



## Response to the Productivity Commission Draft Report on Economic Regulation of Airports dated February 2019

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## List of Abbreviations

<b>2017-2018 ACCC Airport Monitoring Report</b>	ACCC, <i>Airport monitoring report 2017-2018</i> , February 2019
<b>ASA</b>	Aeronautical Service Agreement
<b>Commission</b>	Productivity Commission
<b>Draft Report</b>	Productivity Commission 2019, <i>Economic Regulation of Airports</i> , Draft Report, Canberra
<b>First Submission</b>	Sydney Airport's submission to the Productivity Commission dated 3 September 2018
<b>National Access Regime</b>	The regime established under Part IIIA of the <i>Competition and Consumer Act 2010</i> (Cth)
<b>Second Submission</b>	Sydney Airport's submission to the Productivity Commission dated 23 November 2018
<b>Slot Management Scheme</b>	Sydney Airport Slot Management Scheme 2013 (Cth)
<b>T1</b>	Terminal 1 (International terminal)
<b>T2</b>	Terminal 2 (Common user domestic terminal)
<b>T3</b>	Terminal 3 (Qantas domestic terminal)

# Part A:

## Executive Summary

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### Chapter 1: Executive Summary

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Sydney Airport supports the Commission's finding that the existing 'light-handed' airport regulation benefits the community and remains fit for purpose.

Sydney Airport confirms its ongoing commitment to improving its infrastructure, operating efficiency and passenger experience.

This submission responds to a number of information requests in the Draft Report and provides further data on certain issues of interest to the Commission:

- **Chapter 2: 'Take-it-or-leave-it' offers**  
Sydney Airport does not make take-it-or-leave-it offers in relation to material terms in its agreements with airlines.
- **Chapter 3: Risk sharing between Sydney Airport and users**  
Sydney Airport's commercial agreements with airlines provide for risk to be shared between the parties in commercially reasonable proportions and the degree of risk borne by Sydney Airport has increased over time.
- **Chapter 4: Landside access and engagement with landside operators**  
Access fees for Ground Transport Operators at Sydney Airport reflect the opportunity cost of the scarce land proximate to Sydney Airport's terminals. Sydney Airport consults regularly and does not make take-it or leave-it offers.
- **Chapter 5: The movement cap**  
Sydney Airport supports reforms to the movement cap and agrees that any reforms must balance the impact of aircraft noise on local communities with the benefits reforms would offer to airlines, passengers and the broader state and national economy. Possible reforms could include measuring the movement cap over a longer period and removing regional flights from the movement cap.
- **Chapter 6: The Slot Management Scheme**  
Sydney Airport supports the Commission's draft recommendation and looks forward to participating in the public review of the Slot Management Scheme. Ultimately, the purpose of slot management schemes is to maximise benefits to the greatest number of airport users and the current scheme does not work effectively at a constrained airport like Sydney.
- **Chapter 7: Regional access and pricing**  
Sydney Airport agrees that the regional access regime can be improved and supports the Commission's draft recommendation on future declarations in relation to the regional price cap and notification regime. In its current form, Sydney Airport considers that the Commission's draft recommendation in relation to the permanent regional service series (**PRSS**) could have unintended consequences, such as slot hoarding. Options that could better achieve the intent include measuring the cap on a daily basis or removing regional flights from the cap subject to the inclusion of safeguards to protect the overall availability of slots for non-regional airlines.

- **Chapter 8: Jet fuel supply**

The Fuel Throughput Levy (*FTL*) forms part of a pricing structure agreed through commercial negotiations between Sydney Airport and the Joint User Hydrant Installation Joint Venture (*JUHI JV*). Sydney Airport accepts volume risk with the JUHI JV. Sydney Airport understands that the jet fuel price charged by the fuel companies to airlines has been lower at Sydney Airport than at any other major Australian airport. Sydney Airport agrees that there is scope to increase transparency and competition in the supply of jet fuel at Sydney Airport and is exploring ways to ensure future commercial arrangements will promote access and competition.
- **Chapter 9: Clauses in commercial agreements with airport users**

Sydney Airport notes the Commission's views on 'declaration' and 'no less favourable' clauses that appear in some agreements between airlines and airports. Sydney Airport will not enforce such clauses nor agree to such clauses being included in future agreements.
- **Chapter 10: ACCC Monitoring**

Sydney Airport understands the purpose of the Commission's recommendations that monitored airports should provide to the ACCC more detailed information on airport performance. However, given the complexity and layering of commercial agreements, providing the level of breakdown requested by the Commission would not be straightforward. Careful consideration would need to be given to what information is shared to ensure it is not open to misinterpretation and does not enable commercially sensitive information to be back-solved. Sydney Airport would willingly engage with the ACCC to determine the right type and level of detail to be provided and on an updated set of service indicators.
- **Chapter 11: Urban encroachment at Sydney Airport**

Sydney Airport agrees with the Commission's statements regarding urban encroachment at Western Sydney Airport and believes that the inappropriate re-zoning of lands in the areas around Sydney Airport must be similarly restricted to ensure Sydney Airport is able to operate efficiently into the future.
- **Chapter 12: International charges**

Sydney Airport's international charges reflect the pricing structure put in place by the ACCC in 2001, when Sydney Airport was privatised. Sydney Airport considers there may be more effective and efficient ways to allocate aviation charges but notes that any changes will impact different airlines in different ways.

