the ineffective nature of Part IIIA of the Competition and Consumer Act (CCA) is that airlines and most other firms in the economy do not seek to use it. The airlines have made it clear over many years, and in this current review, that they believe the four major airports have not been providing reasonable terms of access. Despite this, it has been five years since an airline sought to have aeronautical services at Sydney Airport declared (which ended up being withdrawn by Tiger Airways), and 18 years for Melbourne Airport. No airline has sought declaration at Brisbane or Perth airports.

Airlines, and most other firms in the economy, have ceased to try to use Part IIIA for two main reasons. The first reason is that Part IIIA declaration processes can be lengthy and arduous, and are subject to merits and judicial reviews that can take years. Two examples are provided below.

- Coal producer Glencore first applied for a shipping channel service to be declared at the Port of Newcastle in May 2015. The matter was not settled until March 2018 after it had been considered by the National Competition Council, the Treasurer, the Australian Competition Tribunal, the Federal Court and High Court (which dismissed an application to hear a further appeal).³⁴
- Virgin Blue Airlines first applied for the declaration of airside services at Sydney Airport in October 2002. The matter was finally settled in March 2007 when the High Court dismissed an application for further appeal, but not before the matter had also been considered by the NCC (which made opposing draft and final decisions), the Treasurer, the Australian Competition Tribunal and the Full Federal Court.³⁵

A second reason for the airlines ceasing to use Part IIIA is that they have learnt that it is very difficult to get a service declared. The Virgin Blue application above resulted in the declaration of airside services at Sydney Airport for a five-year period from 2005. However, this is the exception rather than the rule. Over the last 23 years, only three of the 14 decisions by the NCC have been to declare a service. Even though it did not proceed to a final decision, the only other decision in relation to aeronautical services for passenger airlines (Virgin Blue application at Melbourne Airport in 2001) was a draft decision to not declare the service.

It has become more difficult to obtain declaration of a service in recent years. In 2017, the Federal Government revised declaration criterion (a) which related to promoting competition in a dependent market.

The effect of this amendment is clearly shown by the submission of the NCC stating that the government had responded to calls by both the Productivity Commission and the Harper Competition Policy Review to raise the threshold.³⁶ In particular, the submission says that a stated purpose of the amendment was to overturn the interpretation adopted by the Full Federal Court in declaring access to airside services at Sydney Airport and re-establish the interpretation that existed prior to 2006.³⁷ This clearly indicates that a similar application made today would be rejected.

The effect of the raised threshold for declaration is already evident. After Glencore secured the declaration of the shipping channel service at the Port of Newcastle three years after it first applied, the port used the revised criteria as a basis for the declaration to be revoked. The NCC's preliminary view under the revised criteria agreed that the declaration should be revoked.³⁸

Putting aside the recent amendments, criterion (a) has other implications for the likelihood of aeronautical services being declared. The criterion requires for declaration to promote competition in at least one other market than the market for the service. This shows that it is intended for addressing access issues in vertically integrated industries. That is, by providing access to bottleneck infrastructure for other firms, declaration can unlock competition with the vertically integrated infrastructure operator in the downstream market. However, this does not apply to non-vertically integrated sectors where a monopoly supplier of a service can still cause economic harm through its pricing. The ACCC has stated that policy makers

³⁴ National Competition Council, Application for declaration of shipping channel services at the Port of Newcastle, <http://ncc.gov.au/application/application-for-declaration-of-shipping-channel-services-at-the-port-of-new>

³⁵ National Competition Council, Application for declaration of the airside services at Sydney Airport, <http://ncc.gov.au/pre-2004-application/application-by-virgin-blue-airlines-for-declaration-of-the-airside-services>

³⁶ National Competition Council submission 79 to the PC inquiry (2018), pp. 8,9

³⁷ Ibid, p. 9

³⁸ National Competition Council, Consideration of possible recommendation to revoke declaration of service at the Port of Newcastle, <http://ncc.gov.au/application/consideration-of-possible-recommendation-to-revoke-declaration-of-service-a>

should consider alternative forms of regulation to address monopolistic pricing which contribute to inefficient economic outcomes.³⁹

Airports are an example of a non-vertically integrated sector because legislation restricts airports from owning or operating an airline. Therefore the issue concerning airports is primarily an issue of monopoly pricing rather than access to services.

