



# Response to the Productivity Commission's draft report on economic regulation of airports

25 March 2019



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## Executive Summary

Brisbane Airport Corporation Pty Limited (BAC) welcomes the Productivity Commission's (the Commission's) Draft Report on the Economic Regulation of Airport Services. The Commission's findings reflect our view that the price monitoring framework has been effective in facilitating efficient investment and negotiated outcomes with airport users, to the benefit of the airport users, passengers and the broader community.

We endorse the analysis that has led to the Commission's findings and note that consecutive reviews have come to the conclusion that airports have not systematically abused any market power they hold and that the light handed framework is appropriate for the industry. This framework has provided for the investment needed at Brisbane Airport to continue to provide quality services to airline customers and passengers.

While the Commission has concluded that BAC has not misused any market power it holds, it has highlighted two potential areas of concern – international charges and quality of services.

The quantum of the international charges at Brisbane Airport primarily reflect the significant, lumpy investment in the International Terminal Building (ITB) expansion and runways since 2007/08, with significant building and apron extensions completed. The capacity investments made reflect the peakiness of the international demand at Brisbane Airport, with most international services landing during the morning peak. These investments, as well as operating costs and demand forecasts, were set out in the building block models which were shared with the airline customers during the negotiations for the services agreements.

As noted by the Commission, the level of charges in itself does not necessarily reflect the use of market power and the level of the charges should be considered in the context of the investment cycle, service quality and the overall returns to BAC. The following should be noted:

- The international terminal has been subject to significant investment in the past 15 years;
- Additional passenger processing facilities and floor space has been required to process international customers through quarantine and customs, which are not recovered through the mandated security charges;
- Service quality remains good; and
- Overall returns are moderate, and lowest of the monitored airports.

Taking all these factors into consideration, it is clear that the level of charges for international passengers does not reflect a use of market power. Rather, it reflects the relative investment in the international terminal.

Brisbane Airport has consistently ranked highly on the quality of aeronautical, car parking and landside access services provided at the airport. This is reflected in the monitoring reports published by the Australian Competition and Consumer Commission (ACCC) and the Commission itself has noted the consistently high service quality ratings at Brisbane Airport relative to other airports.

We understand from discussions with the Commission that there are potential concerns about the choice of performance and quality indicators and we would be happy to work with the



Commission and the ACCC in developing service quality indicators that better reflect what is important to airport users.

## 1. Introduction

Brisbane Airport Corporation Pty Limited (BAC) welcomes the Productivity Commission's (the Commission's) Draft Report on the Economic Regulation of Airport Services. The Commission's findings reflect our view that the price monitoring framework has been effective in facilitating efficient investment and negotiated outcomes with airport users, to the benefit of the airport users, passengers and the broader community.

While we concur with the Commission's overall finding that Brisbane Airport has not misused any market power it holds, there are some aspects of the Commission's Draft Report that warrant comment.

In general, this submission focuses on the particular issues of most concern to BAC. We also support the positions set out in the submission made by the Australian Airports Association (AAA).

BAC's response focuses on providing the additional information requested by the Commission and responding to specific observations made by the Commission. It is structured as follows:

- Chapter 2 provides our responses to the Commission's recommendation and information requests relating to market power and negotiating processes for aeronautical services;
- Chapter 3 addresses the Commission's recommendations and information requests relating to car parking and land side access at Brisbane Airport;
- Chapter 4 provides our responses to the Commission's recommendations and information requests relating to jet fuel supply; and
- Chapter 5 concludes with our responses to the Commission's recommendation and information requests relating to future regulatory arrangements.

We have provided a separate submission with further, confidential information.

## 2. Aeronautical services

This chapter provides BAC's response to the Commission's specific information requests and recommendations regarding negotiation processes and market power in aeronautical services.

### 2.1. Take it or leave it offers

The Commission noted claims by airlines that some airport operators have adopted take it or leave it positions during negotiations and has therefore requested further information on such offers made by airport operators.

#### *INFORMATION REQUEST 4.1*

*The Commission is seeking additional information or examples of take it or leave it offers by airport operators, including:*

- *scope and circumstances of the negotiation*
- *overview of the negotiation process and actions of each party*
- *negotiation outcomes, including acceptance of such offers by airport users*
- *the extent to which such conduct during the negotiation process may reflect an exercise of market power.*

#### ***Take it or leave it offers***

BAC notes that all services agreements with its airline customers are negotiated outcomes and not the result of airline customers being forced to accept take it or leave it offers. As we have stated previously, the extent of concessions and incentives provided to the airline customers demonstrate that these are negotiated outcomes, not take it or leave it outcomes.<sup>1</sup>

BAC has made offers capable of acceptance by airlines, usually following a protracted negotiation process and shortly before an existing aeronautical services agreement is due to expire. The subsequent commercial agreements reached with the airlines have reflected acceptance by the airlines of the offers, generally with a range of negotiated changes.

#### ***Other negotiating tactics***

The Commission also noted that an airport could gain bargaining power if it could deny access to the airlines. This is an impracticable position that cannot be realistically imposed. Airports cannot do this because their airport leases require them to provide access irrespective of whether there is a signed agreement in place, as has been acknowledged by airlines. Further, it would impact on the travelling public and an airport's revenue stream in a manner that is clearly uncommercial and impracticable to the airport. Denying access is simply not available to airports.