## Part B:

# Consultation and negotiation of commercial agreements

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## Chapter 2: 'Take-it-or-leave-it' offers

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### Commission's Information Request 4.1

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

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

### Summary of Sydney Airport's response to Information Request 4.1

- Sydney Airport does not make 'take-it-or-leave-it' offers in relation to the material terms of its agreements with airlines.
- Sydney Airport's negotiations with airlines are lengthy and complex and result in highly tailored commercial outcomes which vary among airlines.

## 2.1 Additional information on 'take-it-or-leave-it' offers<sup>1</sup>

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- 1 Sydney Airport refers to Chapter 6 of the First Submission, and reiterates that 'take-it-or-leave-it' offers are not made by Sydney Airport and that:
  - Sydney Airport conducts consultations and negotiations with airlines on an 'open-book' basis, which enhances transparency and facilitates more bespoke commercial arrangements;
  - recent Aeronautical Service Agreements (**ASAs**) are increasingly innovative, reflecting commercial compromise and imposing clear performance criteria on Sydney Airport;
  - investment strategies contained in ASAs provide airlines with price certainty while enabling Sydney Airport to invest in better outcomes for airlines and passengers; and
  - the manner in which Sydney Airport has engaged in negotiations, and the resulting commercial agreements, indicate that Sydney Airport has not exercised market power in its consultations and negotiations with airlines.
- 2 In addition, Sydney Airport notes that negotiations on terms for both aeronautical and non-aeronautical facilities can occur over many years. This means that in some cases airlines are

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<sup>1</sup> This Chapter 2 is limited to airside users. Information on landside operators is provided in Chapter 4.

taking advantage of below market charges for leases on facilities over an extended period. Sydney Airport does not refuse to provide services to airlines in these circumstances and continues to negotiate in good faith. However, this is not sustainable over a long period, especially in circumstances where there is demand for access to these facilities from competitors.

- 3 At present, there are no providers of international or domestic Regular Public Transport (**RPT**) services that pay the aeronautical charge set out in Sydney Airport's standard Conditions of Use (**COU**).<sup>2</sup> Every agreement Sydney Airport has with these airlines is a commercially negotiated outcome. This is evidence that Sydney Airport doesn't make 'take-it-or-leave-it' offers.
- 4 All regional RPT providers including Qantas, Virgin Australia, Jetstar, Rex and FlyPelican, pay the regional COU rate for regional flights which is subject to the regional price notification regime. Prices have remained unchanged since 2002.<sup>3</sup>

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<sup>2</sup> This statement does not apply to freight and charter services.

<sup>3</sup> The regional COU rate remaining unchanged since 2002 represents a reduction of approximately 50% in real terms. As described in Chapter 11 of the First Submission, regional aeronautical services and facilities at Sydney Airport are subject to a price notification regime governed by the ACCC.

## Chapter 3: Risk sharing between Sydney Airport and airport users

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### Commission's Information Request 4.2

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

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

### Summary of Sydney Airport's response to Information Request 4.2

- Sydney Airport's agreements with airlines provide for risk to be shared between the parties in commercially reasonable proportions.
- Sydney Airport bears traffic risk, being the risk that passenger volumes will be less than that forecast. Sydney Airport therefore bears risk for reductions in passenger volumes even though they are almost always caused by matters outside Sydney Airport's control.
- Sydney Airport does not ordinarily pre-finance capital projects through agreements with airlines, although in certain circumstances it may be efficient to pre-finance, for example, for significant and costly capital projects.

### 3.1 Additional information on risk sharing between airports and airport users

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5 Sydney Airport assumes various types of risk under its commercial agreements with airlines and shares other risks. These are described in more detail below.

#### **Traffic risk: risk of under-recovering revenue due to lower than forecast passenger volumes**

6 Sydney Airport's agreements with airlines and the charges paid under those agreements are based on assumptions relating to forecast passenger volumes. If passenger volumes are lower than forecast, Sydney Airport bears the risk associated with this.

7 Passenger volumes can fall below forecasts for a number of reasons, including reasons outside Sydney Airport's control. For example:

- changes in the macroeconomic and microeconomic conditions, such as the global financial crisis and the Asian financial crisis;
- the collapse of airlines (for example the collapse of Ansett Australia in 2001);
- reduced propensity to travel due to plane crashes or terrorist attacks;
- changes in national policies in relation to trade, immigration and tourism;

- airlines prioritising financial yield rather than increasing their market share by selling fewer tickets at higher prices (i.e. maintaining a lower 'load factor'). This results in reduced passenger numbers which can lead to Sydney Airport receiving less revenue than forecast. This is particularly evident for domestic airlines, given the strong positions of the two major Australian incumbents;
- airlines not receiving the slots they applied for and therefore not running as many services as expected;
- emergencies and other disruptions outside the airport / airline relationship, such as weather events, epidemics and natural disasters; and
- market forces such as pilot shortages, and features of related markets such as variations in the price of jet fuel.

While outside Sydney Airport's control, Sydney Airport assumes the risk of under-recovering revenue due to the effect the above matters have on passenger volumes.