Given all the reasons above, the ACCC's view is that airports would be confident that they face little risk of having their aeronautical services declared under Part IIIA.

2.7. A commercial arbitration regime would be a pragmatic and flexible solution

Given the market power held by the major airports, the ACCC continues to consider that the most appropriate policy response is to provide access to arbitration if airports and airlines cannot reach commercial agreement on terms of access including price. We consider that any arbitration should be undertaken by a commercial arbitrator to facilitate timely outcomes.

In its draft report, the Productivity Commission argued that making airport services subject to a negotiate-arbitrate framework had few benefits and many risks.

As explored in more detail in our primary submission, we consider that a commercial arbitration regime has benefits:

- It continues to place emphasis on airport terms and conditions being determined through commercial agreement. Any party frustrating commercial negotiations would face the threat of an independent arbitrator determining prices and terms of access. This threat can incentivise the party with stronger bargaining power to negotiate in good faith with the party with weaker bargaining power to reach agreement.
- Having an arbitration regime in place may prevent negotiation disputes escalating to court action. For example, it is possible that the court proceedings between Perth Airport and Qantas may have been avoided if parties had recourse to arbitration in the event of unsuccessful negotiations.

The Productivity Commission raised concerns about the possible impact of an arbitration regime on investment. It said that 'airlines that disagree with investment proposals...would have incentives to hold up investments that could increase airport capacity and competition between airlines'.⁴⁰ The ACCC assumes that any concern by the Productivity Commission in this regard would also extend to the possibility for arbitrations under the National Access Regime to airports, although the Productivity Commission considers Part IIIA to be an effective part of the regulatory framework.

The ACCC's primary submission put forward a suggestion that the potential for gaming by an incumbent airline could be addressed by implementing guidelines on how arbitrations should be conducted and what matters arbitrators should consider. The guidelines could include a requirement that consideration should be given to overall efficiency in operation of an airport, in particular having regard to the legitimate business interests of the infrastructure provider.

In responding to this suggestion, the Productivity Commission referred to the need for the arbitrator to evaluate the costs and benefits of any proposed investment across the airport

³⁹ Rod Sims (ACCC Chair), 'Increasing efficiencies in supply chains', speech to the ABARES Outlook Conference, 2 March 2016.

⁴⁰ PC draft report (2019), p. 315.

as a whole.⁴¹ While acknowledging that resolving disputes over access to infrastructure will always involve a level of complexity, the ACCC also considers that it should be incumbent on the airports to demonstrate the efficiency benefits of any investment project. Indeed, any airport that finds itself in arbitration should already have demonstrated these benefits and provided a model to justify the costs as part of its commercial negotiation with the airlines. Accordingly, much of the role of the arbitrator would be to provide scrutiny over this information.

Moreover, the ACCC considers that providing airlines with access to arbitration can act as an effective long-term restraint on the growth of prices at major airports, thereby protecting airport users against the threat of hold-up and facilitating long-term investment by both airports and airlines in the use of aeronautical services.

3. Car parking and landside access services

3.1. View on car parking prices underplays the role of market power

The ACCC agrees with the Productivity Commission's support for ongoing monitoring of the major airports' car parking operations. However, it is concerned that the views expressed in the draft report may provide the airports with confidence that they can increase prices without risk of condemnation in future reviews.

The Productivity Commission draft report concludes that 'there is little evidence that Sydney, Melbourne, Brisbane and Perth airports are exercising their market power in car parking.' The report identifies locational rents as the main explanation for the prices set by airports for parking. It also points to evidence of price reductions, investment into additional parking spaces or facilities, as well as competition provided by alternative transport modes to demonstrate that the airports are not exercising their market power in car parking.

The ACCC agrees with some of these factors to an extent. For example, car parking prices may reflect some locational rents and other transport options can place some pressure on airports to price some their services competitively. However, we consider it too dismissive and absolute to say that 'airports have not exercised their market power to the detriment of the community'.

