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PRODUCTIVITY COMMISSION

ECONOMIC REGULATION OF AIRPORTS

MR P LINDWALL Commissioner
DR S KING, Commissioner

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COMMISSIONER LINDWALL: Okay, everyone, we might get started shortly in 30 seconds or so because I like an on time departure. Welcome everyone and good morning, and welcome to the public hearings for the Productivity Commission inquiry into the economic regulation of airports. I'm Paul Lindwall the presiding commissioner of this inquiry and I have got Stephen King with me, my fellow commissioner, and we would like to obviously acknowledge the traditional custodians, the Gadigal people.

The inquiry started with a reference from the Australian Government in June 2018. The purpose of the inquiry is to investigate whether the economic regulation of airport services promotes the efficient operation of airports and related industries.

We released an issues paper in July 2018 and talked to a range of organisations and individuals with an interest in the economic regulation of airports. This has included representatives from the Australian State/Territory governments, airports, airlines, industry representative bodies, academics, researchers and individuals - that pretty much covers everyone on the planet I guess - with an interest in the issues throughout the inquiry. We held focus public hearings on competition in the market for jet fuel in Sydney and Melbourne in late November 2018.

Following the release of the draft report in February the Commission has called for further submissions and is undertaking consultations along with these public hearings. I think we have so far received 88 submissions prior to the draft report and 16, but they're coming in still, since the release of the draft report. We are grateful to all organisations and individuals who have taken the time to prepare submissions and appear at these hearings.

This is the second public hearing for this inquiry post release of the draft report. Following this hearing there will also be a hearing in Melbourne and then we will be working towards completing the final report having considered all the evidence presented at the hearings and submissions and informal discussions.

The final report will be submitted to the Australian Government in June, and participants and those who have registered their interest in the inquiry will be advised when the final report is released by the government, which may be up to 25 sitting days after the revision after its completion.

The purpose of these hearings is to provide an opportunity for interested parties to provide comments and feedback on the draft report and to facilitate public scrutiny of the Commission's work. We would like to conduct all hearings in a reasonably informal manner, but I remind

service. Since privatisation we have invested over \$4.7b and grown the number of airlines flying into Sydney Airport from 37 to 47, thus increasing competition and providing more choice for consumers. At the same time our customer satisfaction scores have continued to improve and now stand at all-time highs.

In addition airlines are doing well. Qantas's most recent results demonstrate this. They are posting record profits. We don't begrudge this. In fact we are happy for their success as it contributes to the overall success of the aviation sector. A healthy vibrant aviation sector is essential to deliver improved outcomes for passengers and to grow the economy, but most importantly as I said before the current system is working in the interests of passengers. Customer satisfaction has never been higher and international prices have never been lower. By way of an example in 1994 an economy airfare from Sydney to Singapore would have cost you about \$2,100 in today's terms. That was equivalent to around two and a half weeks of the average income at that time. Today in 2019 a ticket from Sydney to Singapore will cost you about \$350 on a low cost carrier, or \$850 full fare, which is less than a week's average income.

So when Australians sit down to plan the next family holiday they're seeing more choice and they're seeing more value than ever before. So airports are profitable, airlines are profitable, and passengers are enjoying more choice, lower prices and better quality of service. It does beg the question what's wrong with the current system. The short answer is nothing. The light-handed regulatory regime is working.

We agree with the Commission's conclusion that the current regulatory regime is fit for purpose. The market is working efficiently and everyone is benefitting. There is nothing with the current regime that is broken that needs to be fixed. We also agree with the Commission's conclusion that commercial negotiations between airports and airlines give little cause for concern. The role of regulation is to protect consumers and to guard against market failures. The role of regulation is not to readjust the bargaining position of sophisticated commercial entities that are capable of looking after themselves.

Perhaps most importantly we were pleased with the conclusion that there is no evidence that we as an airport are exercising market power. We take our obligations seriously. We're constantly seeking to improve the airport for the benefit of both airlines and passengers. We are currently investing over \$1m a day to improve facilities, balancing the needs of all 47 airlines who fly into Sydney Airport and numerous other stakeholders.

which are very difficult to then reconcile. We have common use infrastructure, we have common use assets, and each airline at the airport is looking for a preferred position. So if we were to end up with outcomes from an arbitration process that we then have to try and reconcile amongst those 47 airlines, we think that would be extremely difficult to manage and really not realistic. So we believe that negotiate-arbitrate process has its flaws and wouldn't work.

COMMISSIONER LINDWALL: One way of the negotiate-arbitrate working I would perceive will be for an airport such as Sydney and a single airline working on to an arbitrator. Another way would be the airport having all 47 on the one arbitration which (indistinct) single merits one way or the other.

MR CULBERT: I think it would be difficult for all 47 airlines to enter into a single agreement. What we see is a very complex environment where you have very strong incumbent airlines, remembering of course that between Qantas and Virgin they currently occupy around three-quarters of all the slots at Sydney Airport. So they have a very strong and entrenched position, and we see competition between the airlines in relation to that aspect. So I think it would be very difficult to get all 47 airlines to agree to a negotiate-arbitrate position holistically, but that's something I think you have to ask the individual airlines as to whether or not they are prepared to do that.

COMMISSIONER LINDWALL: And in terms of the investment strategy at Sydney Airport if you did have negotiate-arbitrate what would you expect would be the impact on your investment plans going forward and what do you think an arbitrator would end up (indistinct words)?

MR CULBERT: It's a really important point, because we can only invest to grow the airport, to grow capacity, to bring more airlines in, to provide more choice for the end customers if we have got certainty of investment, and the only way we get certainty of investment is if we have agreement with the airlines. So if we're caught up in a negotiate-arbitrate process that is being gamed, that is resulting in outcomes that are very difficult for us to reconcile, it does actually operate as an inhibitor to our ability to invest in the airport, and this is a really important point.

The other point I would make is throughout our history we have never failed to reach an agreement with the airlines. These are robust commercial discussions between two very sophisticated commercial entities who know how to look after themselves, and there's a lot that's actually discussed in these arrangements. Arrangements are complex, they're detailed, there are multiple trade-offs, and ultimately we get to

2019 to June 2015. So it wasn't an agreement we had to do, and therefore it took some years actually to get to a position where everyone was comfortable with the outcome. It was still four years ahead of its schedule and drove a half a billion dollar cheque for Qantas and ongoing aeronautical charges for Sydney Airport, but actually because there was no expiring agreement, I think we spent a lot of time getting that exactly right for all parties and bringing in the International and Domestic Runway Agreement into a pool of compromises. So that was it.

On the international side it was probably around a year and it was primarily negotiated with BARA, the representative for most of our international airlines. They are not a counterparty to the agreements, we then go and contract with each of the airlines, but that would have been close to a year where we were talking everything from a building block model through to an investment profile, a charges profile, and ultimately even beyond the agreement the setting up of a KPI framework which we are measured against. So closer to a year in total.

MR CULBERT: The thing I've noticed as well as I have come into this role is it's not as though you talk three months out from the expiry of the agreement and then start negotiating. We have daily interactions with all of the airlines where we are constantly talking about what's going on in the precincts, the capacity that we need to build to create more opportunity for airlines to fly into the airport, to improve customer service, and so these conversations are ongoing and it tends to coalesce around an agreement to be closer to the expiry of an existing agreement. So the conversations are very detailed, complex, and are happening the whole time.

COMMISSIONER KING: Let's take some of those negotiations. Presumably some of them hit road blocks at various stages. Surely at some of those stages access to an arbiter who would have been able to deal with some of those specific road blocks would that have sped up the negotiation process?

MR WEHBY: We actually did bring a party in between us on the terminal 3 negotiations. We outlined that in our first submission. They provided a recommendation for the deal which was rejected, and the terms on which they proposed it were rejected by both parties. So it was an unsuccessful use of a, I think more like a conciliator rather than arbitrator to be perfectly fair, but trying to seek that middle ground. So we have used voluntary third parties from time to time. They have not been successful, and it was really for a voluntary single airline agreement. It really doesn't reflect the ordinary course of business.

of product within it, a boiler plate agreement certainly is facilitated by BARA, including things like KPIs and that's an incredibly useful document.

But then it is our requirement to go and contract individually to make sure the individual requirements are overlayed, and we think there's value to that, for both the airport and also the airlines.

COMMISSIONER LINDWALL: Can I mention, while we're on that topic then, about negotiating, there have been some thoughts that we should provide some guidelines, either the government should or the Productivity Commission, or the ACCC or some other body, provide guidelines or whether (indistinct) of BARA already does, obviously, (indistinct) and structure of contracts, do you see advantages or disadvantages of that?

MR CULBERT: In our second submission, we actually put that forward as - as a potential proposal. We said some negotiating principles may help. And we thought that would be useful in two respects: (1), from the airports perspective, it could create a set of guidelines that would create a standard around which airports operate, when it comes to their discussions with the airlines. And what we were talking about there in our submission was the willingness to decide about SLAs, and KPIs, commitments around customer service levels, and infrastructure development.

That's something that we've done at Sydney Airport in our most recent agreements, and we feel like that's actually been a really positive step forward. We are now committed, there are objective measurements in place, and they really drive our behaviours. And that was consistently applied across airports in Australia, we think that would be beneficial. But we also thought negotiating principles would operate effectively in relation to the way that the airlines approach negotiation, and we were arguing, or asking, that they come to the negotiating table with a fair and reasonable position, because we do see evidence of things like short paying, non-paying, infrastructure blocking that actually gets in the way of constructive negotiations.

And so, the negotiation principles are not just to tie airports to a set of outcomes, but also to ensure that the airlines themselves come to the negotiations with a fair and reasonable position.

COMMISSIONER LINDWALL: The risk, I guess, and I do see some (indistinct) in the principles (indistinct), spoken there as parties, but is there not a risk that you could end up with the (indistinct) if the government decided you were (indistinct) principles and so on?

MR CULBERT: There's no doubt about that. And it kind of goes back to my original comment that we seem to be grasping for a new regime, when the existing regime is working really well. And you only have to look at the industry as a whole to see that, you've got airports are doing well, and we're incentivised to invest, and we are investing, customer service levels are going up, competition's increasing, we're attracting more competition in the market from an international perspective. Airlines are doing well. Qantas is posting record profits.

But most importantly, the end customer is doing well. They've got more choice. They're enjoying the better quality of service. The prices are lower than they've ever been before, on the international side. So, we're grasping for a view as to what needs to change, and the answer, as I said in my opening, is actually nothing. This is a really efficient market, with a light-handed regulation that's doing its job. So, any changes to the system are unnecessary and threaten that. There's no doubt that the negotiation processes are robust, and challenging, and time-consuming and drawn out.

That's the nature of any complex, difficult, commercial negotiation, between two sophisticated counter parties who are capable of looking after themselves, and who have a very clear view of what they're trying to seek out of the negotiation. But we always reach agreement. We've always been able to reach agreement, and the end beneficiary of that has been the customer.

COMMISSIONER LINDWALL: Now, can we move on to another - - -

COMMISSIONER KING: Sorry, before we move on. Just to clarify, because you did support the -the AAA and BARA proposal on the overarching principles, I still don't understand the argument as to why it needs government's involvement. So, everything that you've talked about having (indistinct) to discuss issues, why is there a view that government, some part of government, needs to be sitting at that table?

MR CULBERT: I'm not sure we were suggesting that in our report - I'll have to take that on notice, as to whether or not we were actually, in our submission, suggesting that the government would have to be involved in that process. I think where we were going on this is that as you come to the ACCC monitoring report, every year, and as you come to the PC every five years, you can assess whether or not the airlines and the airports have been behaving in a consistent fashion with the negotiation principles, as a way of determining when the parties are acting appropriately.

passengers, and the material difference going from 74 to 66 is the introduction of WSA. For the first time in our master plan we factored in WSA being an operating airport.

COMMISSIONER LINDWALL: Now, could we move on to some of the movement capping issues, in particular how often do you think aircraft are delayed due to the cap, what is the length or extent of the delays (indistinct words)?

MR WEHBY: Sure. I guess without being specific, because I'd have to take that on notice, it's very regular, particular in cases of disruption for either weather events or east coast general airport airspace issues, so there are generally daily delays in relation to the operation of the cap. One of the issues there is we are measured on both the scheduled movement cap and an actual movement cap, in particular the use of that actual movement cap does tend to create ongoing issues.

That primarily, again, occurs at the morning peak and the evening peak, but we have shown in our most recent submission, I don't think that's published yet, that the time to recovery can actually stretch beyond the day of operation, even from morning disruption. So, flexibility in the operation of those operating restrictions, without any extra aircraft, would actually allow recovery and minimise the economic impact, make the asset more efficient, make the east coast airspace more efficient in general.

MR CULBERT: Our biggest challenge is the lack of flexibility. We're not asking or arguing for a change to the curfew, we're not asking for an increase in the overall envelope in respect of flights, what we are saying is that a lack of flexibility is providing us with real operational challenges. Recognising that these regulations were set in the 1990s when we were handling 21 million passengers a year and we're now handling 44 million passengers, so the whole nature of the airport has changed and the lack of flexibility is what is really providing the change.

So we asked Airbiz to do some analysis, which is actually in our latest submission. Their analysis concluded that a three hour disruption starting at 3 pm in the afternoon, based on the current operating restrictions, doesn't get cleared until 11 am the next day. If we were to even measure the movements on a daily basis then we would be able to clear that disruption before curfew, before 11 pm. So going over into the next day creates 90,000 hours of passenger delays and gives rise to 8000 overnight stays for people who are trying to get home that night, so that's a sense of the impact in relation to flexibility.

COMMISSIONER LINDWALL: Now, I should say that PC wasn't able to and on no occasion have we ever said that the curfew was to change, nor have we proposed any changes to the removal of cap with minus any possible options for that to be spread out or changed in some way that might be actually levelled. If you were to change the movements in peak periods to other parts of the airport to off-peak periods within that, or shifted somehow, what effect would that have on other operations of the airport such as baggage handling, car parking, et cetera?

MR WEHBY: If we were to take movements from the peak to the off-peak it would alleviate some of the congestion issues we see, particularly probably around the roads, somewhat in the check-in hall. Our biggest criticisms currently from BARA relate to baggage and to bussing, so it would potentially reduce the bussing and maybe reduce the number of gates you would need to deliver. In terms of baggage, it would hopefully make our baggage system more efficient, it is at peak loads at the moment and we are actually looking at developing a new bag room to accommodate those loads. So, once again, it may reduce the need for that investment or, at the very least, improve the operational performance of our current baggage system.

COMMISSIONER LINDWALL: Now, if we look at the other way where there was some flexibility and you increased it in some of the peak hours say, what's the maximum number of movements that you could handle given the current infrastructure do you think?

MR WEHBY: Current infrastructure would need to be expanded. We don't, at the behest of airlines and from economic practicality, we don't build beyond the peak. So we would need to build gates, we would need to be build aircraft stands for parking areas and we would need to extend the baggage system probably more aggressively. We could practically accommodate a number, more than 80, on the airfield in terms of air space, air services estimates with the current mix of aircraft that's probably closer to 90 an hour but it does depend on the mix of aircraft as well, and that may change over time, but we would absolutely need to invest immediately to accommodate the aircraft. And it's worth noting that when slots are allocated, they're not just allocated on whether a movement is available according to the operating restrictions, they're allocated on whether the infrastructure is available. So those slots could not be allocated until we develop the infrastructure that was required to accommodate those services.

COMMISSIONER KING: There are a number of alternatives suggested in regards to allowing more flexibility in the movement cap. Has Sydney Airport done any work on which of those would be the most appropriate (indistinct) in the short term where investment in other infrastructure

would be in issue? And also, does Sydney Airport look to any of the effects on the noise that may be generated to the local residents from (indistinct) those movements?

MR CULBERT: The answer is – is yes. When we've looked at this, we've tried to balance the operational needs of the airport with the needs of the local community and that's why, in our submissions, you'll see that we're not –arguing in favour of a change to the curfew. We're not suggesting a change to the overall envelope. We're just suggesting that more flexibility is required because of the fact that under the current regime, we're limited to 80 flights an hour and it's measured on a rolling hour basis every 15 minutes. So 20 flights every 15 minutes. It makes it really challenging to try to catch up in the event of disruption.

So if you look at global benchmarks, Heathrow Airport also have an envelope that they work against. But they're measured on an annual basis. So they have around about 500,000 movements a year and they're measured on an annual basis. They get to the end of the year. If they've exceeded that envelope, then their envelope next year goes down by the amount that they exceeded times two. So if they go down by 20, then they have 40 less movements in the following year.

Obviously any period of time that provides for the greatest amount of flexibility would be beneficial. Heathrow are a yearly measurement, a monthly measurement, a weekly measurement, a daily measurement. Anything would be helpful for us to be able to manage the restrictions that we have and the inflexibility that prevents us from recovering from disruptions. Anything less than a day, we think, would be less beneficial, particularly as you get towards the end of the day.

If you have a storm occurring at 8, 9 o'clock at night, naturally, you're going to go into the next day. And therefore, greater flexibility is beneficial. And the next morning, you start with the morning peak, where we're pretty full and it's hard to recover until you're getting to around about 11 am the next day.