- 8 Some of Sydney Airport's ASAs require airlines to pay aeronautical charges for a minimum number of passengers. However, the minimum number of passengers is set at a very low level (approximately a third of current actual passenger numbers). It is therefore extremely unlikely that an airline would not meet these minimum levels in the absence of some exceptional occurrence such as a collapse of their business.

#### **Sydney Airport assumes greater risk under longer term agreements**

- 9 The length of Sydney Airport's agreements with airlines varies and reflects the differing requirements and objectives of the airport and airlines. For example, the term of the ASA with international airlines is five years; the term of the Qantas T3 ASA is 10 years; and the term of the T2 domestic ASA is up to 17 years. Generally speaking, longer agreements result in Sydney Airport assuming higher levels of risk. This is because Sydney Airport takes on risks based on assumptions that are built in to its agreements (e.g. in relation to passenger traffic, fleet mix and interest rates), and longer agreements expose Sydney Airport to the unpredictability of those assumptions over a longer period of time.

#### **Pre-financing capital projects**

- 10 The Commission has requested information relating to instances where airport users have pre-financed capital projects. Sydney Airport does not ordinarily pre-finance capital projects through its agreements with airlines, but as a matter of principle Sydney Airport considers it may be appropriate and economically efficient to pre-finance capital projects in certain circumstances. For example, significant and costly projects, such as the development of new terminals or runways, which would be delivered over a long period of time, carry a high degree of risk. Whether such projects would actually be pre-financed is a matter that would be appropriately negotiated between airports and airlines.



## Chapter 4: Landside access and engagement with landside operators

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### Commission's Information Request 6.1

The Commission is seeking evidence on:

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

### Summary of Sydney Airport's response to Information Request 6.1

- Sydney Airport encourages and facilitates the development of a variety of landside access modes to the airport.
- At Sydney Airport, land close to the terminals is scarce, and the opportunity cost of using the land is significant. Sydney Airport must use this scarce land to reduce congestion and keep traffic flowing while also offering consumers a range of access options.
- Sydney Airport regularly engages and consults with landside operators through formal consultation forums and ad hoc meetings.
- Pricing frameworks for car rental operators are the result of complex and vigorous commercial negotiations.
- Sydney Airport consults broadly with Ground Transport Operators (and their industry representative bodies) in determining prices and terms for landside access.
- There are a range of mechanisms for resolving issues available to landside operators, and Sydney Airport maintains productive relationships with landside operators (and their industry representative bodies) in order to identify and resolve issues efficiently.
- Access fees for buses, limousines, taxis, ridesharing services and shuttle buses are set to optimise the use of the limited space at Sydney Airport and to promote competition and consumer choice in relation to ground transport services.

## 4.1 Introduction

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11 Sydney Airport provides a range of landside access services that assist passengers to access its terminals efficiently and safely. These include:

- free pick-up or drop-off by private vehicle;
- paid pick-up by private vehicle;

- rental cars, taxis, limousines, rideshare and car share (e.g. GoGet and Flexicar) services;
  - private coaches and shuttle buses; and
  - active transport (pedestrian and cycle).
- 12 The 2017-2018 ACCC Airport Monitoring Report lists the investments Sydney Airport has made to improve landside infrastructure.<sup>4</sup>
- 13 Sydney Airport actively encourages and facilitates the development of a variety of landside access modes to the airport, even though they compete with Sydney Airport's car parking business. Sydney Airport's chief objective in doing so is to ensure the smooth operation of the airport, to get passengers to their flight and people to work on time, and to enhance the overall passenger experience. These objectives are best met when access to the airport is quick and easy and road congestion around the precinct is minimised.
- 14 At Sydney Airport, land close to the terminals is scarce, and the opportunity cost of the land use is significant. Sydney Airport must balance how it uses this scarce land to reduce congestion and keep traffic flowing while also offering consumers a range of access options.
- 15 Sydney Airport categorises the operators that support landside access to the airport as follows:
- Ground Transport Operators, including:
    - taxis;
    - limousines;
    - shuttle buses and coaches; and
    - rideshare; and
  - car rental operators and car share.

#### **4.2 Additional information on broad consultation and engagement with landside operators**

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- 16 Sydney Airport regularly consults with landside operators and maintains open and collaborative relationships with them. Sydney Airport conducts:
- quarterly ground transport meetings with peak body representatives such as Bus NSW, the NSW Taxi Driver & Operator Association, the NSW Taxi Council and the NSW Hire Car Association, involving discussion and consultation relating to:
    - master planning presentations;
    - Major Development Planning projects;
    - landside access fees; and
    - raising and resolving other stakeholder issues;
  - bi-monthly meetings with the NSW Taxi Council involving discussion and consultation relating to:

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<sup>4</sup> 2017-2018 ACCC Airport Monitoring Report Chapter 7.5.