Any monopoly can claim that profits earned or the high price charged for its services reflect the value that consumers place on that service. The fact that there are customers willing to pay the prices set by an airport does not allow us to conclude that high prices for car-parking or landside access services do not reflect the harmful exercise of market power. Without appropriate evidence (for example by establishing a benchmark that can distinguish locational from monopoly rents, or identifying competitive prices from monopoly prices), this argument underplays the role of market power and justifies rising prices and profit margins.

The ACCC considers the issue not to be whether airports are exercising their market power, but that it is very difficult to quantify the extent to which they have abused this market power. Developing a methodology and collecting reliable and appropriate information that would assist in distinguishing locational from monopoly rents is very difficult (see section 5.1.1 of the ACCC's original submission for further discussion on the difference between locational and monopoly rents).

Despite these challenges, the ACCC remains concerned with not only the increasing prices charged by airports for car parking, but the significance of operating profits (EBITA) earned. One of the main arguments made by airports in response is that as a measure, operating

⁴¹ Ibid, p. 314.

profit does not take into account the capital-intensive nature of providing car parking services, including the value of land. The Australian Airports Association also submitted that high EBITA profit margins can be ‘largely explained by locational rents and convenience premiums’.⁴² On the other hand, it also agrees that it is difficult to clearly distinguish between locational and monopoly rents, or place a value on the opportunity cost of land.

As the sole providers of car parking on airport land (in most cases), airports can limit competition by controlling the supply of car parking facilities as well as landside access terms and conditions. In doing so, both consumers and landside access users (i.e. operators of alternative transport modes) may be, and possibly have been, adversely affected by this behaviour.

The draft report raises some concerns about landside access charges but dismisses concerns with car parking. In its analysis, the Productivity Commission has compared the prices of car parking at major airports with the price of parking near other important sites such as stadia or hospitals. We question, however, whether this is a valid comparison.

One question is whether it is correct to compare the price of car parking at an airport with the price of car parking at a nearby CBD, for example. CBD parking is likely to be competitive, with a number of independent competing providers, but car parking in the CBD is also likely to be expensive due to the high opportunity cost of land. Airports, on the other hand, are often located well outside the centre of the city, and often have an abundance of land, which they often use for other activities (such as retail centres or, as in the case of Melbourne, a surf park). In other words, the opportunity cost of land in the vicinity of the airport is often relatively low. The challenge for the airport is making that land convenient and easy to use for parking, through the provision of convenient on-site transportation.

When seeking to detect the presence of market power in car parking charges, the relevant comparison is not with the price of parking in high-cost CBD centres but rather, the price of parking that would arise if all the available airport land was made available for the competitive provision of parking and other retail services and the airport ensured that transportation to and from those competing car parks was easy and convenient. By failing to provide easy access to slightly-more-remote parking facilities, an airport can increase the market power of the closest-to-terminal facilities.

We consider that, without constructing this counterfactual, the Productivity Commission is not in a position to conclude that “airport car park prices can largely be explained by the value that airport users place on convenience and proximity to the terminal”.⁴³

3.2. Whether major airports have exercised market power in the supply of landside access services

The Productivity Commission report notes that there is insufficient evidence to determine whether airports have exercised their market power in relation to landside access⁴⁴ but due to concerns raised by some landside operators in relation to the ‘adequacy of infrastructure and consultation arrangements at some airports’, it will ‘withhold its judgement....until the final report’.⁴⁵

The ACCC considers that airports hold strong market power in providing landside access to transport operators, which typically requires access to bottleneck infrastructure (e.g. terminal

⁴²Australian Airports Association, submission 50 to the PC Inquiry (2018), pp. 96-97.

⁴³ PC (2019), p. 179.

⁴⁴ Ibid

⁴⁵ PC (2019), p. 203.

forecourt areas). As noted previously, the ACCC considers that it would be prudent to assume that firms will use their market power if there is lack of conclusive evidence that they have not and there is an absence of effective regulatory oversight that would prevent the airports from doing so.

Furthermore, while some airlines have a degree of countervailing power, this is not the case for landside operators. Some operators recently raised concerns to the Productivity Commission that airports offer inadequate consultation and limited transparency around their cost allocation methodologies that would justify any increase to charges, or changes to terms and conditions.⁴⁶ Operators have also approached the ACCC raising similar concerns.