The Commission's suggestion that it is airlines, rather than airports, that have an incentive to hold out on reaching an agreement is correct. In finalising an agreement with an airline, a reconciliation of actual charges paid to those charges an airline would have paid under the agreement at the time an agreement is reached is common. However, the airline retains the

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<sup>1</sup> BAC, *Submission to the Productivity Commission's inquiry into airport regulation*, September 2018.

benefit of paying lower charges until such time as it chooses to sign an agreement with BAC, providing it with a significant negotiating advantage.

## 2.2. Risk sharing in aeronautical agreements

The Commission has requested further information on risk sharing between the airport and its airline customers.

### INFORMATION REQUEST 4.2

*The Commission is seeking additional information on the ways in which airports and airport users share risks through negotiated agreements including:*

- mechanisms to share investment risks, such as offers or use of take or pay contracts, where users are required to guarantee a level of future service use*
- current or proposed contract terms that do not reflect a reasonable sharing of risk, and the rationale for their use*
- instances where airport users have pre financed capital projects and why this did or did not represent a reasonable sharing of risk*
- the extent to which any risk transfer reflects an exercise of market power, and why.*

Under the current agreements with the airlines, BAC carries the majority of the volume risk, with prices set on a per passenger basis. This means that BAC carries the cost of lower than forecast passengers through lower revenue (and vice versa if actual passenger numbers are higher than forecast).

This contrasts to the heavily regulated electricity distribution sector, where the regulated business generally takes limited volume risk and where volumes are less volatile compared to airports. Under the revenue cap used by the Australian Energy Regulator for example, revenue shortfall (or over-recovery) in the prior year is subsequently recovered (or returned to customers) through an adjustment to revenue in the subsequent year.<sup>2</sup> There are no such provisions in the current services agreements we have with our airline customers.

We note that any claims by airlines that they bear the risk of generating demand and freight volume<sup>3</sup> should not be interpreted as being an obligation on them to meet demand or throughput targets for the airport. BAC does not have any agreements with airlines that obligates them to meet a minimum throughput. If they choose not to operate any flights (for whatever reason), the charges payable to Brisbane Airport will be nil. There are no “take or pay” arrangements and no capacity payment requirements in any of our agreements.

BAC believes that the risk sharing in the negotiated agreements is reasonable and reflects the relative bargaining power of the airports and airline customers, rather than an exercise of market power by the airport.

Airlines have previously argued that the rate of return should be commensurate with other regulated industries, such as the electricity network sector. However, notwithstanding a range

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<sup>2</sup> There is a delay in the adjustment to the revenue to allow for timing of price approvals each year.

<sup>3</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.128

of differences between the sectors, the extent of the volume risk borne by the airports means that this is not appropriate.

### ***Assets included in the aeronautical asset base***

The Commission referenced claims by airlines that over-runs in capital projects were added to the opening asset base for the next period.<sup>4</sup>

Actual capital expenditure is rolled into the asset base for subsequent periods and, if there has been an over-run (or under-run), this would be included in the roll forward of the asset base. There are valid reasons why actual capital expenditure may be different to the original forecast, such as scope changes. During the last terminal agreement (2012 – 2017), there was a capital underspend reflecting lower than forecast demand, whilst other replacement capital expenditure was over-spent to ensure that BAC could continue to provide the expected level of service. This related primarily to digital infrastructure to generate efficiencies in terminal operations. From a capacity capital expenditure perspective, the demand was lower than expected and we adjusted our capital expenditure program accordingly.

BAC has controls and processes in place through its procurement policies and investment governance framework to ensure that capital expenditure is both prudent and efficient. Furthermore, our project management framework has been subject to assessment by the Australian Institute of Project Management (AIPM) and 85% of BAC's project managers are accredited through AIPM.<sup>5</sup> BAC does not outsource project management.

It is important to note too that BAC generally bears the risk of cost over-runs during the period of a given services agreement, as airlines typically resist upward adjustments to charges during the period to account for higher than forecast capital expenditure, other than the review clauses in the runway agreements. Furthermore, over-runs may be borne solely by BAC for short-lived assets (such as IT) that are fully depreciated prior to the commencement of the next services agreement period. In this case, the airline customers do not bear any of the cost of the over-run for the total capital expenditure agreed prior to signing the agreement.

### ***Pre-financing***

In the 2012 review, the Commission found that *“pre-funding of airport investments is a recognised component of the Pricing Principles”* and that such arrangements should continue to be negotiated between the airports and airlines.<sup>6</sup> It acknowledged at that time that the new runway at Brisbane Airport may present a challenge to this.

While the negotiations were not without their challenges, a negotiated outcome has been agreed with our airline customers and the current runway charges reflect the capital expenditure incurred on the runway prior to it becoming operational.

We also note that the agreement negotiated with our airline customers is a longer term agreement covering the period from construction through to commissioning of the new runway.

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<sup>4</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.128

<sup>5</sup> BAC aims to have all its project managers accredited by AIPM over time.

<sup>6</sup> Productivity Commission, *Economic Regulation of Airport Services, Inquiry Report No.57*, December 2011, p.123



It provides for periodic reviews to adjust for factors such as actual capital expenditure and movements in market parameters.

### 2.3. Terminals services agreement

Since our submission to the Commission in September 2018, the domestic terminal leases and the “stub” agreement covering the domestic and international terminal services to 31 December 2018 expired. Negotiations had commenced on the terminal agreement to cover the four and a half year period from 1 January 2019 to 30 June 2023 at that time. These negotiations went relatively smoothly and there are new commercially negotiated and signed terminal agreements in place for the majority of airline customers. BAC continues to be in documentation phase of negotiations with several airlines, and has not reached an agreement on commercial terms with one major airline.