- industry trends;
  - raising and resolving issues, such as operational and customer service issues; and
  - technology projects;
- bi-annual meetings with stakeholders in the rental car industry to discuss traffic congestion issues, and to consult on proposed road developments and other solutions to address traffic congestion; and
  - ad hoc meetings with Bus NSW, the NSW Taxi Driver & Operator Association and the NSW Hire Car Association involving discussion and consultation relating to operational issues (e.g. traffic), compliance with regulatory obligations and cleanliness standards.
- 17 The consultation forums described above are intended to be collaborative, and all attendees are given the opportunity to add agenda items before the meetings. Special attendees (such as subject matter experts) are invited upon the request of a regular attendee. Sydney Airport also facilitates participation by being flexible on the timing and frequency of meetings.
- 18 In addition to the regular consultation described above, individual landside operators can and do approach Sydney Airport staff to discuss and resolve issues on an ad hoc basis.
- 19 Sydney Airport's existing consultation and engagement with landside operators is extensive, and this will continue. Sydney Airport believes it does not require any specific improvements.

#### **4.3 Additional information on consultation and engagement with landside operators when setting prices and terms for landside access**

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##### **Car rental operators**

- 20 The prices charged to car rental operators are contained in commercial agreements (usually referred to as Licence Agreements or Occupancy Agreements). These agreements average seven years duration. The terms of these agreements, including pricing frameworks with agreed annual escalations, are the result of meaningful negotiation processes.
- 21 For example, in 2014, Sydney Airport engaged in complex negotiations with the six major car rental operators over a period of 6-12 months to agree a term sheet for new Licence Agreements. This involved a series of meetings to negotiate terms and resulted in a bespoke set of terms governing the provision of access and ancillary services by Sydney Airport to the car rental operators.

##### **Ground Transport Operators**

- 22 Sydney Airport consults broadly with Ground Transport Operators (and their industry representative bodies) in determining prices and terms for landside access.
- 23 For example, in 2016 Sydney Airport implemented new arrangements for Ground Transport Operator access at the domestic terminals (T2/T3), which (among other things):
- significantly increased the number of free-of-charge passenger pick-up bays (for private vehicles); and
  - facilitated increased competition in ground transport services by supporting the entry of ridesharing services.

Access fees for landside operators were increased as part of the new arrangements, and Sydney Airport consulted with representatives of all affected stakeholders ahead of implementing the changes. As part of this process, Sydney Airport conducted a series of workshops with the NSW Taxi Council and engaged extensively in relation to fees and other operational issues (e.g. the practicalities surrounding the entry of ridesharing services such as Uber). Please refer to Case Study 1 below for further details.

- 24 Sydney Airport has Ground Transport Licence Agreements with specific operators that are negotiated in response to exclusive needs, such as:
- four licensed ground transport access zones for exclusive use operated by Royale Limousines (T1), Redy2go (T1), Redy2go (T2/T3), and Royale Limousines (T3);
  - two Sublease Agreements with Redy2go to operate Ground Transport Travel Desks inside the T1 and T2 terminal buildings; and
  - 10 Branded Wayfinding Agreements for booking platforms to display company logos at the Priority Pick-up areas.

#### 4.4 Additional information on consultation and engagement with landside operators for undertaking investment

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- 25 Sydney Airport also engages with landside operators in relation to enhancements to landside facilities and service offerings, to deliver benefits to the landside operators, customers and the airport as a whole. Case Study 1 below describes one such example. Recent examples of investments made by Sydney Airport to benefit landside operators and their customers are outlined in Table 1 below.

##### **Case Study 1**

##### **Improvements to domestic terminal ground transport arrangements**

As described above, after six months of stakeholder consultation, Sydney Airport in 2016 implemented major improvements to its ground transport access arrangements at the domestic terminals (T2/T3). This project aimed to reduce congestion in passenger drop-off/pick-up areas, maintain a level playing field in ground transport options, facilitate the entry of ridesharing services, and enhance consumer choice in relation to paid transport services to and from the airport. The changes came into effect on 13 September 2016.

Sydney Airport engaged in extensive consultation with affected stakeholders in relation to:

- the logistical and operational aspects of the new arrangements; and
- associated increases to access fees for landside operators.

For example, Sydney Airport conducted a series of workshops in 2015 and 2016 with the NSW Taxi Council to discuss proposed revisions to access arrangements. In a letter in May 2016, a representative of the NSW Taxi Council stated as follows:

I would also like to express my appreciation... for consulting us on your proposed Ground Transport Plan for point to point transport providers at the Domestic Terminal. [W]e believe the plan is a constructive step forward in dealing with this complex issue.

Additionally, Sydney Airport engaged in negotiations with Uber in 2016 in relation to the proposed revisions to access arrangements. These negotiations involved Sydney Airport gaining an appreciation of Uber's business and strategies and resulted in outcomes favourable to Uber such as:

- access to the Priority Pick-up area and branded signage at the airport (both of which are helpful to passengers); and
- a holding area away from the terminal, free of charge for up to 30 minutes, to allow ridesharing vehicles to wait for passengers.

These outcomes have facilitated significant growth in ridesharing at Sydney Airport, as described in section 12.2 of the First Submission.