4. The Productivity Commission's proposed changes to the monitoring regime

The Productivity Commission's draft report made a number of recommendations on how the current monitoring regime should be improved. The ACCC considers that the proposed changes by the Productivity Commission appear broadly reasonable. However while these changes may improve monitoring marginally, monitoring alone does not provide an effective constraint on the airports' market power.

4.1. The ACCC to review quality of service measures

The Productivity Commission's draft report considered (draft recommendation 10.5) that the ACCC should review and update the quality of service measures that reflect outcomes that are valued by airport users (airlines and passengers).⁴⁷ In particular, the Productivity Commission considered that it would be useful to incorporate the indicators that airports and airlines use in their service level agreements (SLAs).⁴⁸

The ACCC agrees that it is timely to undertake a comprehensive review of its quality of service indicators. It has been six years since the previous such review in 2013, which was requested by the government in response to the 2011 Productivity Commission inquiry. Revising some of the objective indicators (e.g. flight information display screens) that do not adequately capture innovation in modern airports may provide better reflection of the quality of the passengers' experience at the monitored airports.

The ACCC also agrees that SLAs agreed between airports and airlines could provide useful guidance for the types of measures that should be included in the regime administered by the ACCC. Using the same indicators may also help reduce some of the reporting burden on the airports. However, it is also recognised that SLAs are still relatively new and developing.

4.2. The ACCC to collect and report disaggregated data on international and domestic aeronautical services

The Productivity Commission's draft report recommended that the ACCC's annual monitoring report should include separate reporting of costs and revenues in relation to the provision and use of aeronautical services for domestic and international flights (draft recommendation 10.4).⁴⁹

⁴⁶ Andrew's Airport Parking Group, submission 30 to the PC Inquiry (2018), and Australian Finance Industry Association, submission 67 to the PC Inquiry (2018).

⁴⁷ PC (2019), p. 39, 303.

⁴⁸ PC (2019), p. 24, 303.

⁴⁹ PC (2019), p. 23, 39, 303.

The Productivity Commission found that Sydney and Brisbane airports' charges for international services are relatively high when comparing with overseas airports.⁵⁰ It considered that a detailed breakdown in costs and revenues data on international and domestic services would help inform analysis of whether airport charges for these services are excessive.

The ACCC is broadly comfortable with the proposed change. Further breakdown between international and domestic services can increase transparency in airport pricing. In fact, the ACCC calculated separate revenue per passenger for international and domestic aeronautical services using its current monitoring data in the preparation of the 2017–18 airport monitoring report. It decided not to publish this information after a number of airports raised confidentiality concerns. It may revisit this approach for future reports depending on the views of the Productivity Commission in this inquiry.

However there are a number of limitations associated with disaggregating data into specific aeronautical services. First, the allocation of common costs arising from the use of common infrastructure (e.g. runway, or terminal in the case of Perth Airport) could be challenging for the monitored airports and the methodological issues may give rise to scope for discretion. As different airports may follow different cost allocation methods, the ACCC may play a role to ensure consistency in future.

It is also unclear to what extent a further breakdown of international and domestic passenger data would help enable a conclusive assessment of airport charges. Revenue and cost information would shed light on airports' profit margins in these services. However, the Productivity Commission considered that the appropriate profitability measure to use is ROAA. However, because airport investment decisions relating to these services are likely to be related rather than independent of each other, it may not be meaningful to separately estimate ROAA for those services. For example when an airport decides whether it will build a new runway which will be shared by both services, it will seek to compare the total expected return from both services with the total cost of investment, rather than considering whether the expected return from each will be sufficient.

4.3. Proposed changes to the monitoring of car parking services

The Productivity Commission recommended that more information, such as about utilisation rates for at-terminal and at-distance car parking, would enable 'a more detailed analysis of whether airports have exercised their market power in car parking'.⁵¹

Draft recommendation 10.4 specifies that statements should 'separately show the number of users, costs and revenues in relation to the provision and use of at-terminal and at-distance car parking and the utilisation rates for each type of parking'.⁵²

Given the ACCC considers monitoring to be more effective in relation to car parking than aeronautical services, we support the collection of more detailed information, particularly on car parking expenses for each type of parking. However, data on utilisation rates and revenue information by car park type is already collected and published as part of the monitoring regime. We will consider whether further information collected from the airports on this matter could be included in the monitoring report.