COMMISSIONER KING: Sorry, because I'm aware of time, but just briefly, it has been put to us in some of our discussions with groups representing residents that increasing the flexibility even on, say, an 80 per hour over a day type of approach, so that would simply mean that it would be gamed to use a word you've used earlier on in this discussion. It would end up with more airlines and more flights being put in the peak periods, because they're effectively the most valuable, so yes, the total number of flights may not change, but you start getting more concentrated noise and more loss of amenity for local residents in the peak periods

which also of course overlap with times when the residents tend to be home.

So the idea there is that it would be an undesirable thing. So what's your comment to that?

MR WEHBY: I mean, one of the issues that we would have to look at with any change is the slot allocation procedures as well. Whether you allow airlines that are not operating the peak to move into the peak or whether they're preserved for new airlines, for instance. We saw precedent in something like that when Ansett collapsed. Whether slots were actually preserved for new carriers to come in and utilise those. So you didn't see a mass shift of an incumbent airline into an existing peak slot for instance.

So actually, any changes to flexibility around the operating restrictions, must be accompanied with a review of how the slots are allocated. And that could lead to the addressing of some of those issues that the communities rightly bring out. We understand those issues. We're concerned about those issues as well. And we'd need to look at the slot allocation procedures, along with the operating restrictions to get a holistic view of noise.

COMMISSIONER LINDWALL: Now, we've got not much time, so I'll just ask about landside access. Do you use take it or leave it contracts and how do you set the price for landside access?

MR CULBERT: So the short answer is no we don't make take it or leave it offers. The landside access that we have at the airport covers a range of different modes of transport but firstly, 37 per cent of all trips that are made to the airport are made in private vehicles where the consumer doesn't pay a cent, so we have free drop off and pick up, so 37 per cent of trips are completely free on drop off and pick up.

Train is now at 24 per cent of total trips to the airport. Sydney Airport has no economic interest in the train that's owned and run by a private operator and run together with the government. And then you have two other categories. You have rental cars and you have what we call ground transport operators. The rental car agreements are negotiated between once again, sophisticated commercial counterparties. We're talking the likes of Avis and Hertz, who are global companies. They operate in airports around the world. And we enter into negotiated agreements with them.

Australia's major airports are regularly ranked in the top 100 airports in the world, many of them in the top 50 and at least one or two in the top 20.

Brisbane Airport has been considered Australia's best in all manner of global rankings, and later this week at the annual world airports' awards in London, I hope to see us again crowned the best in the country and one of the best in the world. That Australia's airports achieve these rankings despite their relatively small size compared to the other international ports, and in the absence of government subsidy, which in some countries have seen investment, utterly unrelated to any need for a financial return, is a testament to the system as it stands today.

The system contains within it the necessary checks and balances, including these regular reviews by the PC to ensure that private ownership recognises its responsibilities to the consumer and to the nation, whilst also allowing the profitability to encourage and ensure investment in the growth that drives economic benefit across the country. In the years since 1987 when Brisbane Airport Corporation took control of Brisbane Airport, the number of travellers using the airport has grown 167 per cent to more than 23 million. The number of airlines accommodated has grown 20 per cent to 35.

The number of businesses on site has nearly quadrupled to 420, and the number of people employed on site has grown around 260 per cent to around 24,000, or one in every 100 jobs in Queensland, and importantly this growth has also facilitated the growth and profitability of our partners in the aviation industry, and in Australia's and the world's airlines.

Over the past three reviews by the PC of the economic regulations of Australia's airports, the analysis has been consistent and the conclusions have been consistent. This consistency has provided confidence to our investors, enabling them to sink more than three and a half billion in capital into Brisbane Airport in the last 21 years, and another 2.2 billion in the coming years. Without this level of confidence we would not be building our new runway, a piece of infrastructure of national importance.

We are grateful to the Commission for its fidelity to the original principles of its reviews and for the thoroughness of its analysis. We recognise, too, that whilst a draft report of this review is largely favourable to the positions we have taken in our submission, there are always areas for improvement. We have in our written supplementary submission provided additional information to the commission in response to a variety of information requests. I won't detail those in this statement, but we're happy to discuss this request further this morning.

Whilst the Commission has rightly concluded that Brisbane Airport Corporation has not misused any market power it holds, it has highlighted a couple of potential areas for attention, notably our international charges and our quality of service agreements with our airline pilots. I'm happy to address these now, though further details are also included in our supplementary submissions.

International charges. The quantum of the international charges at Brisbane Airport primarily reflect the significant investment in the expansion of the international terminal building itself in 2007 and 2008, and more recently in 2015 and 2018. It also reflects major investment in the associated aprons in the international terminal, and the runway system. The capacity investments we have made reflect the peaky-ness of the international demand at Brisbane Airport with most international services landing during the morning peak. Whilst it is certainly our desire and intention to encourage growth into the shoulder periods, the reality is that Brisbane is an O and D (origin and destination) airport and arrivals into Brisbane are overwhelmingly dictated by departure slots at origin airports, particularly in Asia and the Middle East.

In contrast, our domestic terminal has had relatively low investment over the same period as more than two-thirds of the building was, until the beginning of this year, subject to leases to Qantas Airlines and Virgin Australia, and of course domestic demand is more evenly spread across the day. Our published international charges for both the runway and the terminals are based on the building block models and reflect the forecast capital expenditure for the respective services.

The building block models which were shared with our airline customers as part of the negotiation process provide visibility of the proposed capital expenditure projects, operating costs and demand forecasts. It is important to note that the investment side was 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 will not necessarily reflect abuse 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.

In summary. The international terminal has been subject to significant investment in the past 10 years. Service quality remains good and overall returns are moderate and the 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 the use of market power. Rather, it reflects the relative investment in the international terminal.

With regard to service quality, the Commission also flagged service quality at Brisbane Airport as being a potential indicator of the use of market power at BAC. We are unsure of the rationale behind this and note that it would appear to be at odds with the subsequent observations and comments in the draft report. Specifically the Commission notes that Brisbane Airport performs better on other indicators other than the high international charges discussed of, and then noted the consistently high service quality ratings at Brisbane Airport relative to other airports.

The presentation of service quality at Brisbane Airport as amber on the traffic light chart is also at odds with the subsequent statement that there is not a problem with service quality at monitored 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.

This is reflected in the monitoring reports published by the Australian Competition Consumer Commission as well as external rankings such as those produced by Skytrax and ACI. The quality of service at Brisbane Airport has been consistently good without being excessive and does not reflect a potential abuse of market power. Commissioners, we are more than happy to explore these questions through you now.

COMMISSIONER LINDWALL: Thank you very much. Could I just start, you've said there are 35 airlines. How many of the airlines do you have agreements with?

MR MALEK: Currently there are some airlines which are represented as non-signatories, so of the 35 airlines, there are 29 which are signatories, and of those, we currently have 28 airlines who have either signed commercial agreements, commercially agreed terms or are currently paying the new charges. There's one airline that we have not been able to agree commercial terms with.

COMMISSIONER LINDWALL: One still outstanding?

MR MALEK: Yes.

COMMISSIONER LINDWALL: Would you care to say which one?

MR MALEK: Qantas.

plating some of the infrastructure. Of course, you've also got the pre-finance thing of your new runway. Now, we go across to some regulated industries, such as electricity in New South Wales has been gold plating of transmission (indistinct). Would you accept the claim that there's been some gold plating of investment at Brisbane, and if there hasn't been, how could you justify that there hasn't been any?

MR DE GRAAFF: Well, I strongly disagree with the fact that there's gold plating happening in Brisbane. Yes, we provide a high quality operation, high quality service and high quality products to airlines and passenger customers, and that's how we like it to be. But everything that's been provided in terms of infrastructure and all the products and services are based on consultation with the airlines, and there's a very thorough process defining what investment levels are and what products – what infrastructure would be delivered throughout our investment plan.

So that's not gold plating, that's an agreement between airport and airline.

COMMISSIONER LINDWALL: So given you actually did, hypothetically, gold plate it, you're saying that you wouldn't be able to pass that cost to your customers, they would have to bear it themselves.

MR DE GRAAFF: Well, I think ultimately our investment program is something that is based on thorough consultation and negotiation with airlines. So I disagree with whether we're gold plating it. I think we both agreed that a high level of service is essential for a customer at Brisbane Airport, especially because we compete with airports all over the world, nationally, we compete with airlines in the nation, but also locally and, as you know, we share some customers with a few other airports.

So there's no incentive to gold plate or to drive costs up, because I believe that would lose customers to those other airports.

COMMISSIONER KING: Can I just clarify? So the upgrades that you did to the international terminal and the other investments for international carriers, they were made with the agreement of the relevant carriers or how did that work?

MR MALEK: So, Commissioner, actually the process that we've gone through to give you an outline - is through consultation. The final agreement reflects the agreed projects that actually do go into the underlying asset base. The price path that's generated from those reflects the capital program of existing assets but also a prospective new investments in particular for the international terminal and associated infrastructure.

COMMISSIONER KING: Can I just follow up one of the things you actually said on the domestic side of it, which I'd just like some more details on. You said you've taken back the relevant domestic terminals, but they were not up to standard and you mentioned, I think, the Brisbane Airport standard. Presumably those terminals were satisfactory for the carriers before they handed them back to you, so how do I interpret your statement there, other than being that you're about to gold plate the domestic terminal?

MR DE GRAAFF: Well, that's a bit of a trick question, I have to say.

COMMISSIONER KING: I need to understand your points.

MR DE GRAAFF: There was no incentive for the two major airlines operating in the domestic terminal to invest in the last few years of their lease agreement, so we believe that they've waited until we took over and that means that together with the airlines and in consultation with the airlines we're investing currently in very basic things like redevelopment of one of the areas for about \$40 million, we're fixing up the bathrooms, carpet, seating, those kind of things.

So although perhaps the airline thought it was acceptable, we both agree there's room for improvement.

COMMISSIONER KING: So just to clarify, so it was that end of terminal lease you think that led to them running down the asset?

MR DE GRAAFF: Well, I can't talk for the airlines, but I think, reading between the lines, you could read what my personal opinion about that is.

COMMISSIONER LINDWALL: On the international charges being relatively high, your explanation is that there's been a significant amount of investment and it's all lumpy. Does that mean that in five or so years' time if you were to repeat this analysis your – the international charges are more likely to be in line with the other airports?

MR DE GRAAFF: Yes and no. When you look at our international charges, the terminal share of those international charges is actually more or less flat over the years, for the last eight years it has been flat, and that means that the terminal investments were absorbed in that charge by the increase in volumes. The increase in our international charges are driven by the new runway, and as you know we started the development of that runway in 2013, and we're still investing. So that part of the international charge, the runway share of that is still increasing.

COMMISSIONER LINDWALL: That will go up.

MR DE GRAAFF: And there's no better example of one view of investment in the runway, because from the day we're opening, it's not going to be fully used, and that's pretty obvious that it will take us 25, 30 years. So that's one of the examples that we've seen.

COMMISSIONER LINDWALL: And your new runway is particularly expensive given the geology of the area.

MR DE GRAAFF: Yes, well the land where the runway is being built has the consistency of toothpaste, so we needed I think 12 million cubic metres of sand, initially this had to settle for three years, and this was financed by Brisbane Airport Corporation. We only started the real construction of – we started the project in 2012, with only starting the real construction of the runway about 18 months ago. We still have about a year to go before we can use it. So all in all, it's almost a cattle prod project that's 10 years in the making from the first dollar spent to the last dollar spent.

COMMISSIONER LINDWALL: Shall we move onto a different topic. Landside access. Now, as you know car parking, access to your terminal by taxis and off airport car parking and so on, how did you determine those agreements and what kind of price? Some people would say they might be too hard and parking's too expensive, that type of thing. How would you justify it?

MR MALEK: Sure, I can talk to that. Just in terms of landside access at Brisbane Airport, I might just speak to the composition of it - they are different across all airports. Given the vast road network that we've invested in over the past decade, we have a much higher percentage of drop off, there is lack of congestion, so its closer to 60 per cent at Brisbane Airport.

In terms of ground transport operators, we have close to 17 per cent. Air Train, which is our train operator, is actually a much smaller percentage than some of our southern airport peers - at 8 per cent. With the balance of course being parking and other operators in the airport.

In terms of how we determine pricing for access - in 2013 Brisbane Airport went through a process of changing our access charging regime, which went from a charge – an access charge for operators irrespective of volume. Given the vast road network and, our obligation to ensure that we provide all people that access to the airport from transfers, pickup and drop off area at the terminal face for passengers, we changed our charging regime to

focus on the number of the vehicles, vehicle type, as well as length of stay. The pricing regime that was rolled out in 2013 and has escalated predominantly by CPI. All of our operators have signed up to and agreed to the charging regime.

In 2018, we actually did have a slight increase - really to then standardise the charging framework to be in line with where taxis are. The operators on airport do have standard forums, which meet on a quarterly basis or annual basis, to raise any concerns. In the contracts, they do have – sorry, whilst there’s actually no dispute resolution within contracts, we do formally engage with operators to escalate issues internally and, of course, they go externally if and when required.

COMMISSIONER LINDWALL: Did you have anything on landside access?

COMMISSIONER KING: No, I think at the time I wouldn’t mind changing the schedule.

COMMISSIONER LINDWALL: Yes, go ahead. Well, I think we’ll move onto jet fuel given the time.

COMMISSIONER KING: So just to clarifying background a bit, Brisbane Airport, your fuel throughput levy; that’s no longer in existence?

MR MALEK: That’s correct, Commissioner. That ceased in 2011, I believe, as the throughput levy.

COMMISSIONER KING: Why?

MR MALEK: That predates both Gert-Jan and I so I won’t - - -

MR DE GRAAFF: No, I was there.

MR MALEK: He was there, yes, sorry.

MR DE GRAAFF: No, we came to another commercial arrangement with JUHI and so that’s the one and only reason to simplify things.

COMMISSIONER KING: So from the airport’s perspective was the fuel throughput levy was part of a – was it JUHI charge or was it - - -

MR DE GRAAFF: It was, yes, it was a JUHI charge. It was not significant in the scheme of things so we tried to simplify the relationship

between the airport, the JUHI operator and the oil companies that are part of the JUHI. So that's the reason why we decided to get rid of this charge.

COMMISSIONER KING: On the JUHI structure you have the jet fuel companies obviously owning or controlling I should say some critical airport infrastructure. We've had complaints from the airlines that this is leading to overpricing for jet fuel in Australia and you'd be aware of BARA's information that they've provided to us and it was in our draft report. What's Brisbane airport's view on the JUHI arrangements that you have? Do you feel that that's leading to be an appropriate level of pricing of fuel for the airlines or do you think other action is needed in that space?

MR DE GRAAFF: Yes, well, BAC understands that the JUHI arrangements are effective at Brisbane Airport. So we're not aware of any issues regarding the access to the supply chain, nor the cost of the JUHI operation. We've got several leases and licences in place to allow JUHI to operate and provide services at the airports and it's a commercial agreement we have with them. We don't own any of the infrastructure. That's all owned by the JUHI organisation. But if JUHI wouldn't invest in the infrastructure based on our contracts, we could step in at any time and do that ourselves and so that's what we have in place.

But at Brisbane Airport, historically we never had real issues. Well, there's enough fuel storage capacity which is usually critical issue at airports. JUHI is actually investing based on their contract in more fuel storage capacity and, again, we are not aware of any issues with regards to pricing at Brisbane. We've got a pretty good arrangement with multiple oil companies being part of JUHI and with access to the JUHI infrastructure.

COMMISSIONER KING: So just a follow up on that last point. So you're happy with access to the JUHI infrastructure; do you mean third parties getting access just to provide jet fuel?

MR DE GRAAFF: As far as I know that's possible. We recently had a biofuel pilot and it's a good indication that a complete alien partner by the way supported by Virgin and Brisbane Airport Corporation had access to JUHI installation to use the infrastructure for biofuel capacity.

COMMISSIONER KING: We have heard that there were a few hiccups, if I can put it that way, in that access arrangement and getting that fuel.

MR DE GRAAFF: Yes, well, and that's a fair point and biofuel's an innovation; it's new. So the concerns were predominantly about safety. When you put biofuel in your hydrant system it mixes with everything else, so you cannot say, "Well, this one single aircraft, I prefer had biofuel (indistinct) all the others." So we had to convince all the users of the hydrant installation that it would be a very, very tiny point of the fuel that would be tanked would be biofuel.

COMMISSIONER LINDWALL: But my understanding was that Virgin Airlines was quite satisfied. Since they're the ones operating the planes, one would think they had a better idea and, in fact, a greater desire to ensure the security and safety of the fuel than even a fuel company since they're the ones actually very exposed if something happens.

MR DE GRAAFF: That's correct. Yes, no, that's correct.

COMMISSIONER KING: Well, to put Paul's point the other way around, we know in other infrastructure such as gas pipelines, which seems to be coming up a bit today, that claims about substandard quality can and have been used to prevent access. It's an easy way for incumbents to say, "Ah, well, we can't give you access," substandard product and it comes with the existing product safety problems. Does Brisbane Airport have any concerns that, whilst obviously safety is a pre-eminent issue that it can be used by JUHI incumbents by the fuel companies to prevent competitors in?