**Table 1: Summary of major landside projects by deployment year**

Year	Projects deployed	Value (\$m)
2011	Expanded T1 taxi awning for queueing customers	0.9
	Expanded T1 limousine covered area	2.9
2012	Expanded T2 taxi rank	1.5
2013	Expanded holding bay at domestic terminals	0.3
	Constructed additional lane on Ross Smith Avenue to support commercial vehicles	1.5
	Upgrades to signage and wayfinding	0.2
2014	Expanded T1 taxi holding bay	0.3
	Other improvements for licensed operators	0.3
2015	Renovated taxi holding bay facilities	0.2
	Enhanced landside access management systems	0.5
2016	Introduced domestic Priority Pick-up	3.6
	Enhanced prayer room facilities	0.9
	Constructed new facilities for commercial operators	0.4
	Improvements to the taxi rank at the domestic terminals	0.2
2017	Constructed new roads to domestic taxi holding bay & expanded the holding bay	3.9
	Upgrades to wayfinding and equipment for pick-up	0.3
2018	Introduced international Priority Pick-up	2.4
	Introduced taxi rank queue count and information system	0.4
	Enhanced bus and limousine management system	0.3

#### 4.5 Additional information on mechanisms available to landside operators to raise and resolve issues

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##### **Car rental operators**

- 26 Sydney Airport representatives meet with Tier 1 car rental operators weekly and those operators have a relationship manager with whom they are able to raise and resolve issues directly.<sup>5</sup>
- 27 Tier 2 car rental operators are able to raise issues directly with the Sydney Airport Business Manager, Car Rentals. Alternatively, those operators may contact the Customer Care team or Sydney Airport's Manager Service Strategy and Customer Experience. Issues relating to the shuttle buses used by Tier 2 and Tier 3 car rental operators can be raised with the Business Manager, Car Rentals.
- 28 The issue that car rental operators most commonly raise with Sydney Airport is traffic congestion. To manage and address these issues, Sydney Airport conducts bi-annual industry meetings to discuss and consult on road developments and traffic issues. As outlined in the First Submission, Sydney Airport works collaboratively with NSW transport agencies to try to address congestion issues (both on and off the airport).
- 29 In addition to the above, the Licence Agreements that govern Tier 1 car rental operators' access to Sydney Airport contain dispute resolution clauses that provide mechanisms for the parties to resolve disputes efficiently. At a high level, the dispute resolution mechanism provides that in the event of a dispute:
- the parties must meet and in good faith seek to resolve the dispute within 14 days of the dispute arising;
  - if the dispute is not resolved within 14 days of such negotiations commencing, the dispute must be referred to the Chief Executive Officers of the parties to attempt to resolve the dispute; and
  - if the dispute is not resolved within a further 14 days, the parties must engage a mediator to assist in resolving the dispute.

Please refer to Confidential Appendix 1, which contains an example of a typical dispute resolution provision seen in Tier 1 car rental operator Licence Agreements. These have never been triggered in practice.

##### **Ground Transport Operators**

- 30 Ground Transport Operators are able to raise issues with Sydney Airport either individually or via their respective industry associations. These operators can contact the Landside Business Manager (generally in relation to industry-wide issues), or the Customer Care team or Manager Service Strategy and Customer Experience (for individual issues).
- 31 Sydney Airport also undertakes ongoing consultation with landside operators which allows operators to raise issues and for all stakeholders to seek productive solutions (as described above).

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<sup>5</sup> A description of the three tiers of car rental operators is set out below.

### Examples of collaborative issue resolution

32 Sydney Airport has demonstrated its engagement with landside operators to resolve issues and complaints. For example:

- **In 2015:** the NSW Taxi Council and NSW Taxi Driver & Operator Association raised concerns regarding the cleanliness and conditions of toilet and prayer room facilities provided for taxi drivers at the airport. Sydney Airport consulted with affected stakeholders and subsequently invested \$900,000 in refurbishing toilets, adding a foot wash facility and refurbishing the prayer room. This project was finalised in December 2015. Sydney Airport has also increased the cleaning frequency for these facilities.
- **From 2016 – 2018:** Sydney Airport developed the 'short fare system' (**SFS**) in response to issues raised by the taxi industry relating to short fares from the airport. Taxi operators were frustrated that they could wait in taxi rank queues for up to 30 minutes for a short fare (for example to the surrounding suburbs of Mascot and Wollie Creek, for which the fare is under \$20). To address these concerns, Sydney Airport developed the SFS in consultation with the NSW Taxi Council and NSW Taxi Driver & Operator Association. The SFS is able to detect a short fare through the taxi's GPS data which identifies how far the taxi has travelled and enables a taxi which has not travelled beyond a set boundary to bypass the taxi rank queue upon returning to the airport after dropping off the short fare passenger. This technological solution was developed at Sydney Airport's cost and the SFS realised its objective to improve customer experience, efficiency and fairness for taxi operators at Sydney Airport.

33 These examples evidence both Sydney Airport's responsiveness to landside operator concerns and its commitment to investing to support their operations.

### 4.6 Additional information on pricing frameworks for landside access generally

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34 In determining pricing and access for landside operators, Sydney Airport considers:

- the scarcity of land close to the terminal;
- the passenger demand for services based on convenience and speed;
- the volume of passenger demand for services;
- whether access is granted on an exclusive or shared basis;
- the value in incentivising behaviours that benefit the airport and passengers as a whole (e.g. pricing models that assist in managing landside congestion); and
- the opportunity cost associated with the scarce land available at Sydney Airport (as acknowledged in the Draft Report in relation to car parking prices). The facilities used by landside operators at Sydney Airport are also located on scarce land and therefore carry a high opportunity cost.