Regarding the previously leased areas of the domestic terminal from QF and VA, respectively, to BAC, there is a six-month transition agreement in place for the hand-over.

### 2.4. Market power in aeronautical services

The Commission concluded the four monitored airports have not misused any market power.

#### *DRAFT FINDING 5.1*

*The four monitored airports — Sydney, Melbourne, Brisbane and Perth — have market power in aeronautical services, but they have not systematically exercised their market power to the detriment of the community. There is no justification for significant change to the current form of regulation of aeronautical services at these airports.*

BAC strongly supports the Commission’s finding that Brisbane Airport has not misused any market power that it may hold in the provision of aeronautical services. We agree that there is no justification to significant changes to the current regulatory framework.

We are concerned however, that the Commission has raised the following factors as potential indicators of the use of market power by BAC:

- The level of international charges (issue 1)
- The service quality outcomes (issue 2).

These are discussed below.

#### ***Issue 1: International charges***

The Commission identified the relative level of international charges at Brisbane Airport as being a potential indicator of the use of market power by BAC, although it noted that BAC’s overall performance indicated that it is not exercising market power.

The quantum of the international charges at Brisbane Airport primarily reflects the significant, lumpy investment in the International Terminal Building (ITB) expansion (both the building itself and the associated aprons) and runway since 2007/08, with major expansions recently completed.

The capacity investments made reflect the peakiness of the international demand at Brisbane Airport, with most international services landing during the morning peak and not yet spreading into the shoulders. The domestic terminal, in contrast, has had relatively low investment over the same period (noting that it was subject to two domestic terminal leases until recently) and a less peaky demand profile.

The published international charges (for both the runway and the terminal) are based on the building block models for the respective charges, and reflect the forecast capital expenditure and demand for the respective services. The building block models, which were shared with the airline customers as part of the negotiation process, provided visibility over the proposed capital expenditure projects, operating costs and demand forecasts.

It is important to note that the investment cycle is also reflected in the price path for the international terminal. These charges are remaining flat or falling in real terms over the next few years.

As noted by the Commission, the level of charges in itself does not necessarily reflect the use of market power and the level of the charges should be considered in the context of the investment cycle, service quality and the overall returns to BAC. The following should be noted:

- The international terminal has been subject to significant investment in the past 15 years;
- Additional passenger processing facilities and floor space required to process international customers through quarantine and customs, which are not recovered through the mandated security charges;
- Service quality remains good; and
- Overall returns are moderate, and lowest of the monitored airports.

Taking all these factors into consideration, it is clear that the level of charges for international passengers does not reflect a use of market power. Rather, it reflects the relative investment in the international terminal.

#### **Discounts to published charges**

The Commission's analysis was based on the published aeronautical charges for Brisbane, which generally only apply where the airline does not have a separately negotiated and signed agreement with Brisbane Airport. These signed agreements generally include discounts to the published rates, which means that very few airlines pay the scheduled rates. The vast majority of airlines pay passenger charges that are less than the published charges.

#### ***Issue 2: Quality of service***

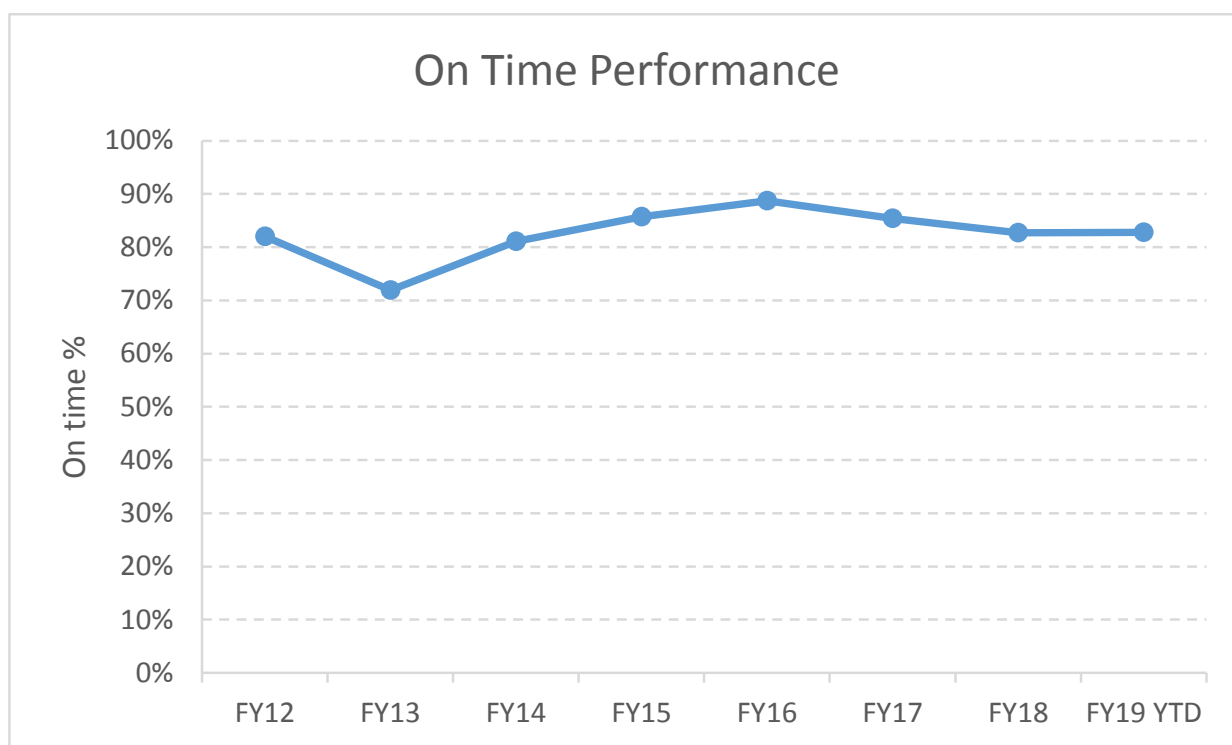
The Commission flagged service quality at Brisbane Airport as being a potential indicator of the use of market power by BAC.<sup>7</sup> The rationale for this was not provided by the Commission and would appear at odds with subsequent observations and comments in the Commission's Draft Report. Specifically, the Commission notes that Brisbane Airport "performed better on other indicators" (other than the high international charges discussed above) and then noted the