MR DE GRAAFF: No, as I said before, I'm not aware of any issues with regard to the JUHI operation at Brisbane Airport, nor did I receive any claims or remarks about it from our airlines.

COMMISSIONER LINDWALL: Okay, well, given the time, we've got a couple of things quickly. To what extent do Sydney Airport's regulatory constraints affect travellers to and from Brisbane Airport?

MR DE GRAAFF: Well, Brisbane Airport on-time performance has been traditionally very high, except in the year 2013 when we dropped below the 80 per cent on-time performance. But on average, on-time performance at Brisbane Airport is between the 82 and 85, 86 per cent over the last few years. In February of this year we were close to 90 per cent on-time performance. So that's a very good result.

The most important reasons that we're not closer to the 100 per cent is weather. But the second one is the knock-on effects of capacity constraints at Sydney and Melbourne Airport. If their on-time performance has been hit by either weather and any other reasons, we see

To borrow a real estate saying, in Sydney it's all about noise, noise and noise. You only have to look at the press that followed the release of your draft report and the view of that in Sydney. It was all about the impact of those operations and what that was going to have on people.

Now, I'm not going to rehash my written submission; I assume you've read it. But I do want to just run through a couple of the, sort of, key points. So the first one is that you need to consider the impact on people. The Commission's draft report in my opinion was grossly inadequate. It showed little understanding and little knowledge of the background of the regulations or indeed any regard for the impact of aircraft noise on the residents of Sydney.

It really just regurgitated the views of Sydney Airport and the industry which seek to benefit from the relaxation of any regulations. You need to understand that this is not an academic exercise. That aircraft noise has a very real and personal impact on people. It affects their physical and psychological health, their amenity, their ability to productively go about their day and their general well-being.

To understand the impact of aircraft noise in Sydney on the people, you need to read the 1995 Senate Select Committee on Aircraft Noise report which is called 'Falling on Deaf Ears'. I have provided a copy of that. So basically following the huge public outcry with the opening of the third runway and the operational changes, there was a regulatory regime that put into place three things. And those were: the Long Term Operating Plan for Sydney, in order to share the noise; the Sydney Airport Demand Management Act of 1997, which was to put a definite limit on the number of aircraft that could cause aircraft noise in any one hour; and, the Sydney Airport Curfew Act, which was to protect the ability of people to sleep free from aircraft noise. Now, these regulations are a necessary consequence of the airport's location 8 km from the centre of the city and the impact that aircraft have flying over tens of kilometres of suburban Sydney, impacting hundreds of thousands of residents, some of whom experience in excess of 400 aircraft a day.

Now, the question is, are the regulations working as intended? The Productivity Commission makes the point in its report that it assesses regulations as to whether they're fit for purpose. And it says, "Any regulatory regime should achieve its intended objectives and do so in a way that is targeted and proportionate to the policy problem.

Well, the policy problem is aircraft noise pollution. The Demand Management Act, in particular, is intended to draw a line in the sand to

actually achieving your objective? In other words, have we potentially got a win/win here of removing aircraft out of - - -

MR CLARKE: If you want to regulate – if you want to regulate, and I mean, you know, so that it's not optional, you want to regulate that there are less movements during other times of the day to enable those noise-sharing modes to be used, then I'd be all for it. But that's not what's been proposed, right? This is all about incremental growth. This is all about allowing more than 80 movements, at any time throughout the day. None of these proposals that were put forward in the Productivity Commission's draft report said, "Yeah, don't worry, we'll be happy. What we'll do is between 6 and 7 in the morning we'll restrict that to 45 movements an hour so you can use simultaneous opposite directions," which are the ones coming in and out of the Bay that cause really very little noise problem, right? "We're going to do that," right? But meanwhile at 9 o'clock we're going to allow you to do 85. No one is proposing that. What's being proposed is 85 at 9 o'clock in the morning, but we'll just keep 80 available between 6 and 7 as well.

COMMISSIONER KING: And this is your personal view. I understand that, but would you personally favour an approach that said, "Well –" or do you believe it would be desirable to do the sort of thing you just mentioned, which would be to say, "Well, you can have more movements in that peak, but the quid pro quo has to be explicitly less movements off peak," and that would actually – may or may not be desirable from the airport's perspective, I don't know, or the airlines, but that would potentially be a better noise outcome for the residents.

MR CLARKE: I think it would be, so long as it was regulated that there was a, and it's been put forward previously, a 'variable cap', and as long as it was regulated in such a way that the capacity – sorry, the number of movements was no greater than the capacity of the noise-sharing modes.

COMMISSIONER KING: Okay. If you had a variable cap type approach but there were weather events that led to delays.

MR CLARKE: Yes.

COMMISSIONER KING: And again, from your personal perspective, do you think it would be reasonable or desirable to build in some flexibility there? So, yes, if a thunderstorm happens to have come across and prevented movements of planes during the peak, then for that one day, there could be catch ups in the off-peak periods?

MR CLARKE: You could. So, one of the things that the Long Term Operating Plan recommended - well, one of its modes is what's called mode 10, which is landings from the north, and along with that was a procedure, called trident. Trident provides for multiple flight paths to the east and the west of the centreline for aircraft landing from the north. The problem is, trident has never been implemented, and one of the reasons that's constantly been put forward for that is that the technology is not there to enable it to be done, and that technology is probably a couple of things.

One of it is sequencing, and the other one is the ability to accurately direct all aircraft. Now, one of the issues, of course at the moment, is potential conflict with Badgery's Creek. And so, whether trident is ever able to be implemented with the airspace design for Badgery's Creek is an issue which remains to be seen.

COMMISSIONER KING: All right. Did you have any final points?

MR CLARKE: No.

COMMISSIONER LINDWALL: Can I just finally ask then, John, how do you see the community and Sydney Airport in 20 or 15 years? How do you envisage it, in terms of good outcome from - - -

MR CLARKE: Well, you know, I mean, there's sort of two views here. One of them is, you know, in reality is, in a great many first world countries, city airports have basically been moved, because - and, the land has been repurposed to higher and better use. Because the reality is that an airport is not a good use of real estate. That's the reality of it. The airport will bang on about all the money it brings to the economy, and all the rest, but that is not location dependent. You know, people still fly to Narita, in Tokyo, but it's still 67 kilometres from the outside of the city, right?

So, the airport and the city it serves, you know, they don't have to be, you know, close, geographically close, right? So, in, in an ideal world, you'd say, "Really, that land ought to be repurposed, it ought to go, you know to higher and better use," and away you go. Now, the problem is, is that there's a whole bunch of people out here who have a financial interest in its retention where it is. So, is that - is that likely? Probably not. I'd like to think it is. I mean, economically it's a rational thing to do. But politically, I don't know whether you'd get away with it.

So, you know, the reality is that caps need to be put on and retained on Sydney Airport that enable it to exist in the manner that is not entirely destructive to the community, in fact it serves – (indistinct)

COMMISSIONER LINDWALL: I think that's the time, thank you.

COMMISSIONER KING: Thank you very much, then, John.

COMMISSIONER LINDWALL: Now we've got a little morning tea break, and I believe we're taking off at 11.55 with Qantas.

SHORT ADJOURNMENT [11.37 am]

RESUMED [11.57 am]

COMMISSIONER LINDWALL: So I'd like to welcome Qantas to speak to us. And I'd invite you all to introduce yourselves.

MR PARKER: I thank you, Commissioners. Commissioners Lindwall and King. My name is Andrew Parker, I am the group executive for government industry international and sustainability. I am joined today by my colleagues, a few of us, Rob De Bella who is the executive manager of finance, Matt Hudson who is the head of commercial airports, Moksha Watts, head of sustainability and industry affairs, Michele Laidlaw, at the end, the head of legal. Jackie Quang, our senior legal counsel and Rick West, our manager of airport commercial relationships.

COMMISSIONER LINDWALL: Before you go on, Andrew, could I say that when you all speak at various times.

MR PARKER: Yes.

COMMISSIONER LINDWALL: It's probably good to just say your name just for the transcript. But please, if you want to give an introductory statement, thanks, Andrew.

MR PARKER: Thank you. Thanks, Commissioner. We are perplexed and disappointed at how easily the draft report has, in our review, dismissed critical independent evidence, accepted airport claims without question and disregarded the everyday realities of air travellers and others who need to use our airports. To Qantas, this process and review has been about fairness. Is \$6 for an airport coffee fair? Is \$90 for airport parking

fair? Is \$34,000 to land and depart a Qantas A380 fair? And how is it fair that parking at an airport can cost more than the Jetstar flight itself?

And on this question of fairness, we would consider the statement of five years ago to be particularly pertinent. Privatisation without competition risks turning a public monopoly into a private monopoly. The owners may change but the public will get ripped off just the same. What is the second option? If competition is not possible, then the privatised business needs to be regulated so that it cannot exploit its market power. It's a fine sentiment from Commissioner King in 2014.

So it is a genuine mystery to us that the Commission now thinks that regulation in its mildest of forms of a privatised monopoly business is somehow unfair or unreasonable. And it is a shame in our view that the PC has essentially endorsed the exorbitant airport and car parking charges and green lighted monopolistic behaviour to the detriment of our passengers and the Australian community.

The enthusiastic endorsement by the Australian Airports Association in rejecting fair and reasonable reform to airport commercial behaviour for the sixth successive time should also provoke reflection and concern. To this end, Qantas is of the view that future reviews of airports by the Commission should be abandoned given their lack of rigour analysis and unfortunate predictability regardless of evidence or changes in the external environment.

And whilst the Commission states in its draft that it will consider regulation for more extreme examples of a clear abuse of market power in your final report, we remain sceptical. Hence our position that an expert open-minded body should assess this matter in future, in the future, or that parliament given the weight of evidence should directly legislate to government.

We believe also the Commission has ignored the abundance of compelling evidence provided to it by the Australian Competition Regulator, multiple airport users and credible experts, such as Michael O'Brien QC, Margaret Arblaster, Frontier Economics and the National Competition Council. These experts may be dismissed by the Airports Association, but consider their credibility versus that of a lobbying group.

And we believe the facts speak for themselves. The lowest car parking profit is earned by Perth Airport which more than 50 cents out of \$1 spent goes in profit and 70 cents at Sydney. Airports earn 25 per cent more revenue per passenger in real terms since a decade ago and their margin is

double the long-running international average. And meanwhile, airfares, best measured by best discount economy fares have declined 40 per cent.

Seven Australian airports charge hidden fuel throughput levies. A fee for no service extracting over \$20 million a year from airlines and their customers. And nine out of 10 of the most expensive airports in the world for car hire are in Australia. And the number of airports, a number of airports are even brazen enough to profit from aviation security. Their public conditions of use assert the right to extract a return on their investment in security. In plain English, that means profit.

And don't just believe us. Consider their investors. Sydney Airport has an unregulated revenue stream in a monopoly environment. That was UBS last year. Ongoing myths, such as effective regulatory oversight exist today, profits by monopoly airports are reasonable and airlines have countervailing power, seem to be swallowed whole by this draft. And opportunities to uncover the truth of super normal profits have, in our view, been passed over. For instance, not determining airports cost of capital or their overall profit margin, is intellectually lazy.

Like drop bears and Lasseter's Reef, airline countervailing power is a myth. A tall story told by airports to distract from their monopolistic behaviour such as denying us the right to fly Johannesburg to Perth or holding our aircraft to ransom at Canberra Airport until a diversion charge eight times higher than other airports was paid by credit card.

In a fiercely competitive Australian market, airlines have almost no countervailing power. Network airlines like Qantas or Virgin cannot credibly threaten to withdraw their services. This can be demonstrated through a simple real life example at Newcastle Airport last year. The Qantas Group was forced to withdraw services from Newcastle due to pilot shortages. Frontier Economics found that Virgin was able to respond almost immediately to backfill this lost capacity.

Frontier Economics also looked at the relative cost faced by the Qantas group and Perth Airport from the threat of a withdrawal of a single daily return flight between Melbourne and Perth. It found that the airline would have more to lose, up to 10 times more than the airport because of Perth's critical importance to our customers, our broader network and operations. Reducing or withdrawing services in response to airport behaviour is simply not feasible and the airports know this. And which market will we give up? Is it Qantas to Perth? Is it Jetstar to the Gold Coast? Is it QantasLink to Tamworth.

It deeply concerns us that the Commission has chosen to believe this fiction as fact and yet the Commission presents no evidence of countervailing power anywhere in its 367 pages. The Commission's suggestion that airlines can refuse to pay charges at the level determined by an airport when an agreement expires is to us extraordinary, as is the implication that the payment delaying tactics to Australian charges are a normal and adequate bargaining tool. These extreme measures are indicative of a broken system that offers airlines few options to moderate airport charges at reasonable levels.

The fact is, while negotiations were underway with Perth, the Qantas Group agreed to play – pay what we believe in good faith to be a fair and reasonable charge. And we continue to pay it. We ask Perth Airport to resolve the dispute through binding expert determination. They refused and yet our offer still stands. But instead we now face a long retrospective court case that will cost millions of dollars and destabilise that market.

As privately owned monopolies, Australian airports have the economic advantage of falling costs per passenger as output increases. But despite significant increases in passengers and freight from airlines, monopoly airport charges continue to rise well above inflation. And while Australian monopoly airports' revenue has soared 25 per cent over the last decade, airfares continue to decrease as a result of airlines focussing on all aspects of their cost space.

On this point, I'd like to briefly address the false claims perpetuated by the airports about the cost of airfares. The AAA claim there has been an increase in real domestic airfares over the last seven years. This is simply wrong. The reality is that real restricted economy airfares which have been used as the base of its entire argument, make up less than 2 per cent of airfare inventory sold.

In real terms, best discount economy airfares which is what the majority of economy passengers purchase, are 40 per cent lower today than in 2003. It illustrates the AAA's ignorance of competitive airline economics. The Commission and the AAA view that aeronautical charges make up only a small proportion of the total cost of an airline and that is wrong. Airport fees, levies and charges at as much as 20 per cent to the cost of an airfare.

In fact in some regional routes, airport charges are higher than fuel, aircraft costs or flight crew. So in conclusion, we believe the current regime of oversight is ineffective and gives Australia's privately owned monopoly airports carte blanche to increase airport charges and sting air

travellers as much and as often as they wish. To call it light handed regulation is a misnomer. A more accurate term is non-regulation.

The ACCC has consistently argued price monitoring is not regulation. Monitoring alone is not enough to constrain the behaviour of airports with significant market power. And declaration under the National Access Regime is time consuming, expensive and difficult, if not, impossible. The solution: efficient and timely reform through deemed declaration of major airports and access to independent and binding arbitration are essential in our view to deliver true and effective light-handed regulation. As A4ANZ has pointed out, the advantages of such minimal reform include at least \$445 m in net savings and efficiency benefits with a benefit to cost ratio of 14 to one. And like arbitration, the wider economy, parameters can and should be set for efficiency and fairness.

Arbitration is part of the aeronautical pricing principles. The Airports Association also say they can do better and want to talk to us airlines after the PC process has finished. This offer should of course be viewed with cynicism. Instead, while doubtful, we urge the Commission to reconsider its findings in the final report for the benefit of all Australians and not singularly for monopoly airports.

Thank you, Commissioners.

COMMISSIONER LINDWALL: Thank you, Andrew for that comprehensive presentation. Can you hear me now? Sorry. Thank you for that, Andrew. I'd like to just start by saying that the teams and the commissioners for the four now PC inquiries have all been different, and the PC doesn't take a different approach each time to how we analyse the problem. Now, I know that you have suggested that perhaps the ACCC should be involved in that, but there is a very fundamental regulatory system structure that has been long held as a principle in government that a regulator should not, should not be involved in the declaration of their own policy, because there's a major conflict of interest, and that's why there has always been a structure where an independent agency may not think the PC is the right agency, but some agency that doesn't actually implement the regulation. That's where the principle of that comes from. So I wanted to put that out.

Now could I turn to negotiate-arbitrate. If there's a problem with Part IIIA surely the best solution is to make Part IIIA more efficient. Why does there need to be a specific regulatory regime for airports compared to any other types of organisations and sectors of the economy?

the test of criterion A to be the effective declaration in promoting competition in the downstream market, I think we feel that that has raised the bar that needs to be crossed.

COMMISSIONER KING: Just to clarify my understanding is that the original NCC decision and a tribunal decision on appeal for Virgin Blue in Sydney was on an equivalent test to A, so - - -

MS LAIDLAW: That's correct.

COMMISSIONER KING: - - - so my understanding is the original declaration there occurred on what would now be equivalent law. That's your understanding as well?

MS LAIDLAW: Yes. We certainly don't suggest that it's impossible to clear the threshold of criterion A. What we say is that it has been made materially more difficult, particularly in circumstances where we have a non-vertically integrated piece of infrastructure with perhaps not the incentive to deny access that you might see in a case of vertically integrated monopolies.

COMMISSIONER KING: So Qantas disagrees with the National Competition Council who to the best of my knowledge the NCC has said that the current tests are fine and fit for purpose.

MS LAIDLAW: I think what I would say is that the threshold has been raised and that if the Part IIIA process is designed to provide a credible threat of an effective remedy for the use of market power there may be a question mark as to whether Part IIIA really does that, because by increasing the threshold it has perhaps increased the time, cost and resources involved in pursuing a declaration to its natural conclusion.