⁵⁰ PC (2019), p. 299.

⁵¹ PC (2019), pp. 300-303.

⁵² PC (2019), p. 39.

4.4. Proposed changes to the monitoring of landside access

As acknowledged by the Productivity Commission, there have been challenges in relation to collecting consistent and reliable data on landside access services. Draft recommendation 10.4 specifies that additional information on landside should be collected as part of the monitoring regime. Specifically it requests statements that 'separately show the number of vehicles that use landside access services, charges and other terms of access for each landside service, and the operating costs and revenues in relation to the provision and use of the various landside access services, such as services for shuttle buses, taxis and hire cars'.⁵³

The ACCC supports the collection of more detailed information to enhance this function. In particular, the ACCC supports the collection of:

- more detailed information on landside access expenses, such as the operating costs of providing landside access services, and
- more specific information on landside access utilisation rates, by service type.

However, as submitted in its original submission, the ACCC considers that it should be issued with a formal direction to monitor landside access services similar to its monitoring of aeronautical and car parking services under Part VIIA of the CCA.

In the absence of a formal direction, the ACCC has so far proactively sought and published more detailed information on prices, utilisation, terms and conditions where possible in the latest airport monitoring report, and will continue to do so for future reports.

4.5. The recommendation for the ACCC to publish a database for monitored airports

The Productivity Commission's draft report (draft recommendation 10.4) proposed that the ACCC publish a database of information provided by the monitored airports.

In recent years, the ACCC has begun to publish airport data in spreadsheet format on its website, which forms part of its monitoring reports.⁵⁴ This includes airport regulatory accounts, car parking pricing and operational data, and aeronautical service operational data.

The ACCC sees merits in continuing to do so which can facilitate stakeholders' understanding of airport monitoring reports. The ACCC will consider expanding the online dataset, which can potentially include a database that underpins the data in its monitoring reports.

The Productivity Commission also proposed that the ACCC should audit this database (draft recommendation 10.4). There are a number of processes and mechanisms as part of the ACCC monitoring to ensure accuracy of data. First airports are required to have their regulatory accounts audited by an auditor. The ACCC also has a process where it has ongoing engagement with the airports on data related issues. Moreover the airports are provided with opportunities to check and validate accuracy of data prior to public release of the reports.

The ACCC however notes that it is less clear about the Productivity Commission's meaning of undertaking an 'audit' of the database as an audit in its typical meaning would involve an

⁵³ PC (2019), p. 39.

⁵⁴ The data sets for the 2017-18 report is available at <https://www.accc.gov.au/publications/airport-monitoring-reports/airport-monitoring-report-2017-18>.

official examination of matters by an independent auditor. The ACCC therefore seeks clarification from the Productivity Commission regarding this issue.

4.6. Providing the ACCC with the power to make record-keeping-rules

In its primary submission, the ACCC considered that an option for addressing the issue of information asymmetry in negotiation between airports and airlines is to provide the ACCC with the ability to make rules about what type of information the airports must keep and disclose, by possibly amending the Airports Act to give the ACCC power to make record-keeping-rules (RKR).

In its draft report, the Productivity Commission said that it might consider recommending RKR in future, but at this stage recommended enhancing the annual financial and quality of service monitoring instead.⁵⁵

While the ACCC broadly agrees with the Productivity Commission's recommendations for enhanced monitoring, it maintains that giving the ACCC power to make RKR would provide the ACCC with the ability to collect the data required for assessing airport prices and profits. Importantly, RKR powers would provide the flexibility for the ACCC to regularly assess the ongoing need for the data provided by the airports and amend the requirements when necessary. RKR could also potentially help facilitate negotiations between airports and airlines if airlines do not have sufficient information.