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<sup>7</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, Figure 5.2, p.136  
Response to Productivity Commission's Draft Report

consistently high service quality ratings at Brisbane Airport relative to other airports.<sup>8</sup> The presentation of service quality at Brisbane Airport as amber is also at odds with its subsequent statement that “there is not a problem with service quality at the monitored airports”.<sup>9</sup>

The Commission did note that on-time performance (OTP) had declined in recent years and had returned to 2011 levels.<sup>10</sup> As shown in the following chart, OTP at Brisbane Airport<sup>11</sup> has declined a little in recent years. However, it still remains above 80%, which is considered to be good performance on this indicator.



OTP results are a function of a number of factors, not all of which are under BAC’s control. This includes medical emergencies, either on board aircraft parked at the terminals or for the Royal Flying Doctor Service flights, in addition to the factors identified by the Commission, such as adverse weather and flow on effects from delays at other airports.

As detailed in our earlier submission to the Commission, Brisbane Airport has consistently ranked highly on the quality of aeronautical, car parking and landside access services provided at the airport.<sup>12</sup> This is reflected in the monitoring reports published by the Australian Competition and Consumer Commission (ACCC) as well as external rankings such as those produced by SkyTrax. The quality of service at Brisbane Airport has been consistently good, without being excessive, and does not reflect a potential abuse of market power.

<sup>8</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.173.

<sup>9</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.273

<sup>10</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.151

<sup>11</sup> A flight is considered to be on time if it is a Regular Public Transport (RPT) flight that arrives or departs early or up to 15 minutes later than its schedule time.

<sup>12</sup> Brisbane Airport Corporation, *Submission to the Productivity Commission’s inquiry into airport regulation*, September 2018.



BAC has noted previously that the airline quality of service ratings are subject to gaming, as they are completed by the airlines, who have a vested interest in the outcomes. The Commission itself noted:

*“Methodological issues and biases limit the robustness of quality of service ratings under the monitoring regime.”<sup>13</sup>*

We understand from discussions with the Commission that there are potential concerns about the choice of key performance and quality indicators and we would be happy to work with the Commission and the ACCC in developing service quality indicators that better reflect what is important to airport users. This is discussed further in Chapter 5.

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<sup>13</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.136  
Response to Productivity Commission's Draft Report

### 3. Car parking and landside access

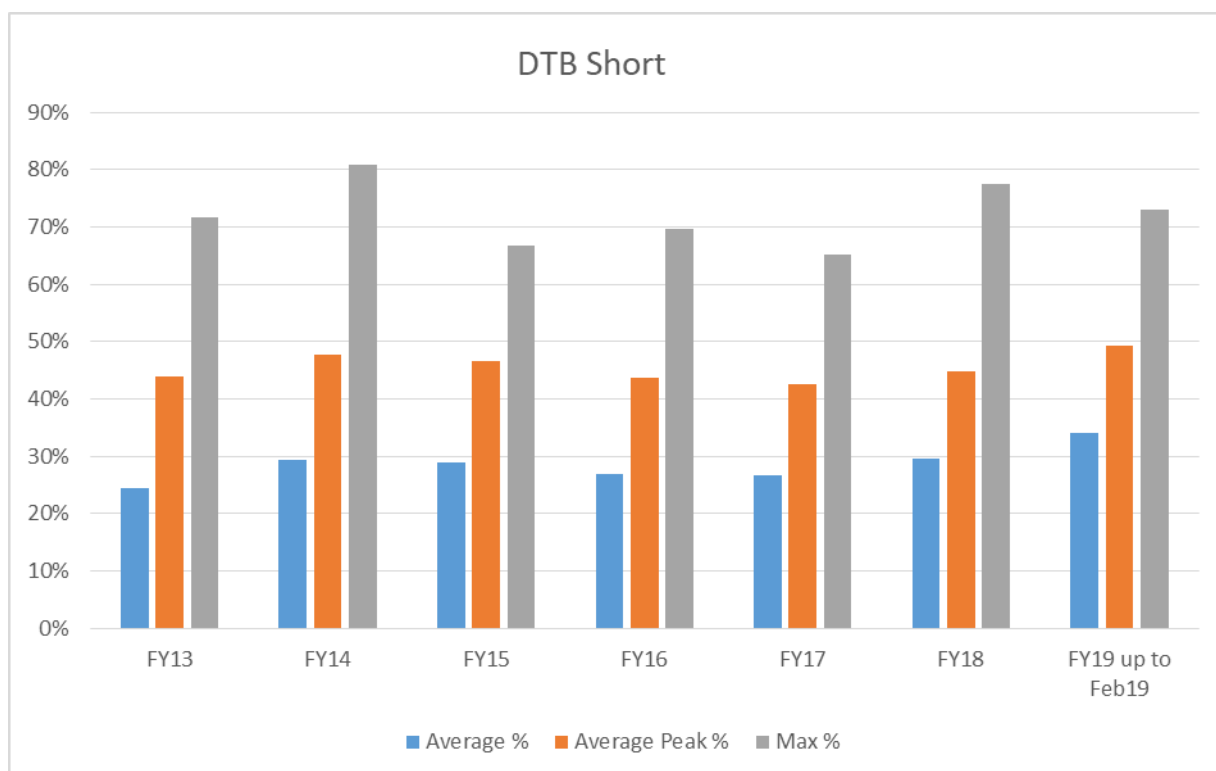
This chapter provides BAC’s response to the Commission’s specific information requests and recommendations regarding car parking and landside access at Brisbane Airport.