COMMISSIONER KING: Despite the fact that there was effectively a declaration at Sydney Airport on the current criteria.

MR PARKER: It's not the current criteria.

COMMISSIONER KING: The Virgin Blue original declaration was under a test that - Part 1 which is the one that I think we're arguing about, or discussing, Part A - - -

MS LAIDLAW: Yes.

COMMISSIONER KING: - - - which was very similar to the Part A that's currently in place, unless Qantas believes that's an incorrect statement.

MS WATTS: We would argue that it isn't similar given that the criterion A test has changed, and the - - -

COMMISSIONER KING: No, but it's changed twice. The determination of the criteria as put forward by the Full Federal Court in Virgin Blue appeal was a different interpretation than had been given to criterion A up to that time, which included the NCC and tribunal decision to declare Sydney Airport in the Virgin Blue case. The recent change has then been to return the interpretation of criterion A back to the interpretation that was used by the NCC and the tribunal when Virgin Blue was successful in declaring Sydney Airport.

MR PARKER: I think answering your question as directly as we can we are pessimistic on the declaration process in its current form, and I think it is worth reminding that the Virgin Blue process took five years, it cost millions of dollars, and as the ACCC has said we need a more direct and efficient and productive access to a dispute mechanism like final offer arbitration instead of a process that is wholly inefficient and with real ambiguity on its potential for success, would be our summation.

MS LAIDLAW: Sorry, Andrew, and just to add that the NCC - there's been an application to revoke the declaration of the Port of Newcastle as a result of this change in criterion A, or following on from this change in criterion A. Now, whether that revocation process will be successful is still an open question, but it seemed a reasonable conclusion to draw that that process was kicked off post a change in the law, a change to criterion A.

COMMISSIONER KING: Although I would note that the NCC did not recommend declaration Port of Newcastle prior to the change of law either.

MS LAIDLAW: No. The Competition Tribunal did though.

COMMISSIONER KING: I understand, but you put forward the NCC as an expert that we have not paid appropriate attention to. It appears that Qantas's view is they prefer the ACCC as the regulator rather than the NCC. Is that a reasonable approach or a reasonable interpretation of your comments, Andrew?

MR PARKER: I think we're trying as I said to be as efficient and light-handed in having a commercial practical solution, which is why a model like final offer arbitration is our preference.

COMMISSIONER LINDWALL: Could you contrast final offer arbitration with negotiate-arbitrate, or are they basically the same things?

MR PARKER: I think they're the same things, and I think in Graeme Samuel's testimony he will go through in greater detail, but the fundamentals are the same, and I think that speaks to the fallacy of gaming. There is inherent risk for both parties in such a model, and we accept that and we have stared into that risk profile of what a final offer arbitration could mean for the Qantas Group, and it must by its nature bring parties closer to a more acceptable common commercial position. It will only be used, we believe, in those extreme examples where you are unable to reach a commercial agreement, and again I think Perth is a live example of this of instead we have to go to a retrospective court process that we think is wholly inefficient versus an independent expert arbitration model.

COMMISSIONER LINDWALL: There are 47 airlines at Sydney Airport if I remember from the Sydney Airport testimony this morning. Do you envisage if there was a use in negotiate-arbitrate that let's say Qantas was in dispute with Sydney Airport that the other 46 airlines would want to be part of that too?

MR PARKER: I don't know, but I certainly have some doubts as to the validity of that argument. As I say I think these are extreme examples. Many airports have given testimony today and in their submissions about most negotiations in their view are wholly satisfactory and dealt with in an expedient manner, but we believe an arbitration model will be used infrequently. Most international airlines are collectively represented through BARA, but I think we can only speak to Qantas and our position, which is this would be an outlier in its used, but a really important tool, because we certainly believe the airports don't consider the national access regime as a credible threat to regulatory intervention.

COMMISSIONER LINDWALL: How should an arbitrator view the desires of the travelling public, the community at large, potential new airlines when determining an arbitration process between say Qantas and Sydney Airport or some other airport? I mean you don't know who these potential airlines might be, and they could result in a requirement with the law, the investment then say is currently planned, who knows.

MS WATTS: A couple of points, Commissioner. Firstly, the arbitration is, as Michele Laidlaw has said, is currently part of the regime, so the national access regime already enables arbitration to be activated, although we believe that it's incredibly difficult, and secondly the arbitration is also envisaged in the aeronautical pricing principles. So it's not - I suppose it's unclear if it's arbitration that's being challenged in this questioning, or if it's used in some particular hypothetical scenario. If it's the latter, well we would submit that things such as the gas code have demonstrated that you can set the conditions for arbitration. You can have a pool of arbitrators who are asked to consider a number of issues, including competition from other entrants. So we're not the regulatory experts, but we would say is that in our experience it is possible to construct an arbitration system in such a way that it would not stifle competition, if anything the way that many monopoly airports behave now that would be stifling the competition.

COMMISSIONER LINDWALL: Is it the fact of an airport being a monopoly that's a concern or the market power that it possesses, because I've got a friend who owns a bakery in Braidwood which is a monopoly by definition since there's no other bakery there. Doesn't that mean that it's exercising market power that's the important issue?

MR PARKER: Is the bakery charging \$12 for a loaf of bread?

COMMISSIONER LINDWALL: It charges a fair bit, the bakery for its loaf of bread and I'm sure it's making a decent profit actually.

MR PARKER: I think it's a combination of those factors. Monopolies without regulation we concur with many voices on this topic, including one I quoted earlier, but particularly the ACCC, who I think it's worth pointing at from the earlier line of questioning, similarly said they don't believe that arbitration would be used in a large number of negotiations. But I think it is a combination of absolutely our view that there is an exercising of market power and that is evidenced through a range of matrix items including their margin and profitability, the international comparison, and the lack of any competitive threat or countervailing power by an airline like Qantas.

COMMISSIONER LINDWALL: I think you're coming down to the fact there's market power in the exercise of it. If you have a monopoly or if you have an organisation without the exercise of market power, but it has market power, or it is a monopoly, would you agree that it shouldn't be subject to additional regulations, or are you saying that because it's a monopoly or/and because it's got market power ipso facto it should be regulated?

airlines, one of them seems to benefit airports. We recommended that they be put in the aeronautical pricing principles. Would you accept that if that was adopted by the government, or - because pricing principles are voluntary, as far as I understand.

MS WATTS: Sure. We have no objection to such a recommendation, we would simply submit that the problem with the pricing principles are that they are not enforceable, that - that airports, in our experience, don't take them very seriously.

COMMISSIONER LINDWALL: We've also discussed a - well, let's talk about a status quo, because it was spoken about in negotiate-arbitrate enough, and now, I think, we welcome your thoughts on that, obviously. But the building block methodology has been used for a long time in - in working out the costs, and for investment, which of course is a lumpy and quite high cost, in particular, putting new runways in. How do you envisage the use of that in the past? Has it been useful to you to use that type of model?

MR HUDSON: All right, so, it's Matt Hudson here. I think - we would say we think it's essential to use that model. In markets around the world, that model is used in other industries, in Australia that model is used. We think it's a critical statement that we should use as an industry. We would say that we don't think the model has been consistently used over time and that's where the challenge is; that's what we think needs to be addressed.

COMMISSIONER LINDWALL: But wouldn't the fact that airports are using building block methodology suggest that they don't have the market power you might be suggesting? For example, you know, in another industry they just tell you the price and you take it or leave it, and that's the way it is and the fact that you do manage to get a building block methodology might suggest some sort of ability to negotiate.

MR HUDSON: I would say we don't consistently get to use the building block model. So we have some airports when we engage in conversations on the building block model will say to us things such as, "We understand Qantas. That's what you're doing and here's the price," so that's not consistently applied. Indications where it is applied, we think that there's a lack of transparency of information shared between the airports and Qantas which makes it a difficult conversation for us to have without the information available to us.

COMMISSIONER KING: Just on that. Sorry, just to make sure we've got all the information. So the airports that don't use the building block

approach or give you a “take it or leave it” offer, is that any of Perth, Melbourne, Sydney or Brisbane?

MR HUDSON: Yes, I’d say definitely, in the case of Perth. I’d say definitely; Perth’s view is that the building block model does not apply.

COMMISSIONER KING: And Qantas’ view is that Perth effectively made it a take it or leave it offer.

MR HUDSON: That's right.

COMMISSIONER KING: I understand that there's a court case going on here and I don't want to - - -

MR HUDSON: Yes, that's right, correct, that's right.

COMMISSIONER KING: No, thank you.

MR HUDSON: Yes.

COMMISSIONER KING: I just wanted that clarified.

COMMISSIONER LINDWALL: Now, another issue that was raised this morning and is by submissions, and we also talked about aircraft noise, is the movement cap at Sydney airport. Have you got any thoughts about that you'd like to share and any of the reform options mentioned, palatable or not?

MR PARKER: Yes, we think obviously there's an enormous – many decades' work has gone into trying to solve the complexity of Sydney Airport. We are big supporters of Western Sydney Airport because we think it will add, we certainly hope, a competitive element to aviation in the Sydney basin.

We don't, in all intents and purpose, have a view that an increase in terms of movements per hour or the curfew is politically realistic. We do like a couple of things; which is flexibility within, particularly the 15 minute windows, so that we can catch up after a weather event and, importantly, we operate a very small number of overnight freight services and there's some legislative arrangements proposed in terms of introducing the ability for us to use quieter aircraft which we would like to do than the law currently allows for. So there's a few areas we are supportive of, but we're not overly confident on the appetite for other more significant changes.

COMMISSIONER LINDWALL: Now, the other thing of course that you've mentioned in your submission is about what you'd say is "excessive security costs" to a number of airports.

MR PARKER: Yes.

COMMISSIONER LINDWALL: Of course the government determines the amount of security, the minimum security at an airport. I guess, well, to articulate, are you claiming that the airports are deliberately having more security than required or is it that the cost of the security is too much for a given level of security, and why is that so? What would be the incentive for an airport to gold-plate security, if you like?

MR PARKER: Moksha?

MS WATTS: I think – sorry, Moksha Watts. Commissioner, our concern with the security pass through charging model is that the definitions have slipped over time that, as it was originally envisaged, it related to direct costs of security; costs such as passenger and baggage screening, counter terrorist security, and it has, now, expanded to include indirect costs such as administration fees, return on capital investment and a range of other overheads.

So, although there is an umbrella of government mandated charges, the concept has significantly expanded and because it is a pass through charge model, there is, not only very little scrutiny that we're able to apply to what is in those costs, but it fundamentally does not incentivise an airport as a security operator to be efficient. So they simply pass on whatever the cost is to airlines who then pass that onto passengers.

COMMISSIONER LINDWALL: Would you prefer the New Zealand approach where the government provides the security and then charges airlines for the security that the government is actually providing?

MS WATTS: So we're open to considering a number of reform options. There are challenges with the New Zealand model as well. We believe it could be more efficient and cost-effective. The Canadian model is another example; that's slightly different again.

But we believe that there are some simpler more light-handed options that are available for government before it considers something so different as bringing security in-house and some of the ones that we have suggested include introducing efficiency obligations on security operators, introducing appropriate boundaries on the concept of what is a recoverable security cost, amending price monitoring to consider security

charges so to provide additional information that we currently don't have and also implementing some pricing principles on the infrastructure costs around security. There are some simple things that could be done initially before some of those other options are considered.

MR PARKER: If I could just quickly add.

COMMISSIONER KING: Yes.

MR PARKER: I think it is the pass through charging model that we think acts as a disincentive for efficiency, and if I could just quickly give you the example of Perth Airport. So when we constructed our T3-T4 new international operation, Perth quoted circa \$40 million of which security was an essential element of that capital build.

We proposed, and it was ultimately agreed that we would develop and implement the new terminal arrangements, including security, and we did it for almost half and the Commonwealth itself noted how more efficiently, because of incentive, that the airline was able to operate versus an airport that has no real incentive in a pass through model when they simply pass on that cost, or in the case of some airports, seek to be rewarded with a margin on top of the investment.

COMMISSIONER KING: Do you want to do – I'm happy to do jet fuel or you are?

COMMISSIONER LINDWALL: Yes, you do jet fuel.

COMMISSIONER KING: I'll do jet fuel.

COMMISSIONER LINDWALL: We're going to talk about jet fuel, obviously.

COMMISSIONER KING: Jet fuel: Qantas' view on whether there's appropriate competition in jet fuel and do you see significant differences in the prices of jet fuel between either Australia and overseas or between different airports in Australia?

MS WATTS: Jet fuel, as you would have come across in your inquiry, is an area where information is incredibly difficult to find. So there's a number of commercial confidentiality constraints around the supply of jet fuel.

What we would say is one of the issues of concern to us is the application of fuel throughput levies which operate at seven airports, five of which we

operate to, and to the best of our knowledge we cannot find an additional service that those levies fund.

So if you took the example of the joint user hydrant installation at Sydney, the JUHI pays that a license fee and a leasing fee which (indistinct) should cover all of the costs to the airport of hosting that facility, regardless, the airport charges a 5 cents a litre levy which has increased in – well, it was introduced in 2012 and it's increased since then, to airlines for the passage of that fuel.

We believe that represents a windfall gain of approximately 17 million to that airport and probably of those seven airports nationally, we believe that the gain would be around about 20 million a year. So that's certainly an efficiency that we would suggest is worthy of consideration.

COMMISSIONER KING: Do you see any systematic difference in the total fuel price, in other words, including the throughput levy at airports that have that levy versus not? So in other words where there's a 5 cents per litre throughput levy, do you tend to pay 5 cents per litre more for fuel than you would otherwise be paying?

MS WATTS: So there's two ways to respond to that question. So at Sydney if the 5 cents didn't exist, we would pay 5 cents less and so that would be obvious. The case of Melbourne Airport its, as you know, is an open access arrangement but the infrastructure at Melbourne is incredibly constrained. So the access fee is actually quite high because there is an infrastructure constraint there.

So there can be a number of factors that will, beyond the actual price of the crude, come into the ultimate price we pay. The three most crucial factors would be fuel throughput levies, the access arrangement – the ability to get alternate access where there is a price constraint and an infrastructure provision along the jet fuel supply chain. So that's off and on airport.

COMMISSIONER KING: Qantas is in a slightly unusual position because you are obviously equity holders in the JUHI. It's been put to us that these fuel throughput levies are simply part of a negotiation for JUHIs so they're actually just part of a contractual agreement between the airport and the JUHIs for the JUHI lease. So does Qantas believe that if the 5 cent throughput levy disappeared, then, at the next contract negotiation with the JUHI and the airport that the 5 cents would simply reappear somewhere in there as a direct charge to the JUHI?

MS WATTS: It's a hypothetical in the sense that the levy was introduced in 2012, you know, the year of the last inquiry. In our experience, we would, through other airport negotiations which my colleagues can enumerate in additional detail, where an input cost is challenged by us, an often equivalent appears elsewhere in the building block methodology or in the OpEx cost.

So the fuel throughput levy is a great example of the way we see some of the gaming behaviour of airports where costs are simply shifted the moment there is some scrutiny. So throughput levies might've been seen as an opportunistic way of raising money. If the Commission were to make a finding against them, it's not possible to say if that cost will not simply disappear and be put into another input that the airlines pay and that's, I suppose, why we're here to argue for more effective light-handed regulation in order to provide greater scrutiny and transparency of the entire airport operation because we believe there is a risk of these things.

COMMISSIONER LINDWALL: Getting to that, and I'm conscious of the time. Do you believe that the profits made by an airport, say from its DFO operation, should be used to cross-subsidise aeronautical services?

MS WATTS: So more broadly there is a range of non-aeronautical revenue that airports earn because of the symbiotic relationship they have with airlines. There's no one to buy a cup of coffee if there isn't someone travelling on your plane, to be really simple about it. So there's a range of aeronautical revenue that is directly linked to the aeronautical revenue of an airport. You know, whether that's a DFO or not is another matter. We would suggest that's more an issue around what's permissible and not permissible under an Airport's Act airport rather than the material of a question.

COMMISSIONER KING: Yes, so just to clarify. I mean, essentially we're only talking about hybrid till or a dual till or some sort of – where should the boundary be? So should it include all airport profits under any sort of regulatory approach of airports, regardless of where the profits have come from, what operations? Should it include those that are only in the terminal and therefore you can say directly related to passengers? Should it include business parks where arguably, you know, some of the rent of those business parks is related to its proximity to the airport, but others are simply a commercial rent? So if there was a broader approach to airport profits, where would be draw the line?

COMMISSIONER LINDWALL: I'll let Jim - - -

MR HUDSON: Yes, I think from our perspective there's two things we would want, before I get to the question of where we would draw the line. We want airports to earn as the monopoly asset to earn a return that's a reasonable return in accordance with the building block model; a WACC framework. We also want airports to be incentivised to invest efficiently and invest efficiently in the right sort of investments. So whether that's aeronautical or not aeronautical, drive right long term outcomes for the airport and airport community. I don't know what the specific answer is around where you draw the line. What I will say is that hybrid till models, single till models can act as incentives to get the right efficient investment. They can also operate as a right framework to ensure an airport receives an appropriate return on a building block framework.