## **4.7 Additional information on pricing frameworks for Ground Transport Operators**

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### **Buses and Limousines**

- 35 Sydney Airport facilitates buses (including mini-buses, regular buses and coaches)<sup>6</sup> and limousines to access designated areas at the airport to pick up passengers. The access fees depend on the length of the stay and, specific to buses, the size of the vehicle using the area. Participating buses and limousines must register on Sydney Airport's website and enter into a Ground Transport Operator Agreement. The access fees that apply under Ground Transport Operator Agreements are those displayed on Sydney Airport's website and on entry/exit of each dedicated area.
- 36 Sydney Airport has around 3,175 Ground Transport Operator Agreements in place: see Section 12.5, paragraph 409 of the First Submission. These agreements provide for fixed annual price increases.
- 37 The Ground Transport Operator Agreements contain a number of provisions that contribute to the efficiency and safety of airport operations, such as:
- comprehensive operational requirements, including safety-oriented procedures and procedures designed to enhance efficiency and quick turnaround;
  - a requirement that operators be accredited by Transport NSW and provide details of their accreditation to Sydney Airport;
  - scaling charges to incentivise using the drop-off and pick-up areas more efficiently - fees are lower for shorter stays; and
  - a requirement that operators effect and maintain certain insurances.
- 38 Ground Transport Operators can drop-off passengers at designated kerbside drop-off facilities free of charge (subject to road use parameters).

### **Taxis**

- 39 The taxi ranks allow taxis exclusive access to the most convenient location to pick-up passengers (directly outside the front door of the terminal). Taxis are permitted access to the taxi ranks at Sydney Airport without an agreement with Sydney Airport. Access fees are displayed upon entry to the taxi rank.
- 40 No fees are charged to taxis for drop-off at designated kerbside drop-off facilities.
- 41 The taxi holding bays are located in close proximity to the terminal to reduce the impact of congestion due to the volume of demand for taxis. The taxi holding bays have facilities such as toilets and prayer rooms which are maintained and cleaned by Sydney Airport. Sydney Airport staff also coordinate the taxi ranks and holding bays. In addition to these operating costs, Sydney Airport has invested in expanding taxi ranks and holding bays and improving associated facilities (as described in Table 1 above).

### **Ridesharing services and pre-book services**

- 42 Ridesharing services and pre-book services such as limousines, pre-booked taxis and shuttle buses use Sydney Airport's Priority Pick-up zones which are publicly accessible

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<sup>6</sup> For these purposes, a mini-bus is a bus with up to 14 seats, a regular bus is a bus with between 15 and 29 seats, and a coach is a bus with 30 or more seats. Shuttle buses (e.g. those used by Tier 2 and Tier 3 car rental operators) are treated in the same manner as taxis and ridesharing services (see below).



areas used by both commercial and private vehicles. Use of these zones does not require the operator to pre-register with Sydney Airport. Access fees are displayed upon entry to the Priority Pick-up zones.

- 43 Priority Pick-up zones are located on scarce land close to the terminal. To maximise use of the land, the access fee is structured to incentivise quick turnaround. The fee is low for a short stay but escalates for longer stays. This encourages vehicles to enter and exit the areas quickly and optimises the use of the areas in a premium location.
- 44 There is also a holding bay for rideshare and pre-book services, which is free of charge for 30 minutes, to support operators by providing space to enable them to wait for passengers for longer durations. This reduces repeated circulation and promotes quick turnaround in the Priority Pick-up zone.
- 45 No fees are charged to rideshare and pre-book operators for drop-off at designated kerbside areas.

#### **Price reviews**

- 46 While Sydney Airport does consult broadly with Ground Transport Operators (and their industry associations), it ultimately determines landside access fees.
- 47 Sydney Airport usually reviews access fees for landside operators once a year.<sup>7</sup> Sydney Airport engages with relevant landside operators and industry associations in relation to access fee increases and provides at least 30 days' notice of a fee increase.

#### **4.8 Additional information on pricing frameworks for car rental and car share operators**

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- 48 Pricing frameworks are negotiated and agreed between Sydney Airport and car rental operators.
- 49 For the purpose of determining pricing frameworks, car rental operators are categorised into three 'tiers':
- Tier 1 – major car rental companies that have facilities (e.g. service desks, car parking facilities etc) at the airport terminals (Avis, Hertz, Europcar, Thrifty, Budget and Redspot/Enterprise);
  - Tier 2 – lower charge car rental companies that are located at the airport but further from the terminal than Tier 1 operators, and that generally use shuttle buses to pick up and drop off customers from the terminals (Apex and Ace/Firefly); and
  - Tier 3 – car rental companies that are located off-airport and use shuttle buses to pick up and drop off customers from the terminals.
- 50 Pricing frameworks for Tier 1 car rental operators have a number of separate components for reasons including:
- to share risk appropriately between the parties;

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<sup>7</sup> Other than for those operating under Ground Transport Licence Agreements, as those agreements contain negotiated mechanisms for fixed price increases.