#### 3.1. Car parking

BAC generally agrees with the Commission’s conclusions and recommendations on car parking. There are a range of transport options available and the use of these alternatives is reflected in the relative modal share of the on-airport car park, as presented by the Commission.<sup>14</sup>

The Commission highlighted the low utilisation of the domestic park-short at-terminal car park, stating that it “could indicate the exercise of market power or timing in the [airport’s] investment cycle”.<sup>15</sup> The utilisation data was drawn from a Houston Kemp report on car parking and landside access, prepared for BAC in 2018 to support its submission to the Commission’s inquiry.

The Commission also noted that it would need time series data on the utilisation of the car park to rule out the use of market power. We have provided the requested time series data in the following chart.



<sup>14</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.181

<sup>15</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.193

BAC notes that the average utilisation rates do not reflect the use of the car park in the peak periods and that the infrastructure is not built for average demand.<sup>16</sup> A more useful indicator is maximum occupancy which presents the use of the car park at its peak. This shows that the utilisation has been consistently between 65% and 80%.

It should also be noted that the above utilisation rates for short term parking do not capture the additional capacity that is utilised by overflow from other car parking products during peak periods.

### 3.2. Landside access

The Commission concluded that there was insufficient data collected through the monitoring regime to assess whether airport operators had misused their market power in landside access. Accordingly, it requested further information be provided to assist it in its review.

#### *INFORMATION REQUEST 6.1*

*The Commission is seeking evidence on:*

- how airport operators consult and engage with landside operators when setting access charges and undertaking investment in landside infrastructure*
- how consultation between airports and landside operators could be improved*
- mechanisms available to landside operators to raise issues with airport operators that relate to landside access and how issues are resolved*
- the pricing frameworks airport operators employ to determine the access price of specific and common use landside infrastructure and whether these frameworks, and the associated methodology, are included in negotiations with airport users*
- airport operators making take it or leave it offers when negotiating charges and other terms of access with landside operators*
- negotiation outcomes, including acceptance of take it or leave it offers by landside operators.*

#### **Consultation process and outcomes**

There are a number of forums through which BAC engages with the ground transport operators (GTOs) at Brisbane Airport:

- Brisbane Airport Ground Transport Operators Forum (BAGTOF);
- Taxi Metro;
- Airport Taxi Working Group; and
- Limo Action Group Queensland.

Despite our generally good working relationship with the GTOs at Brisbane Airport, BAC notes the ACCC's findings that some off airport car park operators have found BAC unresponsive to their needs.<sup>17</sup> We believe these comments stem from the discussions at the time of the

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<sup>16</sup> The average % shown in the chart is the average across all the bays across the whole year and thus includes those hours in the middle of the night when the short term car park is generally empty.

<sup>17</sup> Productivity Commission, *Economic Regulation of Airports*, Draft Report, February 2019, p.200

conclusion of legacy agreements, which were not cost reflective and therefore not renewed. This is discussed further below.

### ***Issue resolution***

BAC provides information in the operating manuals for GTOs and taxis on how to lodge a complaint, including an email address and contact phone number. Furthermore, there is a landside access office on-site at Brisbane Airport that service providers can go to for any matters relating to landside access, including information on access and any issues they have. The location and opening hours for that office is also in the manuals, which are readily available from the BAC website.

The signed agreements for landside access services generally do not include dispute resolution clauses. This is consistent with BAC's approach for smaller contracts; however, normal dispute resolution processes, involving escalation up the management chain followed by external mediation, are applied if there are any issues.

BAC notes that there was one issue that was escalated to an external body, with off airport car park operators taking a complaint the ACCC for resolution, after it had been escalated through the management ranks. The ACCC concluded in BAC's favour, specifically that all off airport car park operators should be subject to the same pricing arrangements.

### ***Pricing framework***

The current charging regime for landside access was implemented in 2011 and charges for ground transport operators have generally increased annually by CPI since that time. The exception to this is ride-share services, whose charges were increased by 11% to bring them into line with those of taxi services.

Charges for landside access are structured as follows:

- Private scheduled bus services (Con-Xion) – monthly access fee. This is a negotiated fee that covers dedicated infrastructure provided by BAC as well as access to the terminals;
- Train – annual corridor lease (currently no per passenger charges);
- Car rental operators – charges for operations at the terminal include a fixed component for the desks at the terminal, car spaces within the car parks and car park booths, and a variable component based on turnover. There are separate property leases for the sites occupied within the Central Parking Area;
- Taxis and ride-share (e.g. Uber) – fee per passenger pick up, with dedicated lanes; and
- Other GTOs (including off-airport car park operators) – are charged an access fee for each pick up, which varies with the size of the vehicle and the length of time parked at Brisbane Airport.