I would say that the current model where you do have a dual till often ends up where retail or non-aero investment is prioritised over aero investment or even worse, is categorised as aero investment and so I think that's the challenge that we would face.

COMMISSIONER KING: Sorry, I do want to just sort of push this a little bit further because I want to understand Qantas' position. So let's say there is a retail outlet – we won't mention a specific brand – which is built on an airport but completely separate from the terminal; may have a different access road – and if you've got one in your head, it's in Brisbane – maybe highly profitable, perhaps, because of tax rules or, perhaps, because of the original lease conditions meant that the government may not have got as much money as it should've when renting it out and simply a better use of land.

But if there is evidence that there is little, if any connection, between the use of the retail precinct and the aeronautical services, would Qantas say those windfall profits associated with a retail centre, “Yes, no, they're separate. They're not regulated. It's the aeronautical, broadly speaking, relating to passenger transport services that need to come under that single till”?

MR PARKER: We would certainly encourage the Commission to look at this more deeply because I think it warrants a debate to our philosophy that Matt mentioned earlier of the passengers we bring to an airport, and if you reverse engineer it, it is also the extraordinary margin of airports in Australia, compared to their international peers that suggests there is something fundamentally wrong with your making an 80 per cent margin or a 70 per cent margin on car parking.

So the answer to your question is “not perfect”, but we do think it warrants serious examination, if not by the Commission, by others and we

operator believes that Sydney airport operates efficiently with the existing curfew and cap.

The plan indicates the aircraft movements at Sydney airport over the past three years have been relatively stable and currently the cap is only approached during super-peaks, like public holidays and the start and finish of school holidays. And there doesn't appear to be any consideration of how a lift to the capital curfew would affect the future Western Sydney Airport. We've been advocating for the Western Sydney Airport to be built for a very long time now, and as an indication of my credentials as an Anti-NIMBY, I have very publically advocated to some of my colleagues of the same political persuasion in Western Sydney that their objections on the basis of aircraft noise to Western Sydney Airport are unfounded.

There are people in the Blue Mountains who are saying, "Oh, no, we can't have a Western Sydney Airport because it will affect us. The noise will affect us". It is actually quicker to get from the inner west to Parramatta than it is from Western Sydney Airport to the Blue Mountains. So I don't think there's anyone in Australia who has a more intimate understanding of what aircraft noise is or a greater tolerance for aircraft noise than people who live in the southern part of the inner west municipality.

So we are not opposed to airports. We're used to living with one. We're opposed to the agreement that was reached all those years ago and which has been infringed upon in practice, being torn up and the curfew and the cap being permanently undermined. So I might leave it there.

COMMISSIONER LINDWALL: Thank you very much. Do you mind if I call you Darcy?

COUNCILLOR BYRNE: Not at all. My technical title is Your Worship but I've been trying to convince people to go with that for many years and no one will.

COMMISSIONER LINDWALL: Rather good. Could I just clarify the Inner West Council distinct? Where does it extend compared to the airport itself?

COUNCILLOR BYRNE: It is bounded by Balmain and Birchgrove in the north. Ashfield in the west, Ashfield and Croydon in the west. Marrickville, Tempe, St Peters and Sydenham in the south and Newtown in the east. So it is kind of ground zero.

COMMISSIONER LINDWALL: Yes. There's no other council's area that would - - -

COUNCILLOR BYRNE: No, the three form a constituent councils that make up the inner west council were Marrickville, Leichhardt and Ashfield and they were also the three councils that were most affected by aircraft noise in the past.

COMMISSIONER LINDWALL: And you would acknowledge that we haven't said in our draft report that curfew should be removed or that there should be an increase in traffic, we were just exploring options with some level of flexibility in this.

COUNCILLOR BYRNE: Well, I was first made aware of it when I was contacted by Channel 7 to say that it had been suggested in your draft report that maybe the cap and curfew should go, and so I made my views clear on the television program that night and I've come here today to respectfully engage with you on the issue as well.

COMMISSIONER LINDWALL: Yes, I don't think you'll see us making any such recommendations.

COMMISSIONER KING: There certainly aren't any such recommendations in the draft report – I would be extraordinarily surprised if they - - -

COMMISSIONER LINDWALL: I'd be surprised.

COMMISSIONER KING: I suspect the current Commissioners would have to walk under a bus.

COUNCILLOR BYRNE: Right. Well, that's very reassuring.

COMMISSIONER LINDWALL: But can I talk about the operations during curfew period.

COUNCILLOR BYRNE: Yes.

COMMISSIONER LINDWALL: We are told that if Australia Post and other freight companies have told us that they'd have to have more movements of noisy aircraft and they're prohibited to use fewer movements of the large area (indistinct) . Is that somewhere that some flexibility could be agreed?

COUNCILLOR BYRNE: I think we'd want it to be very clearly demonstrated that any change to the cap or the curfew was not going to have any detrimental impact on the quality of life of residents living in the immediate vicinity of the airport, and it seems clear to me that if you increase the number of movements that there will be an increase in noise.

I understand that the technology is changing and that the aircraft that are coming online now operate very differently to those that were built 20 years ago, but people in our community are pretty cynical about any suggestion that we should have to put up with more aircraft noise. We're already dealing with more of it than anyone else in Australia, so I think the onus is really upon Sydney Airport Corporation or any of the operators making use of the airport to demonstrate very clearly that there won't be additional impacts through any change.

COMMISSIONER LINDWALL: So this thin edge of the wedge you mentioned, how would it be demonstrated credibly to you as the Mayor, that this change would be of mutual benefit, if you like or in fact it could reduce noise or lead to a better outcome and also allow greater levels of freights.

COUNCILLOR BYRNE: I think I'd just have to return that question to you. How would you demonstrate it to us? I don't think the onus is upon us to come up with a set of criterion - - -

COMMISSIONER LINDWALL: I am just asking for any suggestion, that's all.

COUNCILLOR BYRNE: Yes. We've got two very important protective measures in place and we're determined to maintain them.

COMMISSIONER LINDWALL: You've got this close association with Sydney Airport in many ways, obviously over many years. And in our inquiry we did look at a bit about the planning and master planning approach and interaction between the roads and rail and so on and the airport - and obviously, the airport does communicate with the state government. How happy are you with the relationships at Sydney Airport, in terms of your day-to-day interactions?

COUNCILLOR BYRNE: Well I think you have to understand the political context of our area, so there's - I am a member of the Labor Party. The Greens political party have significant representation across inner western Sydney and their policy is to close Sydney Airport. They are also opposed to the Western Sydney Airport, so I understand how people would get into Sydney under the Greens administration which is

by parachute but I just don't understand how they would get back out. So I've always tried to have a very constructive relationship with Sydney Airport Corporation. They undertake a lot of community development work and grants programs, charitable giving, there's lots of good people who work there, we consider them a very significant employer. There's lots of our local residents who work there and so we recognise all of those benefits and have always tried to have a constructive relationship. Obviously, as you'd already be aware from your investigations, accessibility through the local traffic networks, into and out of the airport is very poor.

COMMISSIONER LINDWALL: The congestion must be painful, yes.

COUNCILLOR BYRNE: Yes and the planning around Westconnex hasn't solved that. The original premise would be that it would create a direct link to Port Botany and the airport; it's still not entirely clear how the two - how Westconnex will be connected to the airport. There is this Sydney Gateway project which is proceeding but I think the planning around that entire project, in relation to the airport, has been shambolic. That has created a lot of cynicism and distrust. One of the other factors that you might want to consider is that the existing impacts on places like St Peters, from the Westconnex project and now the construction of the Metro, have been very, very significant in terms of dust, air pollution, noise pollution, traffic disruption. So it's all sort of tied into one sort of tsunami of infrastructure impacts, which local residents are up in arms about.

COMMISSIONER LINDWALL: So this is really a sense that a government, of whichever persuasion, make a promise in some area and it's not fulfilled through noise, through dust and other impacts and that makes the community distrustful of promises or even resistant to change that might be helpful?

COUNCILLOR BYRNE: Yes, the government's inability to ensure that contractors associated with the Westconnex project have complied with their conditions of consent, has engendered a lot of anger and were you to have obviously, disowned any suggestion that you would propose lifting the cap or the curfew but I could certainly attest to the fact that were that to be proposed now, that that would be conflated with the existing impacts that people are experiencing and it would result in very strident opposition.

COMMISSIONER LINDWALL: I should let Stephen ask some questions.

COMMISSIONER KING: So just to - I guess what we were trying to explore in our draft report was sort of the potential for win/win type of situations, where the local community is better off and the travelling public are potentially better off as well. I am happy for - these are theoretical but I am interested in exploring whether some of our suggestions could potentially do that. So for example, you mentioned LTOP targets not being met. It has been put to us that if we reduced the number of movements off-peak, then that would help achieve the targets in the long-term operational plan. Now obviously, that would be a loss for the airport, so what we were wondering is, if you then had more movements in the peak - and I understand there's a bit of flexibility there from the airport's logistical perspective - would that be overall a benefit? So concentrating the noise, in a sense, in the two peak periods, with perhaps lower noise in line with long-term operational plan in the off-peak periods. Is that something worth considering or not - and I'm happy either way.

COUNCILLOR BYRNE: I might ask our strategic transport planner, Ken Welsh, to address that question.

MR WELSH: The issue with concentrating the noise over the peak periods is that the morning peak, in particular, is still a sensitive period for the residents and for the schools. So you would have a much more intense period for say three hours in the morning, where at the minute the cap is 80, whereas you could push it all the way to 100. That would have the potential of yes, depleting the need for the off-peak period but putting a very intense period of noise from six until nine and that, I consider that quite a sensitive period.

COMMISSIONER KING: Okay. One of the other possibilities then - so I take that as a trade-off and it's not clear. Is that a reasonable summary?

MR WELSH: Yes, you would need to do a full noise analysis on it. The other issues we have is the current method of analysing noise is about 35 years old, so we're not convinced that the system is - - -

COMMISSIONER LINDWALL: Just a quick one. I don't think it was 100, I don't think even think that Sydney Airport has the capacity of managing 100 movements in the tower. I thought maybe 85 might be something - - -

MR WELSH: At the minute you have a cap of 80 but the joint study into the operation of the airports back about five years ago, five to seven years

COMMISSIONER KING: No, I understand that. Just a couple of things on the evidence background. The 80 movements per hour, it is far from clear to us that there was actually any great science behind it when it came in, rather than 85 or 75 or whatever. Is that the case or are we missing something, was there a study done at the time to justify the 80 movements as a reasonable level?

COUNCILLOR BYRNE: I was in Year 10 at the time, so I might defer to our strategic planning officer again.

MR WELSH: I wasn't in Year 10 but I wasn't in the country. I am not aware of any study that definitively said 80 was the point but some of the representatives from organisations like SACF may have the history on that.

COMMISSIONER KING: Okay. Are you aware of any studies since then, which have actually properly evaluated the cost to community around Sydney Airport of the noise pollution, the economic externality, to understand both the direct economic and just the health and other costs associated with the airport noise. Has anyone in a sense popping it back to you, Darcy, you said that evidence would need to be shown to you. Has anyone actually done the evidence in the last whatever, 20, 30 years to actually show the impacts and how those impacts are changing, what the impacts are? Whether the impacts currently are satisfactory or not?

COUNCILLOR BYRNE: Well, I think that's very enlightened to hear the Productivity Commission looking at the issue in that way. It was an enormous political issue at the time that the cap was introduced, but huge in the same way that Westconnex has been now. There was huge community opposition, all of the local councils were involved in arranging protest rallies against the changes that occurred. At Sydney Airport, at one stage (indistinct) council was driving their waste and recycling trucks around the airport blockading it. And the settlement that was reached did not satisfy a significant proportion to population but people have moved on. And so if you're still living in the inner west or you've moved to the inner west since, you've made a decision that you're going to live in a community where there are pockets or extensive areas where there are significant impacts from aircraft noise.

We know from the data that that has certainly not been reduced over time, but people accept that that is the status quo. That's the decision that we've made. So if Sydney Airport Corporation or the Productivity Commission were to come and ask us that – to cooperate with them in a study to quantify the impacts on people's health and well-being of aircraft

COMMISSIONER LINDWALL: You might have to speak up because the microphones are purely for recording the transcript.

MR ALEXANDER: I see, okay.

COMMISSIONER LINDWALL: So yes, they don't amplify.

MR WARD: Sorry. I'm Jonathon Ward.

MS PATRINOS: And I'm Maria Patrinos a community representative for the west on the Sydney Airport Community Forum which the Federal Government committee feedbacks to the Federal Minister for Transport.

MR ALEXANDER: And I'm still John Alexander. And have been for a long while.

COMMISSIONER LINDWALL: Indeed. Welcome. Do you want to make a statement?

MR ALEXANDER: Sure. I'm the Member of Parliament for Bennelong and chair of the Sydney Airport Community Forum, or SACF for short. I'm joined here by Maria Patrinos and Jonathon Ward. Jonathon is a member of my staff. I believe the inquiry will also be hearing from John Clarke who is also a member of SACF, but we'll be presenting his submission separately.

SACF has already provided a written submission to the inquiry and we will speak to this today. Firstly, we should mention a bit about who we are. SACF was set up by the Minister for Infrastructure and Transport in July 1996 to address the impacts from Sydney Airport in the wake of the huge public outcry over aircraft noise with the opening of the third runway.

It includes representatives of the community, local councils, industry, State and Federal Parliaments. The full membership of SACF is available from the website. The role of SACF is to provide advice to the Minister, Sydney Airport Corporation and aviation authorities on the abatement of aircraft noise and related environmental issues at Sydney Airport and provide advice to aviation authorities to facilitate improved consultation and information flows to the community about the airport's operations. We hold quarterly meetings with local residents and their representatives put their concerns particularly about aircraft noise to industry and the department who in turn give regular updates.

Meetings are fully open to the public. Because SACF's terms are related mostly to noise concerns, we will be limiting our discussion to this element of the inquiry. As Sydney Airport is in the middle of the city and while this is advantageous for access from the CBD, it is disadvantageous to the liveability of the many surrounding suburbs. But this is area of concern in parts of my electorate, in north-western Sydney, demonstrates the wide breadth of Sydney suburbs that are effected by aircraft noise. I would draw the committee's attention to the N70 diagram in our submission, to see the full size of the impact of aircraft noise.

It is impossible for a plane to take off or land in Sydney, without travelling over suburbs. Even to the south, Kurnell lies right under the flight path. Additionally, parallel runways suggest most flights should take off to the north and south of the runway, if one was to simply to consider productivity. But if - but it was the outcry to this concept, back in 1996, that created the need for SACF in the first place. The solution to this problem was the LTOP, the long-term operating plan. To quote from the SACF website:

Airservices Australia developed a report setting out options for operating the Airport in a way that shares the noise as fairly as possible. This document effectively put forward the draft Long Term Operating Plan for Sydney Airport and was released for public comment in late 1996.

The LTOP has the following noise sharing targets for aircraft movements:

17% of movements to the North of the Airport; 13% of movements to the East of the Airport; 15% of movements to the West of the Airport; 55% of movements to the South of the Airport.

A key feature of the Plan is the runway rotation system. This system involves different combinations of runways (runway modes) being used at different times of the day to provide, as far as possible, individual areas with periods of respite from aircraft noise. Noise sharing modes must be used at the airport, except when weather or unusual traffic conditions prevent this occurring, during the following hours on weekdays:

6am to 7am; 11am to 3pm; and 8pm to curfew.

Longer noise sharing hours apply at weekends. Noise sharing modes should be used at other times if the conditions permit.

on a Singapore Airlines A380, prior to its introduction as a commercial service demonstrated this.

It showed that on arrival, the A380 was only between 2.1 and 3.7 decibels quieter than a 747-400. Even Sydney Airport admitted, in its recent preliminary draft Master Plan, that a drop of decibels on landing is barely perceptible to humans, let alone when noise events are frequently between 70 and 90 decibels. The fact is, larger planes are generally noisier than smaller ones, and the pdMP predicts that trend to accelerate. Of course, any move to new generation aircraft will require - will take decades to fully replace the current fleet. The reliance on planes becoming quieter, is not going to make the difference the report is suggesting it will.

In concluding, I would like to reiterate the importance of this cap and curfew. The movement cap is a specific measure limiting the maximum number of movements, during a rolling 60 minute period. The cap reflects the recognition that an important aspect of the impact of aircraft noise on humans is the frequency of events even then, the current cap of 80 movements per hour means an aircraft movement over residents, every 90 seconds, resulting in almost constant aircraft noise.

Economic arguments to change the cap to allow more aircraft to take off and land based on efficiency ignore the economic, social and health costs of aircraft noise pollution on the community. Aircraft noise pollution is treated as a free good, to be consumed at will. As far as Sydney Airport and the aviation industry are concerned. Currently it's only through effective regulation that the community is given some protection.

We believe the draft report fails to consider the broader picture of productivity. Increasing the cap and reducing the curfew in particular may increase the productivity of the airport, but would likely be more than offset by the loss of productivity and health impacts, caused by the constant disruption and annoyance of aircraft noise as well as the many thousands of people who would suffer a broken nights' sleep. Existing cap and curfew regulations must remain. Thank you. And we would welcome questions.