In its draft report, the Productivity Commission noted the view put forward by the ACCC in its submission that the process of making an RKR is likely to take some time and may initially be costly.⁵⁶ To clarify, this depends on whether the RKR would represent a new approach to industry monitoring (for example, with elements of the New Zealand regime). Simply replicating the existing reporting obligations in an RKR would be relatively simple and not costly.

5. Problematic clauses in agreements between airports and airlines

The Productivity Commission noted that some agreements between airports and airlines contained clauses that it deems to be anti-competitive.

One type of clause seen in some agreements contained financial disincentives or loss of contractual rights if an airline were involved in a declaration application under the National Access Regime. While the ACCC believes these clauses do not appear to directly harm competition in either the airport or airline sector, they have the potential to undermine the regulatory regime by reducing the threat of declaration.

Another type of clause restricted the ability of an airport to offer lower charges or other incentives to airlines other than the signatory airline. The Productivity Commission noted that these 'no less favourable' clauses protect the incumbency of an airline that negotiated these favourable terms.

The ACCC agrees with the Productivity Commission's view that such clauses should be removed from all agreements.

⁵⁵ PC (2019), p.306.

⁵⁶ PC (2019), p. 306.

6. Regional air services at Sydney Airport

6.1. Proposed changes to the price notification regime

The Productivity Commission draft report considered the efficiency and effectiveness of the price cap and price notification regime at Sydney Airport. The regime operates under Part VIIA of the *Competition and Consumer Act 2010* and is administered by the ACCC. While the Productivity Commission considered that the price cap should be restrained in its current form at this time given its potential benefits at the margin,⁵⁷ it noted that ‘the public nature of price notifications could discourage commercially negotiated outcomes between Sydney Airport and the airlines operating regional flights.’⁵⁸

In relation to Sydney Airport’s regional air services, the draft report recommends, among other things, that future Declarations relating to the regional price caps and notification regime should only apply to:

- regional flights operated through permanent regional service slots (Productivity Commission draft recommendation 7.1)
- aeronautical services that are not covered in commercial agreements between Sydney Airport and airlines, with prices in the commercial agreements being excluded from being used to assess whether the airport has breached its obligation under the price notification regime (Productivity Commission draft recommendation 7.2)

The ACCC previously submitted that while regulatory oversight is necessary to constrain the airport’s ability to exercise its market power, applying regulatory control to only some of the services (such as regional air services) at the airport is likely to have efficiency implications.⁵⁹ However, the ACCC recognises that there are other policy objectives central to the regime.

The Productivity Commission’s draft recommendations would limit the scope of the price notification regime to services provided outside of commercial agreement. Both Sydney Airport and some of the airlines that use regional air services (e.g. Regional Express) appear supportive of this proposed change.⁶⁰

The proposed modifications appear reasonable given that they could potentially provide more flexibility in the airport’s ability to manage its slots and facilitate commercial negotiation between Sydney Airport and airlines that supply regional air services at Sydney. They are unlikely to result in a weakening of the protection of regional services as airlines that do not have a commercial agreement with the airport will continue to be charged notified prices. It is also envisaged that notified prices will also provide an anchor point for prices negotiated between airlines and the airport.

6.2. Proposal for the monitoring regime to disaggregate specific data on regional air services at Sydney Airport

In connection with its finding regarding the price notification regime, the Productivity Commission also recommended that the ACCC’s monitoring regime be expanded to include data on costs and revenues in relation to the provision of regional air services (see Productivity Commission draft recommendation 10.4). It noted that this ‘would allow the costs of the regional access arrangements to be more easily assessed and then evaluated

⁵⁷ PC (2019), p. 207.

⁵⁸ Ibid.

⁵⁹ ACCC (2018), p. 56.

⁶⁰ PC (2019), p. 228

against their potential benefits'⁶¹ when it reviews the continued need for regional access arrangements in light of the development of Western Sydney Airport in its next airport inquiry.

The ACCC considers that additional data on regional air services may help inform further cost/benefit analysis of the regional access regime. However, it should be noted that regional services share common infrastructure with other services at the airport, and therefore their costs would be influenced by the airport's approach to cost allocation, which can be quite subjective.

⁶¹ PC (2019), p. 229–230.