Landside access charges at Brisbane Airport apply to passenger pick-ups only from the dedicated pick-up zones. There are no charges for passenger drop off if the public drop off lanes are used. GTOs may choose to use the dedicated GTO areas for drop offs, in which case the same access charges as for pick-ups apply.



Whilst charges have not been derived from a pricing model such as the building block model used for aeronautical prices, it is recognised that charges for the landside access should reflect a relative share of the costs for:

- Access roads to the terminal precincts, including Moreton Drive;
- Dedicated waiting areas (including washroom and prayer room facilities) at both the Central Parking Area and the terminal precincts;
- Dedicated pick-up lanes at the terminals;
- Kerbside management staff;
- E-tag reading and automatic queuing management infrastructure; and
- Associated overheads (i.e. BAC management, billing services, cleaning services).

Many of these facilities have been developed over the past 10 years and did not exist at the time Brisbane Airport was privatised. Our earlier submission to the Commission's review provides further information on these investments.

### ***Charges reflect improved infrastructure and changing level of services***

Andrew's Airport Parking Group (AAPG)<sup>18</sup> suggested that there have been significant increases in access fees while infrastructure and services specific to off airport car parking have "remained largely unchanged". AAPG has been providing off-airport car parking services in Brisbane since 2006 (Andrew's Parking) and 2010 (Gateway Airport Parking), and was initially on a monthly access fee arrangement, which expired in November 2014. At that time, the charges reverted to the per pick up charge applicable to other GTOs.<sup>19</sup>

BAC made significant investments in landside access during the period that AAPG was on the monthly access fee arrangement, which were not reflected in the charges under that agreement. These investments included the upgrade of the main access road to the domestic terminal (the Northern Road Access Project, NARP) (\$238 million, completed 2009), redevelopment of the forecourt at the domestic terminal to provide the pedestrian bridge and dedicated GTO lanes (\$69 million, completed 2012) and the introduction of electronic tagging (\$4 million, completed 2013). Thus, the level of services did not change at the time of price increase for AAPG, but the infrastructure and services provided had significantly improved in the lead up to that point and had not been reflected in the charges under that legacy agreement.

Although these investments are arguably not all "specific to off airport car parking", the infrastructure provided significantly improved access for all GTOs, including off-airport car park operators. For example, the NARP was not built specifically for the off-airport car park operators, but benefits them nevertheless through a reduction in congestion, allowing them to operate more efficiently.

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<sup>18</sup> Andrew's Airport Parking Group, *Initial Submission to the Productivity Commission's 2018 Enquiry into Economic Regulation of Airports*, Submission 30, September 2018

<sup>19</sup> BAC provided a concession to AAPG to facilitate the transition. This meant that AAPG was required to pay the minimum charges only (and no time based component) for the first few months of the transition.





### ***Licence Fees for off airport car parking***

The submission from Andrew's Airport Parking Group (AAPG)<sup>20</sup> noted that access to Brisbane Airport is via a licence agreement and the payment of licence fees. BAC would like to clarify that it does not charge licence fees for any GTO and there are no specific charges associated with the annual licensing process.

Pricing for all GTO operators is open and transparent with time based charges applicable based on size of vehicle and length of stay.

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<sup>20</sup> Andrew's Airport Parking Group, *Initial Submission to the Productivity Commission's 2018 Enquiry into Economic Regulation of Airports*, Submission 30, September 2018

## 4. Jet fuel supply

This chapter provides BAC's response to the Commission's specific information requests and recommendations regarding jet fuel supply at Brisbane Airport.

### 4.1. JUHI arrangements

The Commission found that current arrangements for jet fuel supply may restrict competition in some markets.

#### DRAFT FINDING 8.1

*The supply of jet fuel at some Australian airports is characterised by conflicts of interest associated with fuel companies owning the Joint User Hydrant Installation infrastructure, and a lack of open access arrangements to infrastructure services needed to supply jet fuel.*

*There is limited transparency on the terms of third party access to infrastructure services, which makes it difficult for potential competitor fuel suppliers to decide whether to enter a market or to assess whether these terms are reasonable.*

*Prima facie, this has enabled incumbent fuel suppliers to restrict competition in markets to supply jet fuel, leading to some airports having a small number of fuel suppliers, and has likely led to higher prices to access infrastructure services and higher fuel prices.*

As noted in our earlier submission, BAC understands that the JUHI arrangements at Brisbane Airport are effective and we are not aware of any issues regarding access to the supply chain.<sup>21</sup> This is consistent with BARA's findings (using 2014 data) presented by BP in their submission to the Commission:

*"The only airport at which BARA rates competitive conditions as satisfactory is Brisbane Airport for which it claims there are three effective jet fuel suppliers."<sup>22</sup>*

A 2018 report by BARA using 2016 data also came to the same conclusion – that competitive conditions were satisfactory at Brisbane Airport for the three<sup>23</sup> effective suppliers.<sup>24</sup> There have been no developments in recent years that BAC is aware of that would alter this conclusion.

#### INFORMATION REQUEST 8.1

*The Commission is seeking information from participants on markets to supply jet fuel at the capital city airports: ...*

*Airport operators:*

- justification of the structure and size of the fuel throughput levies charged by airports to the jet fuel suppliers*
- future plans to change lease arrangements for JUHI infrastructure to improve competition, including moving to open access.*

<sup>21</sup> BAC, *Submission to the Productivity Commission's inquiry into airport regulation*, September 2018

<sup>22</sup> BP Australia, *Economic Regulation of Airports – BP Australia response to the Productivity Commission inquiry*, September 2018, p.40

<sup>23</sup> BAC notes that the BARA analysis considered fuel supply to the wing tip. There are three into-plane operators at Brisbane Airport, although there are four parties to the JUHI.