COMMISSIONER LINDWALL: Thank you very much for that one. I just wanted to clarify one thing, just from the start. We had not made a recommendation to remove the curfew or increase the cap. What we tried to explore was some flexibility in those, and that's what I'll get to in questions.

Secondly, on the point about orbits, holding patterns at various parts away from population centres at a high altitude, I just note that about three or

COMMISSIONER LINDWALL: Yes, that's true, that's fair. How about you go, Stephen?

MS PATRINOS: No, no, please, go ahead. All I'm saying is that there are a variety, there's a plethora of views around the committee and so it requires a lot of debate to get to a joint position and to agitate for some change.

COMMISSIONER KING: I understand. But if things haven't been discussed at the committee and the committee hasn't reached a consensus and you can't really give a forum view unless there is a forum. I understand.

MS PATRINOS: We can give individual views, of course.

COMMISSIONER KING: Of course, and we'll take them on that basis.

MS PATRINOS: Okay.

COMMISSIONER KING: You may have heard my questions earlier on to the mayor of the Inner West Council relating to where the 80 movement per hour cap came from, why it was 80 rather than 85 or 75 or anything else, are you aware of why 80 was chosen, was there a study done into the noise and amenity, the cost to the residents, is there something that we can go and look at to say that's why 80 was chosen, there is a science or a rationale behind this?

MR ALEXANDER: We did have a discussion about the origins of this, didn't we.

MR WARD: Yes, I mean it wouldn't have been a random number because we weren't there when it was but I can take that on notice and find out.

COMMISSIONER KING: That would be fantastic.

MR ALEXANDER: It wouldn't have just been plucked out of somewhere, nowhere rather, it must come from somewhere.

MS PATRINOS: Well, it definitely came from somewhere, it would have been predicated, I don't know if it was legislated originally on some basis or whether it was part of the development of the LTOP, but I believe there are physical constraints as to how much an aircraft can use a runway under a defined, a predefined configuration, so it's all configuration specific.

frameworks. The report that he did back in the day, I note of interest it was a joint report with another person whose name escapes me. But the report didn't just take in - - -

MS PATRINOS: I want to say Paul.

MR WARD: You think it was Paul?

MS PATRINOS: I think it was Paul, yes, I think it was.

MR WARD: The report took in sort of two aspects of it, because particularly with hearing and noise effects it's not just a – in fact that one person feels that may not be the same way another person feels that, so it's not a truly scientific thing of this aeroplane fits this amount of noise and this aeroplane noise will travel x amount of distance that will stop at this road, this house might affect it, it might have different cladding, that person might have more sensitivity.

So the two people that did it, one was more of the engineering side and plus was more social, behaviour psychologist I believe or much more of that side of the social aspect of it and it was a very interesting report, but it is also fairly dated. So I'll definitely find out.

COMMISSIONER KING: Yes, it's good to know.

MR ALEXANDER: Just I should add that the number one issue regarding the operation of the airport is safety and that figure of 80 movements per hour is probably well within a margin to provide us with probably, the airport, with as good a safety record as anywhere in the world, so the noise is second to safety.

COMMISSIONER LINDWALL: I understand that, yes.

COMMISSIONER KING: I was going to go onto the LTOP, that was the intent.

COMMISSIONER LINDWALL: Yes.

COMMISSIONER KING: All right, thanks. We made a number of suggestions as to possible reforms, Paul ran through one with regards to the post-curfew, whether the planes should be evaluated on a noise basis rather than just a list of this plane and not others that may actually be quieter, so we've discussed that. One of the other ones that we looked at was whether there's ways to provide more flexibility in the cap of potentially have a

variable cap and one option there would be to have fewer movements off-peak and more movements in the peak.

My understanding is that that would make it more likely that the sort of LTOP targets would be able to be met, but it has been put to us that that may be an undesirable change rather than a desirable change, there seems to be different views. So I'd be interested, again, if the forum has a view I'd be interested in the forum's view, if the forum doesn't have a view we'd be interested in your individual views.

MS PATRINOS: Our view is against it I believe, the forum's view is against it.

COMMISSIONER KING: The forum's view is against it, okay.

MS PATRINOS: I think that it's important that the cap remains where it is, I think there's always pressure whether the maximum of the cap is 80 or it's 90 or it's 100 regardless of the absolute value I think there will always be pressure to increase the cap. So in many ways it's about what

a vital transportation role throughout the world, with in excess of 35,000 jets and turbo props in operation; it's a very large fleet of aircraft.

Our submission to the 2011/12 Productivity Commission Inquiry into Economic Regulation of Airports concentrated on the requirement for larger business jets to operate at primary capital city airports, due to the need for longer runways and other infrastructure. It's very pleasing to note that in general, business jets are now very welcome at these capital city airports. We have worked hard at that and it was supported by the Productivity Commission report in 2012.

Also, the ABAA has achieved improved access to Australian airspace for our members and visiting business jets from overseas. Operations into primary capital city airports improved in 2016, when an amendment to the Airservices Australia Assessment of Priorities aeronautical information publication came out.

Now, if a business jet is off blocks on time and has a landing slot if required, the aircraft will be accommodated in the air traffic flow. This improved safety; this was a major step forward for business aviation and airspace safety in Australia and we've had absolutely no adverse comments, even though the Airports Association was very against it, they said that A380s would be diverted from Sydney to Adelaide, et cetera. It was absolutely wrong. We fit into the system, we slot in very easily and our air traffic controllers really appreciate that now.

We have got two major items for discussion today. One is we request a study be undertaken to compare charges incurred by business jet operations at primary capital city airports. We know they are Sydney, Brisbane, Melbourne, Essendon, Perth, Adelaide, Canberra. These airports are of course owned by the Commonwealth and leased to publicly listed companies and privately owned airport operators. Airport charges include take-off and landing fees, aircraft parking fees, security fees, ground handling fees in some cases - but we are particularly concerned about fees at Canberra Airport and it's in our paper, which has gone up on the website today, I believe.

I will just give you a couple of quick examples of Canberra. Domestic operation, first example. Same day domestic arrival and departure, this is one business jet, a Bombardier Global Express, \$3,421 thank you. Aircraft parking for one day, same aircraft, \$2,900 thank you very much. Total \$6,337 plus GST. I will give you another example of an international operation at Canberra, where we need to be there for two days. Apron development levy, \$260 a day, that's 520. Apron access security levy \$440 a day; landing fee per visit \$3,763; aircraft parking fee

\$3,200 per day; total for a two-day trip, international, Canberra Airport for Bombardier Global Express \$11,579, plus GST. I think that would be amongst the most expensive in the world and there must be, in our opinion, an inquiry into Canberra charges and also at the same time, look at other airports.

Now I'll give you an example of Sydney. Sydney International FBO arrival movement fee – that's a fixed based operation charge - \$390 for arrival, and \$390 for departure; airport landing fee \$274.98; airport departure fee the same; airport security fee \$21; aircraft parking fee \$280; total \$1,631. That's at Sydney Airport; for a one day airport visit for Bombardier Global Express.

So who is charging too much? I did get a story from Canberra Airport some years ago. They said, "We have to make these charges because our volume is very low." Well, maybe your volume would increase if you decreased your charges. So that, I really believe we've got to look into capital city airport charges for business jets, particularly Canberra. But look at the rest for a comparison.

Now, I'd like to move onto the recommendation that Curfew Regulations 1995 be amended to allow business jet aircraft which are certified to ICAO Chapter IV noise standards and also certified to carry – and this is very important in our proposal – "a maximum of 19 passengers", because that's the way a business jet is defined in the world. That is the benchmark for a business jet. It might be a Boeing business jet, but they're usually certified for 19 passengers. Our aeroplanes are the biggest, usually Gulfstreams, Bombardiers and Falcon Jets, et cetera.

This recommendation is supported by all of the business aviation associations in the airport who say that the – I'll get onto it shortly – there's a weight limitation, a maximum take-off limitation of 34 tonnes for quiet business jets to be able to operate during the curfew of Sydney Airport.

This was put into motion in 1995 when the Act came out and the largest business jet in general usage then was a Gulfstream G4 which weighed 33.8 tonnes. But aeroplanes have grown much bigger, less noisy and more fuel efficient and they fly further. But those heavier business jets now are penalised. They are discriminated against, even though they are quieter than many business jets currently approved to operate at Sydney during the curfew, but because they're a little bit heavier and they have longer range, they are not permitted to operate.

Airport Division instruments.” This is very interesting. These ten instruments were due to sunset in April this year. In their wisdom, they’ve decided, “No, we’ll let those sunset in another five years.”

Well, we have asked the Department to bring forward at least the Curfew Regulations to sunset as soon as possible so we can get these regulations changed, so we can have these departure and arrival situations and airplanes weighing more than 34 tonnes, but quieter.

Now, it’s very interesting that the Department have said that they will try to move the Curfew Regulation sunset forward a little bit. It definitely must happen before April 2024 and I’m going to work with them to have this as one of the first of the ten. There’s slots; there’s other things that are very important there too.

We don’t complain about the slot system. We try to fit in with it. I just want to touch on that a little bit and then I’ll be quiet. The slot system actually has worked – our members have always worked very well with Airport Coordination Australia on the slot system.

We understand where ACA’s coming from. We try to fit in with it and we do. But we’ve been quite lucky in recent years because the airlines have cancelled quite a few flights. Either the day before or even on that day. So if our guys are willing to go at short notice, they can. And it’s very interesting that our members are becoming more flexible. They might say to the boss look, we haven’t got a spot at 8.30 now, but you know, if you’re ready to go sometime after 7 am, we might get it. And invariably, we do now. Because the airlines are cancelling flights. Anyone who goes to Canberra knows that story. Anyone who goes to Melbourne knows that story. Brisbane. It’s the same thing. A lot of flights cancelled every day. And fortunately, Business Aviation can step in if we’re ready. And I get quite excited sitting on a Dash 8 going to Canberra at 7.05 or whatever it is. And I see a Global Express behind us, because I know someone has cancelled a flight and our guy was ready to go. So it’s great stuff. That’s it from me. Thanks very much.

COMMISSIONER LINDWALL: Well, thank you very much, David. Yes, just a couple of things initially. You said that the current limit is 34,000 kilograms.

MR BELL: Kilograms, yes.

COMMISSIONER LINDWALL: Now, what’s the – how much – how heavy are the planes we’re talking about?

Sydney air-traffic controller said that should be feasible. It's on their list to do now, the staff, the reverse track of the SID and they think they'll have it done by the end of the year. – these are proper IFR approaches and departures.

COMMISSIONER LINDWALL: So what do you say about the government policy announcement that when Western Sydney opens in 2026, there'll be no arrivals during curfew at all except for emergencies?

MR BELL: Yes, it doesn't seem reasonable. We'll have to cross that bridge when it comes. It's – I think that we've proven that our airplanes are very, very quiet and with these new flight procedures we're not going to be flying over built up areas at all. They're very quiet airplanes. In fact I had a group visiting from the Japanese Research Institute, part of ANA Airways. They're interested in Business Aviation movements during the Olympics in Tokyo in 2020 and they had a team come out. We showed them around the airports and talk to airport managers – we went to Sydney Melbourne, and Essendon airports, and we stood outside Kentucky Fried Chicken one day and watched the airplanes coming into land on 16Left, the short runway and there was a couple of 737s with flaps down, pretty noisy.

And then I knew this was going to happen because I had a mate of mine who said I'm going to be arriving in a GIV soon, David, I'm coming from Brisbane. And I said to the Japanese, “Just have a look at this G4 coming in.” And they said, “Well, where is it?” I said, “It's just going past now.” “Oh.”

You could hardly hear it. So that's the proof of the pudding. I know some noise away from airports, but you'll find that Business jets are not noisy away from airports either. They're very quiet.

COMMISSIONER KING: Can I come back to your price examples. So when a business jet arrives, or let's say is flying into Canberra, do – would your members negotiate the prices with Canberra? Or is it sort of like a supermarket. You go in and you either take the price or - - -

MR BELL: No, they don't negotiate. They might tell me that it's too expensive or – I said to them before this hearing now, I said, “Give me some examples that you're really disappointed with.” And Canberra came up mostly. But then I got a comparison for Sydney which is in here, so the two examples I've given for Canberra, or it might be three, are actually quite recently.

MR BELL: Not much. Not much really. I know Essendon was a monopoly up until fairly recently and then another fuel company came in to Essendon and that's improved the situation a lot. Essendon, I'll just say this is a very important Business Aviation airport. There are more than 60 Business jets based at Essendon and a lot of turboprops. It is a – it's a hub for Business Aviation in Australia. The other airports, Sydney, Brisbane, Melbourne, Adelaide, Perth, Darwin, Cairns, to some extent, are all now welcoming business jets, which is great. Because it wasn't the case 10 years ago with some of these airports. In fact, Sydney airport when it was owned by Macquarie Bank in entirety wanted to move Business jets off the airport. They said you can go to Bankstown.

I reported this in the last Commission Inquiry. Going to Bankstown, Newcastle or Canberra would be totally inept and they said "By the way, because of downtown real estate prices, we're going to start charging your members \$3300 a day to park at Sydney airport. They were currently paying \$150 a day. Well, we won that one and since that meeting in 2010, we've had CPI increases at Sydney Airport for parking. And you'll now find that Sydney Airport is amongst the least expensive airports – for aircraft parking. I don't know about car parking charge. They're good for us.

COMMISSIONER LINDWALL: Thank you very much there, David.

MR BELL: Thank you. No more questions?

COMMISSIONER LINDWALL: No, no.

COMMISSIONER KING: That's it.

COMMISSIONER LINDWALL: We're going to hear from REX now. Yes, John how are you? Nice to see you. So John and Warrick, if you would like to introduce yourselves and then perhaps give us a statement.

MR SHARP: Certainly. My name is John Sharp, I'm the deputy chairman of Rex and I'm here with Warrick Lodge.

MR LODGE: Yes, I'm Warrick Lodge and I'm the general manager of network strategy and sales for Rex.

MR SHARP: Thank you very much for giving us a hearing. I have to say at the outset that we very nearly didn't bother to come here today because we are extremely disappointed with your report. We're disappointed on a number of grounds, but one of them which is the reason why we nearly didn't bother to come was because we believe that you

fees. Surely that in the current system is a very lengthy delay and a lot of cost. So I don't understand and we are baffled why you think negotiate-arbitrate is going to be worse than that.

COMMISSIONER LINDWALL: We can talk about that - - -

MR SHARP: Well, I look forward to hearing what the explanation is, because it's not obvious in your draft report. You then talk about arbitrated outcomes may reduce efficiency for other users. You make the statement, but there's no example of how that actually works and we're baffled to find out what it is. We don't understand that. So we will be interested in hearing what it is you think this actually means, because just saying something doesn't mean it's correct.

Then you also talk about availability of the national access regime. This one has us more than baffled. National access regime - the last time anybody had a go at this in the airline business was Virgin Blue. It has been discussed already today. It started in 2002. It took five years to resolve it, and you know this. Virgin Blue ended up having to apply to the NCC. The NCC had to make a recommendation to the relevant minister. The minister could make a judgment. It was appealable by the tribunal. Virgin ended up in both the Full Federal Court, the tribunal, and there was an appeal in the High Court. This took five years. This cost many millions of dollars in legal fees.

You're proposing that this is a reason why we should be happy with the status quo. Now, you think of the cost of that and the time taken in that, and you think about if it wasn't Virgin Blue, pretend it's Rex, Virgin Blue has a market, or Virgin as it is today has a market cap ten times the size of Rex. Sydney Airport who was of course the person or the entity that Virgin Blue was appealing to the NCC for a declaration of airside services, Sydney Airport exhausted every legal avenue they could find to delay that process to try and wear the other side out. Sydney Airport has a market cap that is one hundred times the size of Rex. If you think about this from a practical person's point of view would Rex ever embark on a process like that where the persons or the entity that you are appealing against will have full access to a legal process that they can afford and you can't. I don't think having availability of the national access regime represents a solution that an airline like ours would contemplate using. I think it's a nonsense and I think nobody else has tried it since from the airline perspective.

COMMISSIONER LINDWALL: Tiger has.

COMMISSIONER KING: No, John, I'm not going to be involved in arguing with you.

MR SHARP: Well, you are, but anyway.

COMMISSIONER KING: I merely wish to point out that you stated there hadn't been any application since Virgin. That is factually correct and I think you would agree with that.

COMMISSIONER LINDWALL: Do you want us to ask some questions, John?

MR SHARP: Okay. We don't think the four reasons that you put forward, time and cost - I mean it's hard to argue that the current system doesn't take a lot of time. Am I correct?

COMMISSIONER LINDWALL: Some people would say, yes, that it doesn't take time.

MR SHARP: Some people say.

COMMISSIONER LINDWALL: Some people would say, yes, it does take time.

MR SHARP: The evidence is there to suggest it is, and we have got 400 pages of it here, which we would invite you to read, which actually proves that it does. So the four points; time and cost - it's a long time under the status quo, and the cost can be very great, can it not? Okay. The second point, which is arbitration can hold up investments, well that happens now under the current system. So negotiate-arbitrate is unlikely to change any of that, in fact it could actually speed up the resolution of a dispute because that's the experience others have had doing the same thing, and you can't disagree with the fact that the gas pipeline resolved its problems, it's negotiations, very quickly.