- to provide flexibility to car rental operators by only charging them for the facilities they need (allowing them to manage costs); and
  - for some components (e.g. service desk licence fees), to reflect the premium location of the relevant facilities.
- 51 Some Tier 1 Licence Agreements also provide for Sydney Airport to make financial contributions to support car rental operators, for example capital contributions to facilities and infrastructure improvements. Examples of financial contributions provided for in Tier 1 Licence Agreements are set out in Confidential Appendix 2.
- 52 Sydney Airport also enters into negotiated Licence Agreements or Occupancy Agreements with Tier 2 car rental operators (depending on whether facilities are licensed or leased). The Tier 2 car rental operators noted above (Apex and Ace) are owned by Avis and Hertz respectively, and these companies enter into arm's length commercial negotiations between sophisticated parties which operate globally.
- 53 The pricing framework for Tier 2 car rental operators typically includes: (i) a fee per transaction; and (ii) a building and site lease payment (if applicable), both of which are negotiated and agreed with Sydney Airport. Tier 2 operators also use shuttle buses to pick up customers from the terminal, and in doing so are required to pay the appropriate shuttle bus access fee. They are not charged for drop-off at designated kerbside areas.
- 54 Tier 3 car rental operators (i.e. those located off-site) use shuttle buses to pick up customers from the terminal, and in doing so are required to pay the appropriate shuttle bus access fee for pick-ups. They are not charged for drop-off at designated kerbside areas.
- 55 Sydney Airport also enters into negotiated Licence Agreements with car share operators which grant access to dedicated parking bays and establish a licence fee to be paid to Sydney Airport (per bay occupied per year).

#### **4.9 Additional information on setting terms of access for landside operators**

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- 56 Due to the large number of operators, Sydney Airport is unable to negotiate the per-use access fees for each individual bus, limousine, taxi, ridesharing service and shuttle bus.
- 57 Sydney Airport aims to ensure that access fee structures are fair and contribute to maintaining a level playing field for landside transport operators. A level playing field maximises competition between landside operators and minimises barriers to entry, which in turn enhances customer choice in relation to price and service levels.
- 58 Significantly, no landside access fees are charged to any vehicle (commercial or private) dropping off passengers at designated kerbside drop-off facilities.

## Part C:

# Regulatory regime specific to Sydney Airport

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## Chapter 5: Movement cap

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### Commission's Information Request 7.1

The Commission invites comments on the potential costs and benefits of reforms to Sydney Airport's regulatory constraints on aircraft movements that can also meet current noise objectives.

Options that could improve the efficiency of the movement cap without leading to a net increase in noise include:

- spreading the measurement of the movement cap over a longer time period than the current measure of 80 movements per 15-minute rolling hour
- removing the cap on actual movements but retaining a cap on scheduled movements.

Options that could improve the targeting of noise outcomes include:

- replacing regulatory constraints on aircraft movements with noise caps based on the amount of noise made by each aircraft
- adopting noise-based criteria for determining which aircraft are permitted to operate during the curfew, rather than the current prescribed list of aircraft types.

### Summary of Sydney Airport's response to Information Request 7.1

- Sydney Airport supports the Commission's draft conclusion that the movement cap comes at the 'expense of broader airport efficiency'.
- Any potential reforms to the movement cap should balance the impact of aircraft noise on local residents with the benefits of the reforms to airlines, passengers and the broader state and national economy and take into account the significant improvements in airspace management and quieter aircraft resulting from new technologies. Reforms to the movement cap should also occur in the context of the overall operating restrictions at Sydney Airport in order to manage any unintended consequences.
- Sydney Airport is supportive of reforms such as measuring the movement cap over a longer period of time and removing regional flights from the movement cap (with appropriate efficiency and operational safeguards) to ensure improved regional access.

## 5.1 Additional information on costs and benefits of reforms to the movement cap

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- 59 The cap at Sydney Airport on scheduled and actual movement of aircraft (collectively referred to as the **movement cap**) negatively affects operational efficiency at Sydney Airport.<sup>8</sup>
- 60 It is important to note that Sydney Airport's cap was designed and implemented in the 1990s, reflecting aircraft technology that is now more than 25 years old. Since that time, technological advances have led to improvements to aircraft and air navigation procedures, in turn allowing flights to operate more quietly and with less impact on surrounding areas. Indeed, many of the aircraft that operated in the 1990s no longer operate at Sydney, while newer and quieter aircraft such as the Boeing 787 Dreamliner and Airbus A350 have been brought into service. It is therefore appropriate that Sydney Airport's operating restrictions should continually evolve in line with technological developments.
- 61 Sydney Airport is not aware of any similarly sized airport anywhere in the world (including airports located in urban areas comparable to Sydney Airport) that is subject to a similar movement cap - that is, a cap on scheduled movements on a rolling hour basis, where the hour is measured as a rolling hour commencing every 15 minutes and/or a cap on actual movements set below practical capacity.
- 62 The movement cap is a blunt and inflexible instrument which does not always achieve its desired objective of reducing noise and can result in costs through economic and environmental inefficiencies. These inefficiencies were discussed in sections 10.5 and 10.6 of the First Submission. They were also noted in the Draft Report which acknowledged that the movement cap can:
- exacerbate delays when there are unexpected incidents (such as weather events) by limiting the airport's ability to 'catch-up' from delays;<sup>9</sup>
  - prevent airlines that are looking to operate a new flight from obtaining consistent slots in preferred times;<sup>10</sup> and
  - sometimes result in more noise and emissions.<sup>11</sup>
- 63 Sydney Airport is supportive of the recommendations in the Draft Report, which include:
- spreading the measurement of the movement cap over a longer period; and
  - adopting options which target noise directly.<sup>12</sup>
- 64 Sydney Airport would also support other strategies to manage the effects of the movement cap, such as excluding regional ring fence flights from the measurement of the movement cap. This would improve operational flexibility at Sydney Airport (which will better position Sydney Airport to clear backlogs arising as a result of unexpected incidents) and provide the additional benefit of facilitating opportunities for growth in regional connectivity. However, any reforms to the regional access regime should be subject to appropriate capacity and efficiency safeguards.