<sup>24</sup> BARA, *Submission to the Productivity Commission – the competitive supply of jet fuel*, September 2018.

We currently have no fuel throughput levies at Brisbane Airport. Fuel throughput levies were abolished in 2011 and BAC does not have any plans to re-introduce such fees.

There are a number of leases and licences in place to facilitate the JUHI operations, as discussed below.

### ***Leases and licences***

There are a number of leases and licences in place to facilitate the JUHI operations at the airport. These cover the rights of JUHI to use specific land at the airport for their infrastructure (storage tanks and pipelines).

BAC notes that the head lease is held by one of the JUHI members, rather than JUHI itself and BAC does not have visibility over the commercial arrangements between the JUHI members.

The head lease for the JUHI operations does not restrict potential competition for jet fuel services at Brisbane Airport. It specifically:

- Includes a clause that allows BAC to use the land at Brisbane Airport for any purpose, including services such as those provided by the JUHI (i.e. it is a non-exclusive lease); and
- There are no clauses that would prevent JUHI from introducing new parties into their agreement or providing open access to the jet fuel services at Brisbane Airport on an open access basis.

The licences and leases are due to expire in 2027, although most have a five-year extension option. As this is still a number of years out, BAC has not yet commenced negotiation with JUHI on the renewal, and there are no immediate plans to change the structure or terms and conditions of the licences and leases. However, we will consider the access arrangements as part of the discussions with the JUHI members at that time.

We would also like to re-iterate our observations from BAC's initial submission that we are not aware of any issues at Brisbane Airport with respect to fuel supply and BAC would invest directly in infrastructure if there were any capacity issues.

## **4.2. Jet fuel supply coordination forum**

The Commission has recommended a forum be established at each monitored airport to facilitated coordinated planning at the airports.

### ***DRAFT RECOMMENDATION 8.2***

*The Minister for Infrastructure should recommend a jet fuel supply coordination forum be incorporated into the master planning process at each monitored airport. The forum should be tasked with discussing, among other things:*

- *capacity constraints and any potential pressure points*
- *linkages between infrastructure*
- *demand forecasts and security of supply*
- *future infrastructure requirements and investment planning.*

BAC fully endorses this recommendation, noting that we already work closely with the JUHI on the planning and development of the JUHI facilities at Brisbane Airport. As noted in our earlier submission, BAC participates in regular management and operational meetings with the JUHI, and therefore see this as a formalisation of the processes we already undertake.

The collaborative planning approach is embedded in clause 31 of the head lease for the JUHI, which states:

*The parties acknowledge and agree that they will use reasonable endeavours to work together, in good faith, in a constructive and collaborative manner, in relation to each other's planning requirements for the Airport. To that end, the parties will agree a framework for regular meetings between the parties, at which the parties will discuss such matters as:*

- (1) each party's planning requirements for the Airport;*
- (2) the Airport's requirements overall for aircraft refuelling infrastructure (taking account of, for example, technological advances in aircraft fuel and the market for air services at the Airport);*
- (3) the required timing for delivery of the required infrastructure;*
- (4) how each party might be able to support the other with the delivery of their respective infrastructure requirements.*

## 5. Future regulatory arrangements

This chapter provides BAC's response to the Commission's specific information requests and recommendations regarding future regulatory arrangements for Brisbane Airport.

### 5.1. Anti-competitive contract arrangements

The Commission has requested further information on anti-competitive clauses contained in our commercial agreements.

#### *INFORMATION REQUEST 10.1*

*The Commission invites evidence about anticompetitive clauses in commercial agreements between airports, airlines, landside operators and other airport users.*

#### ***Aeronautical services***

BAC does not have any clauses in its agreements that prevent an airline from pursuing declaration of airport services under Part IIIA of the *Competition and Consumer Act 2010*.

#### ***Landside services***

BAC confirms that there are no "most favoured nation" clauses in any agreements with landside operators.

There are restrictions on the operation of public transport buses at Brisbane Airport, with public buses prohibited from providing services to the international and domestic terminals. This is an obligation imposed by the Queensland Government as part of its agreement with the Airtrain operator.

BAC continues to work with the Queensland Government and Brisbane City Council to extend the public bus services at the airport.

#### ***Commission's recommendation***

The Commission has recommended that the Pricing Principles be amended to prohibit anti-competitive clauses in contracts for aeronautical services.

#### *DRAFT RECOMMENDATION 10.1*

*The Australian Government should amend the Aeronautical Pricing Principles to specify that any agreement between an airport and an airport user must not contain anticompetitive clauses. This includes clauses that would constrain that user's access to regulatory remedies for the exercise of market power or that directly or indirectly reference the terms being offered to users' competitive rivals.*

BAC supports this recommendation.

## 5.2. Future Productivity Commission reviews

The Commission has requested the Australian Government support another review into airport regulation in 2024.