COMMISSIONER LINDWALL: Airports are different to pipelines.

MR SHARP: Okay. Is that correct? Am I correct in saying that?

COMMISSIONER KING: I think if you can finish your comments and then we will start asking you questions because I'm worried about our timing here.

MR SHARP: Well, I will continue, and I want to talk to you about the issue of your claim that airlines have countervailing power over airports.

we don't oppose a review of the slot system but what we would say to you is the slot system which I introduced also, also created the Sydney Airport Community Forum that was here earlier with John Alexander. The slot system that I created actually - and I should really get Warrick to answer this question but I think he'll tell you, it's worked extremely well, he is far better versed in it than I and as far as the rest of it is concerned with managing Sydney Airport, I think you should leave things alone.

COMMISSIONER LINDWALL: Okay, well we had better get on to a couple of questions. Do you want to go first or me?

COMMISSIONER KING: Sorry, just a couple of points that came up during your presentation, so thank you for that. Does REX consider that cost-based prices, that it should be paying cost-based prices at airports for its landing charges?

MR SHARP: The cost-based price would be what it costs to provide the service.

COMMISSIONER KING: So for example, if a building block model or a standard regulatory approach was used with the proper costs, so the operational costs, return on capital, that that should be the basis of REX's charge?

MR SHARP: Let me tell you the experience that we have and this is real-life experience. When a council gets a new general manager, the first thing they try to do, they think this will be a very good initiative on their behalf and show what a good general manager they are, is they decide they'll increase the charges at the regional airport that they administer and they think this is going to produce profits and the airport will be a profit centre and everything will be great.

Now how they do that, in the case of King Island Airport, for example, is you go in and you revalue the asset and you go and value an asset that for the ease of example is worth \$100 before you valued it and after you value it, it's worth \$400 so you then depreciate it at whatever rate you pick, five per cent, whatever you want. In the case of King Island Airport, it added another \$400,000 to the so-called operating costs. So coming to your question, what is the cost - because the cost could be an inflated depreciation cost caused by a new valuation designed to get the charges up so that the airport manager and the council can say "But we're not covering our costs", which is of course what they do. Warrick can give you the example at Wagga, you might like to give the example at Wagga Airport, what they've done there.

MR LODGE: Yes, it was probably only around five years ago that the assets were revalued at Wagga Airport and that revaluation process seen the depreciation costs at the airport blow out from around \$700,000 per year to about \$1.8 million. You know, when Wagga Airport has just over 200,000 passengers a year and you've got almost two million dollars in depreciation costs alone, that has a big impact on the financial viability of the airport.

I guess with regional airports, there needs to be some acknowledgment that many of the regional services that we operate are extremely marginal and if were to go down a path of ensuring that every regional airport was profitable, then there'd be a vast change in what our network would look like because there needs to be a balance between service viability and the community benefits that are driven by regional aviation. As a regional airline we experience the same inefficiencies associated with small passenger numbers as what regional airports do.

So I guess that's where the tension exists in terms of saying, well you know, we've got a loss-making service going to your airport and the airport wants to put up its airport charges by a dollar a passenger. That dollar a passenger might not sound like a lot at face value but with 60,000 passengers, that's an extra \$60,000 in operating costs, which for a service that potentially is already loss-making, is difficult to swallow. So that's where, I think from a regional local government perspective, there needs to be that balance between all those other benefits that the air service bring to the local community and not just looking at the one-dimensional viability of the airport profit and loss.

COMMISSIONER LINDWALL: Because this comes back to negotiate/arbitrate, the (indistinct) access regime or the (indistinct) rules of the arbitration regime under there has been put up as being one that we should look at to see success and yet that is explicitly - part of the rules for the arbitrator is to take explicitly into account the costs. So from what you've just said there, my understanding would be you would have problems in setting that as part of the things that the arbitrator must take into account. Is that?

MR SHARP: Well you know, you're assuming the arbitrator's not very intelligent. I mean the arbitrator I'm sure is capable of working around what a reasonable cost is. I mean when you asked me that question a moment ago, would we be prepared to pay at just the cost, my answer to you is it depends on what the cost is. Is it artificially inflated in the case of say King Island Airport or we experience with others, it depends. So I think if you get an expert arbitrator who actually knows what he's doing

and is intelligent, I'm sure he or she would be fully capable of working out what is a real cost, as opposed to an artificially inflated cost.

COMMISSIONER LINDWALL: What about a better solution - - -

MR SHARP: Okay, I'm looking for better solutions because we haven't found any so far.

COMMISSIONER LINDWALL: A lot of the money that you're talking about going to regional airports, which as you say, cannot make money actually, come from state and federal governments. Some people have proposed a fund for a cost delivered analysis for the investment that is made by the governments because capex for those airports is required to cover them external source, right?

MR SHARP: Correct.

COMMISSIONER LINDWALL: And it goes there. Perhaps as a condition of that, that the governments insist, since they are actually investing in it, that the airports cannot charge depreciation on the asset that's been provided to them and then that wouldn't form part of the charges, you wouldn't need negotiate/arbitrate and you'd have lower prices and - - -

MR SHARP: It's a very valid point to make and we would argue that is the case because in reality, it is an investment made by the airport owner, it's an investment made by the public in the public interest, so why would you depreciate it and then add it to the cost of operating the airport? Indeed it's a very valid point and I totally agree with you. Sadly, we see airport owners, regional councils, local councils, attempt to do that and so this is where your question, I keep coming back to your question, is a difficult one to answer because it depends on the cost. Paul's highlighted a very good way of dealing with it, how an intelligent arbitrator might indeed be able to identify what is a real cost.

COMMISSIONER KING: Would you see the negotiate/arbitrate solution, would the arbitration decision or the arbitrator's decision be appealable?

MR SHARP: Sorry, appealable?

COMMISSIONER KING: Could be - able to be appealed, yes.

MR SHARP: My understanding of what we want is that the arbitrator's decision would be final.

COMMISSIONER KING: Let's imagine that an arbitrator did something that from your perspective was incorrect, in terms of getting the asset base or getting the cost. So perhaps includes facilities that you think are gold plating are over the top and shouldn't but the arbitrator comes up and says, no they're included in the price. It seems to me that's a very lopsided, if I can call it that, solution. The airport then can't say well you know, if the price is too low, they can't say "We'll take our airport and go away" but if the price is too high, as we've seen in Mildura, REX can say "We'll cease flying to that airport." So isn't the negotiate/arbitrate with no appeal process biased towards the airlines?

MR SHARP: I don't see it as such. I see it as providing a quick, affordable and efficient method of solving disputes. I mean, you are putting to us a hypothetical situation. We can be here all afternoon. I could put some hypothetical situations to you. But as a principle, which is what we should be talking about now, and what you should be proposing the government, as a principle, an arbitration system which leaves the arbitrator's judgment as the final judgment is the proposition, I believe, that we support and that we would hope that you would support.

Now, you can put these hypothetical situations where there may be a failure in law, in due process or some other thing, that would give the other side, the so-called loser if there is one, there may not be a loser in this, but let's assume there is for the moment, gives him cause to go to legal challenge. Well, that might happen, I don't know, but what I would say to you is, that is entirely available to anybody who is a so-called loser now, which is probably what will happen in Perth with the Qantas situation, where whoever wins or loses, if there is such a thing, if there is a loser they'll probably appeal.

And that's available now. So in that situation it's no worse than what we've got. But if you take an optimistic view of the world and you assume that arbitrators are intelligent, capable people who are expert in their field, know what they're doing, follow proper due processes, comply with the law as they know it, then the chances are they'll come down with results which would be deemed to be fair and reasonable and there won't be follow on.

MR LODGE: And I think that, from our experience in dealing with more than 50 regional airports that are predominantly owned by local government, that our experience in the way that some of those have been managed from the airport's perspective, our view is that some of those have been quite ridiculous in terms of the proposed increases that are being imposed onto us or put forward, and we believe that having that

arbitration process or even the threat of having that arbitration process as a back stop, will actually avoid some of those outrageous things that happen.

You know, we put forward the negotiate-arbitrate process based on our real life experience in terms of dealing with airports, and we know that, any reasonable person looking at the process that we've been looking at for the last 17 years that Rex has existed, would say that many of the things that we have to endure are totally unreasonable.

COMMISSIONER KING: Just one final one and I understand you don't want to deal with hypotheticals so I'll just put a high level principle, in an arbitration, let's say between Qantas and Wagga airport, would Rex believe that it should be involved in that arbitration, that it should have standing before the arbitrator?

MR SHARP: It depends on the circumstances. Again, you're putting a hypothetical situation, you said you weren't but - - -

COMMISSIONER KING: Well, as a general principle, should airlines that are not directly involved in the dispute, having standing before the arbitrator given that decisions for an airline at an airport may have consequences for the other uses of that airport?

MR SHARP: Yes, Warrick, you can answer that.

MR LODGE: I guess with the regional airports, it's highly uncommon for different users to have different airport charges. Like, for example Wagga airport has a published per passenger head tax and at the end of the day if Qantas is going to have an issue with what Wagga airport is doing, I think that would be a uniformed issue that Rex would have. We operate – like we said, to sixty airports, more than 50 of those are regional airports. Eighty percent of those airports we actually operate as the sole operator. There's only about seven or eight airports where we compete alongside QantasLink.

So when you look at it from that perspective, I wouldn't see any issue in terms of having a regional airport and multiple users which in practical terms is probably going to be one or two regional airport users. We don't see an issue when it's exactly the same issue for both parties.

COMMISSIONER KING: So different at regional to say Sydney Airport?

MR LODGE: I think so.

pretty good threat, at King Island for example, where they're putting it up by 111 – the proposal is to put it up by 111 per cent. If they're doing that to all of the carriers, surely all of them are going to be in the same situation as REX, saying, "We can no longer make a buck out of service in King Island. Nice knowing you, bye." In which case, back to Paul's point, the council will pretty quickly learn that was an undesirable move.

MR LODGE: Well, council tried to implement those charges with no notice. It was effectively communicated in June, for the start of the financial year. And that's what triggered, I guess, discussions between REX and the council, and also between council and the other two airlines. And it's fair to say that probably the departure of the general manager of that council and the departure of the mayor of the council is a reflection on how mismanaged that process was, and that's still an ongoing discussion now. And this first surfaced probably two years ago, when this was first put on the table. Then it went quiet, and then it was put on the table again prior to the last financial year. And now, it's still out in the open, in terms of what King Island Council are going to do with the situation.

MR SHARP: There's an example of, take it or leave it. And we've got another example of take it or leave this week, with Melbourne Airport, moving us from one area to another for our aircraft departures and arrivals parking. It doesn't sound like much, but we were given two weeks' notice to move. Now, the problem with that is that you've got to cross live runways. You've got to cross where jet aircraft push back, and you're going to incur delays, which means your schedule is going to be thrown out.

Now, that's a take it or leave it example. So if I can go back to a point I was labouring on for some time, and that is that there are lots of take it or leave it examples we can give you, bore you to tears on it, that airports put to airlines. It happens all of the time. So, please, if you do anything, change your draft report, which says there's insufficient evidence, and say there is evidence, because there is. And we've been talking about it now, and you used it in your own report, in a different way.

COMMISSIONER KING: Can I come back again to the smaller, regional airports – and this is perhaps putting it more bluntly than Paul it – is it the case that you're not facing abuse of market power, incompetence in some of these pricing decisions?

MR SHARP: Well, the old theory, you know, "Is it a conspiracy or incompetence?" go for incompetence every time. It could well be that.

if you don't do that, we'll blame you, because we've got no other tools to use. So do we threaten to withdraw services? Yes, we do. Why? Because it's one of the only tools we've got left.

COMMISSIONER LINDWALL: I think, John, you should also blame some of your successes (indistinct) who have handed out money to local councils without - - -

MR SHARP: I wouldn't disagree with your comment. I have been known to say it myself to some of them over the years, that this is a stupid thing for them to do.

COMMISSIONER LINDWALL: Could I ask one final question, and then we can go and have a coffee, is whether – and then we've got one more – is whether, after you mentioned about the Virgin Blue dispute with Sydney Airport back in 2002, how have your relations with Sydney Airport changed over time?

MR SHARP: Well, our relations with Sydney Airport have changed. My very good friend Max Moore-Wilton was the CEO, then chair of Sydney Airport, and I have a great deal of regard for Max, but we got on terribly when he was running Sydney Airport. We had very substantial near-physical altercations about the way they would operate. You heard from David Bell earlier about the increase in parking charges for the private business jets. We had exactly the same experience. We received a letter – and it was usual that it was written by Max, presumably.

It said, “Good news, we've revised the way the general aviation area is going to be working, and how it's going to happen. And as a result, your parking charge for your Saab 340B aircraft will now go to \$3400 a day,” something like that; about the same sort of charge that David Bell's members were threatened with, “and it'll take effect as of July 1, in a short while's time.” Now, that was a low point in our relationship. I think we paid \$64 a day to park our aircraft there at that time, so it's a fair increase by any measure, hundreds of per cent. I don't know how many hundreds of per cent, but a lot. And you would argue, I think, if I can assume you guys are reasonable men – are you?

COMMISSIONER LINDWALL: Would I admit otherwise?

MR SHARP: All right, well, I'll judge you when you bring out your final report, and I'll – but if you were a reasonable man, you would say that was an unreasonable increase, wouldn't you?

COMMISSIONER LINDWALL: It does seem rather - - -

legislation for those slots. But the other airports have, if you like, voluntary systems that they bring in to better manage departures and arrivals. Some of them are unfair. I think Brisbane has a condition where they won't allow scheduled charter services to operate with aircraft below 50 seats, which we think is unfair. But at least they have a system, and Sydney does; Melbourne doesn't.

COMMISSIONER LINDWALL: I think we've given you more time than Qantas, actually. So if you want to respond one quick thing about jet fuel, is there anything you want to tell us about that?

MR SHARP: Well, we don't have quite the same problem that the others have. It's not a big issue for us. The subject of fuel we've only raised in these discussions today, on the basis that we think you got it wrong. Because it isn't 20 per cent, it's 15.9. Airport charges aren't less than 10 per cent, they're 16.7, and that's why we - - -

COMMISSIONER LINDWALL: I'm happy to correct the mistakes that we make.

MR SHARP: Very good. I look forward to that.

COMMISSIONER LINDWALL: Thank you, John and Warrick.

MR LODGE: Thank you very much.

COMMISSIONER LINDWALL: Let's go and have a coffee, everyone.

SHORT ADJOURNMENT [3.44 pm]

RESUMED [4.02 pm]

COMMISSIONER LINDWALL: Well, as I said before to everyone, this is our last scheduled presentation. But after that there will be an opportunity, if anyone wants to come forward and give a brief presentation to rebut or agree or whatever. (Indistinct). So, please, Steve, (indistinct) yourself, and an introductory statement if you like.

MR FITZGERALD: Thank you. And good afternoon, Commissioners. Thank you for the opportunity to participate at the hearing. Morrison & Co's provided a brief submission, to support our appearance.

COMMISSIONER LINDWALL: Thank you.

MR FITZGERALD: So I believe you'll have that. If you don't mind, I'd just like to mind a few opening comments for a couple of minutes, and then happy to take any questions. Morrison & Co's known as a specialist infrastructure manager. Our involvement in airport investment goes back over 20 years, and it's detailed in the submissions, so I won't read it. There's comments. The current investments include APAC, which are Melbourne, Launceston, and Queensland Airports, which is Gold Coast, Townsville, Mt Isa, Longreach, and Wellington Airport in New Zealand.

My role as head of asset management for Morrison & Co, and I've got responsibility for the performance of private (indistinct) investments on behalf of clients. I also sit on a number of boards, including Perth Airport and Queensland Airports. I've been involved in the airport sector for 27 years. I work for the Commonwealth Departments of Finance and Transport through the privatisation process. I was an executive at Sydney Airport for several years, including as an economist, and then I was Chief Executive of a group with European Airports and Chief Executive of Wellington Airport.

As noted in our submission, strong investment outcomes rely on a predictable, regulatory framework. Providing investors with confidence in their ability to recover operating and capital expenses over the industries long investment horizon is in the best interest of final customers, the passengers, as it ensures them the appropriate level of airport services will be provided.

I commend the commission for the evidence based approach taken in the draft report, which I note is a continuation of a (indistinct) applied since 2002. As noted in the submission from Harry Bush, Australia is in the fortunate position of not having to unwind a regulatory system over decades to gain the benefits of responsive investment and service quality. With investment and quality outcomes generally observable in Australian airports, there's no case for the imposition of a heavy-handed regulation with its attendant cost in the form of resources, and delays to investment.

The point I wish to most emphasise, however, is that the proposition that there are simple and quick regulatory interventions that would not have significant negative consequences, is simply false. Airport owners and managers understand their responsibility is custodians of significant infrastructure, to invest the appropriate capacity and a quality that facilitates economic growth of the communities they serve. Airports need to balance the needs of all airline customers, and consider the need to passenger customers. The framework for this is set out in the planning

requirements under the Airports Act, that is taken through extensive consultation and negotiation, prior to agreements being struck and investments made.

