



BARA supplementary submission

Sydney Airport submission – inaccurate statements about BARA

The Board of Airline Representatives of Australia (BARA) wishes to bring to the Productivity Commission's attention what it considers to be some inaccurate statements about BARA made by Sydney Airport in its submission dated 3 September 2018 to the Commission's Inquiry into the *Economic regulation of airports*. In BARA's view, Sydney Airport has made inaccurate statements about the publicly-stated positions of both BARA and the Australian Competition and Consumer Commission (ACCC) on the specific matters noted below.

BARA's position on Sydney Airport's 'Conditions of Use' documents

Sydney Airport has stated in its submission that BARA has 'endorsed' (generally understood to mean declared approval or supported) its previous 'Conditions of Use' (COU) documents, stating:

after privatisation: Sydney Airport negotiated COUs, the form of which was endorsed by BARA (p.51)

and:

2006: following the 2006 PC Report, Sydney Airport settled a new commercial agreement endorsed by BARA (p.51)

BARA's position on the quality of Sydney Airport's COUs is summarised in its submission to the Productivity Commission's 2011 Inquiry into the *Economic regulation of airport services*, which stated:

BARA has been involved in lengthy negotiations with SACL generally aimed at the establishment of a balanced longer-term commercial agreement for aeronautical services and facilities. The negotiations have been problematic from the beginning, with SACL simply making demands for higher profits and prices, putting forward pricing proposals designed to generate excessive returns on existing assets and proposing 'commercial' agreements that were in many respects more draconian than those proposed by the previous FAC. (p.25)

and:

The existing draconian SACL 'Conditions of Use' document needs to be scrapped and a more balanced commercial agreement negotiated with international airlines. (p.3)



BARA has resupplied its correspondence from March 2005 to Sydney Airport in which BARA describes Sydney Airport's:

- threat-based negotiation tactics
- dismissive approach to BARA's commercial principles
- 'appallingly legalistic, convoluted and complicated draft contract'.

BARA considers its publicly-stated position and correspondence to Sydney Airport accurately reflects its position on Sydney Airport's COU rather than that claimed by the airport.

The ACCC's position on BARA's countervailing market power

Sydney Airport states that BARA has significant countervailing market power¹. Sydney Airport is entitled to state its position on this issue, but BARA considers that Sydney Airport has misrepresented the ACCC's position in respect of BARA's level of countervailing market power. In particular, Sydney Airport states:

The countervailing power of airlines through associations such as BARA has been acknowledged by BARA and the ACCC:

In its 2010 determination, the ACCC accepted that authorisation for BARA to continue to collectively bargain would result in public benefits including improved bargaining power and input into contracts, transaction cost savings and a small benefit through more efficient infrastructure investment. (p.43)

The issue of BARA's countervailing market power in negotiations with major international airports for airport services was determined by the ACCC in BARA's 2005 Authorisation², which stated:

With BARA's collective bargaining activities, airlines remain in the position where they have no alternative but to deal with the major airports. The ACCC also notes that the proposed arrangement does not include boycott activities. In these circumstances, any countervailing power the airlines may gain by collectively negotiating through BARA would appear to be limited. In that regard, the ACCC notes that the airport operators do not appear concerned that the proposed arrangements would increase the market power of airlines. (p.37)

In its 2010 Authorisation³, the ACCC further stated:

In the context of BARA's application for re-authorisation, the ACCC considers that collective negotiations by BARA with the major international airports may result in a small improvement in the bargaining position of airlines. (p.19)

In BARA's 2015 Authorisation, the ACCC is simply restating the position established back in 2005, namely collective negotiations by BARA can provide a small improvement in bargaining power for airlines from a very low base.

¹ Sydney Airport submission (3 September 2018), p.43

² ACCC (July 2005), Determination, Application for authorisation lodged by the Board of Airline Representatives of Australia, Authorisation number A30232 (Commissioners: Samuel, King, Martin and Smith).

³ ACCC (May 2010), Application for revocation and substitution of an authorisation, Authorisation number A91200 (Commissioners: Samuel, Kell, Schaper, Court, Dimasi, Walker and Willett).



BARA's role in the annual airport quality surveys

Sydney Airport's statement about BARA's role in the ACCC's airport service quality survey that is emailed to airlines to complete is incorrect:

Currently, very few airlines participate in the ACCC's survey, with responses generally only collected from Qantas, Virgin, BARA (which provides the amalgamated view of member airlines) and other smaller or regional airlines. (p.97)

BARA receives the electronic survey form from the ACCC and then emails it out to all member airlines apart from Qantas and Virgin Australia, as they receive the survey directly from the ACCC. Member airlines complete the survey and email it directly to the ACCC. BARA has no role when member airlines complete the survey, nor does it amalgamate any of the results.