### *DRAFT RECOMMENDATION 10.2*

*The Australian Government should request the Productivity Commission to inquire into the regulation of airports in 2024, to determine the effectiveness of the regulatory regime in achieving the following objectives:*

- *promoting the economically efficient operation of, and timely investment in, airports and related industries*
- *minimising unnecessary compliance costs*
- *facilitating commercially negotiated outcomes in airport operations.*

*In requesting the inquiry, the Australian Government should also ask the Commission to consider whether:*

- *any airports should be added to, or removed from, the list of monitored airports*
- *there is a continued need for arrangements to help facilitate access for airlines that provide flights to regional New South Wales.*

*The Australian Government should stipulate in the terms of reference for that inquiry that, on request, the monitored airports should make their agreements with airport users available to the Productivity Commission on a commercial in confidence basis.*

BAC supports the continuation of periodic reviews by the Commission, as the review process has been critical to the effectiveness of the regulatory regime. As noted by the AAA:

*“... the periodic public inquiries conducted by the Commission are a central feature of the regulatory framework that sets evidence and analysis above rhetoric and lobbying in the policy process.”<sup>25</sup>*

The most recent reviews have essentially come to the same conclusion, namely that airports have not systematically abused any market power they hold and that the light handed monitoring framework is appropriate for the industry. However, the review process is important for:

- Identifying improvements to the overall framework (such as the additional transparency the Commission’s recommendation on monitoring data will provide);
- Keeping the behaviour of all parties (airlines, airports and regulators) in check; and
- Providing the broader community with comfort that the airports have acted reasonably in their negotiations with airport users and have not abused their market power.

In particular, BAC sees value in the continuation of the periodic review because it provides an opportunity to factually and objectively consider the behaviour of airlines in the negotiation

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<sup>25</sup> Australian Airports Association, *AAA Submission - Response to the Productivity Commission’s Draft Report*, September 2019, p.12

process and provides an opportunity to correct misperceptions about the strong bargaining power of airports and the negotiation tactics some airlines employ.

### 5.3. Airport monitoring data

The Commission has requested the Australian Competition and Consumer Commission collect more detailed information to support its monitoring functions / reports.

#### *DRAFT RECOMMENDATION 10.4*

*The Australian Government should amend part 7 of the Airports Regulations 1997 such that, in addition to current requirements, monitored airports are required to provide to the Australian Competition and Consumer Commission (ACCC), for each financial year, statements that:*

- show the number of passengers that depart from and arrive at each terminal*
- separately show the costs and revenues in relation to the provision and use of aeronautical services for domestic flights and for international flights*
- for Sydney Airport, also show the costs and revenues in relation to the provision and use of aeronautical services for flights to regional New South Wales*
- 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*
- 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*
- report all costs on the basis that they are specific to a service or common across more than one service (stating the relevant services). In addition, airports should report costs on an allocated basis and should clearly set out the methodologies used for allocating the costs to international and domestic aeronautical services; at terminal and at distance parking; and landside access services.*

*The ACCC should continue to publish annual monitoring reports. It should audit and publish a database of the information the airports provide. The ACCC should publish the methodologies the monitored airports use to allocate costs across different services.*

#### **Additional data to be provided**

BAC supports the collection and publication of airport financial and operational data where it supports the effective prices monitoring and reporting by the ACCC. The additional information set out in Recommendation 10.4 above is generally already available for Brisbane Airport and thus presents only minimal additional regulatory burden on BAC.

As we have stated previously, a critical factor in the effectiveness of the monitoring regime is how the information is presented and used. The information needs to be balanced and considered in the context of the airport's overall performance, encompassing not only absolute price levels, but also the investment cycle, service quality (including SLAs) and rate of return. Furthermore, this needs to be considered over time, rather than as single year measures.

As noted in our submission to the Commission's Issue Paper, we believe the commentary and information presented in the ACCC's monitoring reports could be expanded to include more on

the investment outcomes and that any discussion of prices and profits should take into consideration rate of return outcomes and where BAC is in the investment cycle.<sup>26</sup>

### ***Cost allocation methodology***

BAC supports the recommendation that airports be required to report on cost allocation methodologies.

The cost allocation method should only relate to the allocation of costs between aeronautical and non-aeronautical services and, for aeronautical services, between the various services provided (i.e. aeronautical, parking and landside access). We believe that the recommendation should clearly state that the airports do not need to provide allocation methodologies for allocations between non-aeronautical services, as this is outside the scope of the ACCC's monitoring functions.

### ***Publishing annual monitoring data***

The Commission has recommended that the ACCC should audit and publish a database of the information the airports provide. BAC supports this recommendation in principle, and notes that the financial data submitted to the ACCC is subject to external audit before it is submitted.

## **5.4. Improving quality of service monitoring**

We note that the Commission has requested the Australian Competition and Consumer Commission collect more detailed information to support its monitoring functions and reports.

### ***DRAFT RECOMMENDATION 10.5***

*The Australian Competition and Consumer Commission (ACCC) should, within 12 months, provide advice to the Australian Government on an updated set of quality of service indicators, in consultation with airports, airlines and other airport users.*

*Once the ACCC has developed its recommended list the Australian Government should amend schedule 2 of the Airports Regulations 1997 to codify the updated list of indicators.*

BAC supports this recommendation and agrees that the service quality measures should reflect the service levels and key performance indicators agreed with the airlines, as these are the measures valued by airport users.

We note, however, that effective consultation by the ACCC will be critical to ensure that the resultant quality of service indicators reflect those that are important to, and used by, the industry (airports, airlines, passengers), and not those that the ACCC believes are important. Therefore, BAC requests the Commission amend its recommendation to clarify the extent of the consultation that needs to be undertaken by the ACCC.

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<sup>26</sup> BAC, *Submission to the Productivity Commission's inquiry into airport regulation*, September 2018, p.8  
Response to Productivity Commission's Draft Report