If a third party is introduced to determine outcomes based on a limited number of factors, and the needs of a limited number of stakeholders, such as a single airline, or subset of airlines, the outcome could be materially damaging. We've set out the reasons for this in our submission, but examples of issues that would cause net damage if put through a "simple and quick" process, would include a major common user terminal development, which Perth, Gold Coast and Townsville, all having current, live examples.

The allocation of costs between users or user groups, creating winners and losers amongst - amongst a set of customers. Capacity enhancements that increase competition, or the potential for airline competition, that may be opposed. And the enabling of arguments for fundamental changes to the regulatory understanding of investors at the time of investment, such as stranded asset risk, or pinpoint rate of return specification.

The evidence over 17 years that airports have been able to navigate these complex issues have arrived at balanced outcomes that have facilitated strong growth and delivered increased levels of quality. Given this, increased regulation is unwarranted, and would be unwise. I'd be very happy to take questions.

COMMISSIONER LINDWALL: Okay, thank you for that, then, Steve. Could I start by the examples of negotiate-arbitrate, which some participants have been pushing for, and then claims that the airports have made that might lead to gaming by airlines, against interests of other parties. What do you think of that as a credible outcome, and how would the gaming be manifested?

MR FITZGERALD: Look, I think if the - if a negotiate arbitrate is seen as the way for an airline to ultimately achieve a lower price through a third party, then I do think that derails the good faith negotiations that genuinely are - are progressed towards an outcome. I think there is a risk, and I think - again, the UK example through - through Harry Bush's experience is interesting. It does take - it does take a great deal of maturity, good will, and a system that somehow protects against just the - the negotiate part of a negotiate arbitrate, just being - just being a testing out to get to the lowest possible level before always seeking to go to a - to an arbitrator to seek something even better.

COMMISSIONER LINDWALL: Is it conceivable that under negotiate arbitrate, you might get more investment than you would under the current system?

MR FITZGERALD: Well, one of the concerns I have with negotiate arbitrate as it's being put forward, is - is it would seem to be triggered not by all of your customers, but by a single customer, or group of customers, and therefore you'd be going into a third party arena, where not all of the facts are on the table, not all of the stakeholders are represented, the benefit of - the benefit of whatever's proposed, or being opposed, to other parties is not taken into account. So I think that - that environment takes you down the "swallow the spider, catch the fly" methodology where you continue to broaden out the participants in that regime, until ultimately, you have a full blown price and inquiry type of outcome to avoid the selective outcomes that you would achieve through a limited – a limited scope and limited (indistinct) arbitration process.

COMMISSIONER LINDWALL: Yes, well, I mean, when I asked about investment obviously, it's a very lumpy investment. CapEx program (indistinct) the airports, there was Frontier Economics in the UK did a study of Heathrow which showed that when there were capacity constraints there was insufficient investment. The rates from that were – went to airlines, not airports. Did you find – have you seen that study?

MR FITZGERALD: Yes.

COMMISSIONER LINDWALL: And - - -

MR FITZGERALD: I'm aware of the summary of the outcome study.

COMMISSIONER LINDWALL: So – so would that be fair to say that if a new system led to less investment at an airports, our major airports, you know, could actually lead to higher returns for airlines?

MR FITZGERALD: I absolutely think that that is a risk and a potential driving force of incumbent airlines. And I don't think airlines are unique in this, but I think if you have incumbency in a system with limited capacity, you're incentive is not to have that capacity grow at a rate that you're not ready personally, as the incumbent organisation, to take up.

So look, I've experienced and seen cases where investment is opposed because I would say the market is concentrated, yields are high, new capacity leads to greater competition and it leads to lower fares and therefore is not in the interest of the incumbents.

COMMISSIONER LINDWALL: Now, you're on the board of Perth Airport, as you've said. It's currently in a dispute with Qantas before the Supreme Court in Western Australia. Is there anything you can say to us now about that? Obviously there's sort of things legal privilege type rules that's applied, but - - -

MR FITZGERALD: Look, there are, and I certainly won't go near the legal privilege elements and also I note, I think, you have Kevin Brown, the Chief Executive of Perth Airport protecting (indistinct) Melbourne, so I think Kevin is probably better placed to go through the detail. But I would say it's been amazing in some senses that this is the first legal action to recover charges, short paid by Qantas over the last 17 years. I mean, the commission has evidence of fairly long-term behaviour and what the lack of legal challenge suggests is that people think very, very long and hard before they take legal action against their major customer. I think in the case of Perth, you know, the extent of the short payment and the fact that the short payment was coming off an offer to reduce charges, invoicing them without an agreement at a level below the consulted rate, and then what I consider to be an unjustified and really unexplained level of low remittance, is taking place. It's – it was – I think on public record over \$11m in four months of short payment. I think when you're a commercial organisation you need to act to protect the company.

And look I – this is only part of the ongoing – the discussions, negotiations, a legal case to recover a past invoice only really deals to that invoice. It will provide some guidance as to what might constitute a fair and reasonable price for service and facilities that continue to be delivered and continue to be accepted. And I think that the – the legal – the legal case, if it were to run its course would add to the body of knowledge of how we should be looking at pricing.

COMMISSIONER LINDWALL: (Indistinct) NZ (indistinct) submission said that this was indicative of why a negotiate arbitrator's needed because it's a very costly situation going to court. I take it you don't agree with that?

MR FITZGERALD: No, look, the – it is costly to go to court. But in the context of economic cost of a system that has been working well for 17 years in a national (indistinct) infrastructure, to have one legal case, I think is actually a pretty modest cost. I think the legal process can be relatively efficient. The courts do deal with cases every day. Protagonists can choose to drag things out. And they can choose to delay. They can choose to go through multiple appeals. They needn't. And in the background, there's always the potential for negotiation to continue.

The legal process also tends to include attempts to bring the parties together through some kind of mediation anyway. So look, I think the Western Australian Supreme Court is a – is in my view, a valid place for Perth Airport to be going to seek some form of outcome for the level of short payment that it's currently experiencing.

COMMISSIONER KING: I'll ask one question then if you don't mind. I was going to ask (indistinct words) Perth Airport (indistinct) case. Yes, just rather than change topic. Just to follow up on your last point. Perth Airport hasn't gone to the Supreme Court in WA and asked for payment, back payment based on its own invoices. It's gone to the Supreme Court and actually said, or asked the Supreme Court to work out what are fair and reasonable charges on which Qantas should be paying for these back charges.

That does sound an awful lot like something that would be better put before an arbitrator rather than put before a Supreme Court Judge who may have absolutely no or very little background in regulated returns, utilities, how you actually come up with pricing structures and efficient prices. So the argument that's been put before us is yes, it's the first time it's gone to court, but it's ended up in exactly the wrong forum compared to what you could have under an arbitration system.

MR FITZGERALD: I don't necessarily agree. I think that we are operating in a commercial framework of light-handed regulation and recourse to a common law outcome is actually the continued working of remaining in that commercial framework rather than going to an outcome. Again with one party, Perth Airport has reached agreement with every other airline, other than the Qantas Group at Perth Airport, has been transparent in the information its provided, has gone through an extensive process published its documents so it has attempted to run a fair and reasonable process as negotiated in good faith. Now, the point being made by Qantas, publically, is that there is no contract. So there's not a contract against which to submit an invoice.

We're getting – we're straying into the – straying into the legal territory but in the absence of an invoice, you need to decide – there are services and facilities being provided by Perth Airport that Perth Airport believes it should receive recompense for and is asking a commercial jurisdiction in the Supreme Court to opine on what that might be. And you know, the building blocks model approach to setting price is not the be all and end all in either regulation or the commercial world. It's rarely seen in the commercial world. And in the regulatory world, it's not ubiquitous.

Now, that's been heavily opposed, by Air New Zealand, who like the hub and spoke of Auckland, and Wellington - but Wellington is very much out there, it has enormous community support behind it, it has - it has, you know, council financial support. The Airport's a third owned by the council. Two thirds owned by one of our clients. And so, so I'm not seeing the hold up of investment coming up on the airport side, but certainly the incentive's there for Air New Zealand to try to maintain its strong market position in New Zealand.

COMMISSIONER LINDWALL: Very good. When you look at the airports as an investment, how riskily do you - do you (indistinct) the airport investments in Australia, compared to other asset classes?

MR FITZGERALD: Look, within infrastructure, within core infrastructure, I think airports are right at the top end of the core. Now, core, fundamentally, is a low - a low risk investment class, because of - because of the additional volatility - because of the system in Australia where - where airports take the passenger volume risk within set periods of time, there is greater volatility in passenger numbers than things like electricity consumption, and then you have investments that need to be paid for on, this is another electricity analogy, on merchant's, sort of, basis for the commercial side of the business.

They are at that upper end of your core class, and you could - some people do call them core plus, and certainly when I look around the airports we have interest in, you know, getting to Townsville, let alone Mt Isa or Longreach. You're way up the spectrum. Gold Coast, even, is an interesting case in point, such a strong leisure destination, so you do need - and we certainly, when we invest and advise clients, we look at the - for the volatility of folding the underlying passenger traffic, and clearly government, business, visiting friends and family, leisure are kind of your continual of increasingly volatile passengers.

So, an Airport like Gold Coast, which has a degree, now of business traffic, as that region in northern New South Wales is developing decently VFR a strong leisure focus, is certainly a much riskier airport than a Sydney or a Melbourne, and I'll stop there. I could go into different types of traffic as well, but there are different volatilities.

COMMISSIONER LINDWALL: No, that's all right. So you wouldn't agree characterisation by someone (indistinct) very low risk, you know, put the higher return assets?

MR FITZGERALD: No. And certainly, with there now (indistinct) board of transport, we have - we also have investments in UK water that

businesses? Well, because they are businesses in their own right. They're substantial businesses.

They're standing in a market with competitors and being priced competitively against alternatives. Now, if they are making a reasonable return and they may have some locational advantage or something else we've spoken about, I don't know what the economic efficiency benefit of taking that return and giving it to airlines would be. And I think – I think this goes to the issue of your – of what is the appropriate economic signals to be sending through pricing. And I think we're all in a world where average cost is seen to be accepted as the right way to go. Whereas I think you know as – as a (indistinct) you sort of think well, actually, we're sort of really – we really should have an eye on what long run incremental cost is. And if you're pricing too far below long run incremental cost, what are we doing; and in a constrained market, all we're doing is transferring wealth around. And I don't think that is of any great economic consequence. And even if you did behind that, you know, with the people we represent, essentially, Australian superannuates, you know, our – Wellington Airport is based on New Zealand superannuates?

But the Australian airports are owned partly – the future fund, which is the commonwealth generally, but also our other clients tend to be dominated by Australian superannuates. I think that wealth transfer out of that pool doesn't seem to make a lot of sense to (indistinct).

COMMISSIONER KING: (Indistinct) airports. Yes.

MR FITZGERALD: Yes, (Indistinct) airline (indistinct).

COMMISSIONER KING: (Indistinct words).

MR FITZGERALD: And – and – yes. And look, I don't think – I know the Commission doesn't tend to (indistinct) wealth transfer type issues because it's not particularly (indistinct) to what you do, but I do think that, you know, those equity and ownership arguments do fade with the airports if you were to want to run down that rabbit hole.

COMMISSIONER KING: Yes, okay.

COMMISSIONER LINDWALL: Anymore questions?

COMMISSIONER KING: Just on financial indicators.

COMMISSIONER LINDWALL: Yes, that's fine.

COMMISSIONER KING: Yes, so in our report, we used a range of financial indicators to try and estimate or provide evidence of whether there was market power or whether there was the airports were taking advantage of their market power. I was keen for your views on what are the financial indicators that really – the investors and the airport boards pay most attention to, and if you’ve got views on – well, did we choose a decent set? Have we missed obvious ones? Anything along those lines.

MR FITZGERALD: Look, I think maybe with some regret, I think we’re all drawn to the return on invested capital of measure of the aeronautical till. And I think that’s because we’re somewhat conditioned that that is the – the point that placed a first look. I note in passing that you know, even the margins are still used by others, but I think I can say that there’s really no economic merit in - in such a - - -

COMMISSIONER KING: Well, (indistinct). He doesn't invest in companies and boast about their effort to (indistinct).

MR FITZGERALD: Yes, no, absolutely, and you can certainly buy (indistinct). There's no - investors know well that even management teams incentivise (indistinct), are ones who want to spend your capital unwisely. But, so return investment capital is probably the overall benchmark financial indicator. I think where our opportunity, and where we're moving as an industry and particularly the airports that I am close to, try to move away from the financial indicators to more surface quality type indicators, and I think BARA has been incredibly constructive in pushing airports to, you know, get - get more definitive, more measured, more measurability into the quality and service indicators, as - as a way of, you know, of demonstrating value for money.

Value for money is that concept of price and quality, and I think for too long we've - the price element of it has been the - has been the dominant factor. I mean, at a board level, we look at, you know, return by - when you're trying to manage a business in the very short run, you're looking at real measures on the passenger basis, because really, you have some control in the medium to long term of passenger numbers, and airports put a lot of effort into trying to grow passenger numbers, and in that sense, airports are aligned to their communities, because growth is good for airports.

But in the short term, you have relatively little control over the passenger number, and therefore, when you're trying to pull the levers of a business, to try and extract from that, we look at per passenger measures, and I certainly like looking at real capacity measures, rather than nominal.

COMMISSIONER KING: Anything else?

COMMISSIONER LINDWALL: Well, one other final question, Steve, is about jet fuel. Now, you know that many of the airports, the major airports, they JUHI with the joint venture owned by peak companies. Darwin has moved towards buying back the asset by the airport. Melbourne's moved to open access. As an investor, do you think you have an appetite for the airport actually owning the infrastructure for fuel and supply?

MR FITZGERALD: Yes. And I think that's - look, I think that, my view from an investment point of view, is that that is - that is a good place to be in terms of having someone who can be more the honest broker, to encourage competition in those related markets, and I haven't observed that concentration in those markets as being something that pushes up price to - to airlines, and that's bad for airlines. We want airlines with cheap prices, we want - we want affordable fuel in our airports to encourage growth in airlines.

It's particularly important for international carrier, who are taking up relatively large amounts of fuel, have relatively constrained abilities to tanker fuel between ports, depending on their ranges, and in the airports I deal with, and I include Melbourne in this, but I'm closer to Perth and Gold Coast, particularly that low cost segment, and even that sub-segment of long-haul, low cost. Being able to make sure that they have a competitive fuel offering is absolutely critical to (indistinct), and therefore whether they serve your airports or not.

COMMISSIONER KING: I think that's great, and thank you very much.

COMMISSIONER LINDWALL: Thank you, Steve.

MR FITZGERALD: Thank you.

COMMISSIONER LINDWALL: Now, thank you again, Steve. I think we have Virgin was to appear, is that correct? Something like that.

MR STEEDMAN: (Indistinct).

COMMISSIONER LINDWALL: Happy to answer any questions after the statement?

MR STEEDMAN: No, I think we're going to rely on the statement.

COMMISSIONER LINDWALL: All right. Just identify yourself and make your statement about your client.

MR STEEDMAN: Glen Steedman from Virgin Australia. So we'd like to just make a statement today, and that statement's really just forward our submission that's been sent through to you, and also the A4ANZ, their submission. So, firstly Virgin Australia has a strong preference to negotiate our commercial agreements to the betterment of both parties, and that's the way we approach our negotiations. We believe that gives us a better pro-active and long-term relationship with the airports. However saying that, we don't always reach a position that we believe is equitable to both parties.

PC, as itself recognised, that the airports are in the position of a natural monopoly, and we provided examples in our submission, where we outline that. We also think that PC is incorrect in its assessment that the market power can be controlled through the withdrawal of an airline from an airport. We don't believe that is the case, and we believe that an airline would suffer significantly more detriment than the airport if that occurred, and that's - that lack of account of our market power effectively leaves the airport free to exercise their market power - excuse me.

So, we are not seeking the re-regulation of airports. We don't believe that's beneficial, but we are looking for a circuit breaker we can activate when negotiations break down. We do not share the concern that a negotiate arbitrate regime is inefficient, or it won't work effectively. A well designed negotiate and arbitrate framework will encourage information sharing and genuine commercial negotiations between the parties from the start to the finish. I think the effective thing is we want to use the arbitration mechanism as a way of starting negotiations on the right foot.

And finally, Virgin Australia would encourage the PC to reconsider its position on the negotiate arbitrate regime. We believe that will deliver the best benefit for the traveling public of Australia and the broader economy. And apologies for not taking questions,

COMMISSIONER LINDWALL: No, no, that's perfectly fine.

MR STEEDMAN: We haven't represent ourselves, about that (indistinct) - - -

COMMISSIONER LINDWALL: You're not prepared for that, and that's - - -

MR STEEDMAN: So we'd just like to make that submission, and rely on the reports. Thank you very much.

COMMISSIONER LINDWALL: Thank you. Now, does anyone else want to come up and have their say? No one wants to rebut or agree vigorously with (indistinct)?

COMMISSIONER KING: Going, going.

COMMISSIONER LINDWALL: All right, in which case I think we'll adjourn the proceedings, and we resume in Melbourne on Thursday. Thank you, everyone, for being here.

**MATTER ADJOURNED AT 4.47 pm
UNTIL THURSDAY 28 MARCH 2019**