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<sup>8</sup> Draft Report Page 27.

<sup>9</sup> Draft Report Page 232.

<sup>10</sup> Draft Report Page 233.

<sup>11</sup> Draft Report Page 234.

<sup>12</sup> Draft Report Page 235.

65 Further consideration on some of these options is set out below. Sydney Airport considers that the Commission should recommend that the Government undertakes a comprehensive review of the operating restrictions at Sydney Airport.

## **5.2 Additional information on measuring the movement cap over a longer period and removing the cap on actual movements**

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66 The Draft Report states that one option to resolve the inefficiencies with the current movement cap is to spread the measurement of the movement cap over a longer period, for example, the scheduled movement cap could be measured over a year, a week or a day.<sup>13</sup>

67 Sydney Airport supports the option to spread the measurement of the movement cap over a longer period and notes that this is reasonably common internationally. For example, Heathrow Airport, one of the world's busiest airports, located (similarly to Sydney Airport) in an urban area, operates with an annual cap of 480,000 movements. With this annual cap in place Heathrow Airport averages ~76 aircraft movements per hour during the day.

68 Moving from an hourly to an annual cap would align Sydney Airport to Heathrow Airport and would be preferred as it would provide for the greatest operational flexibility. An annual cap would better position Sydney Airport to clear backlogs which arise as a result of unexpected incidents, particularly those that occur over a long duration or late in the evening, while still maintaining the overall noise management objectives of the movement cap by limiting the overall number of movements.

69 However, a monthly, weekly or even daily cap would still provide significant benefits in terms of operational efficiency.

70 Sydney Airport recently commissioned Airbiz to undertake a study into the impact of the movement cap on the time taken for airline operations at Sydney Airport to recover following a delay.<sup>14</sup> It also assessed how much recovery times would improve by moving to even a daily cap.

71 That study found that for a 3 hour disruption commencing at 3pm, it would take until 11am the following morning to clear the backlog of delayed flights under the movement cap as currently administered. Moving to a daily cap would allow full recovery at 10:47pm on the same day.

72 Other findings include:

- For a 3 hour disruption event commencing at 7am, replacing the current hourly cap with a daily cap would see full recovery at 4:54pm, five hours earlier than the recovery time of 9:53pm under the current regulations. That is a 40% quicker recovery time than under an hourly cap.
- A single 3 hour disruption commencing at 7am would see 90,000 hours of passenger delay saved by moving from the current hourly cap to a daily cap.

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<sup>13</sup> Draft Report Page 235.

<sup>14</sup> Refer to Confidential Appendix 4.

- A 2 hour disruption commencing at 7am would also be cleared 40% quicker under a daily cap than an hourly cap, saving 41,000 hours of lost time to passengers impacted by the delay.
- 73 A movement cap measured over a longer period would also help manage the unintended noise which can arise from the movement cap, as aircraft are forced to wait in the air for the next rolling hour to begin.
- 74 The Draft Report also states that a cap on actual movements on top of a scheduled movement cap 'intensifies' arrival and departure delays and prevents aircraft from landing if they have arrived early.<sup>15</sup> Sydney Airport agrees with this assessment.
- 75 Sydney Airport considers that the removal of the cap on actual movements would enhance efficiency and is in line with the noise reduction objectives of the movement cap. It would enable aircraft to land or take-off before schedule (during non-curfew periods) and therefore reduce instances where aircraft are required to wait on the ground or in the air for the next rolling hour to start (which can be economically inefficient, add to unnecessary noise and pollution, and add to the cost of fuel for airlines when required to wait in the air). However, this change alone will not create the flexibility required to drive operational efficiency and should only be considered as part of a broader package to extend the movement cap to be measured over a longer period of time as outlined above – with Sydney Airport's preference being an annual cap as is in place at Heathrow Airport.
- 76 This is particularly important for Sydney Airport as it is susceptible to off-schedule movements, as explained in paragraph 296 of the First Submission.

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<sup>15</sup> Draft Report Page 235.

## Chapter 6: Sydney Airport Slot Management Scheme

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### **Commission's Draft Recommendation 7.3**

The Australian Government should commission a public review of the Sydney Airport Slot Management Scheme 2013 (Cwlth) following the outcomes of the International Air Transport Association's (IATA) review into the Worldwide Slot Guidelines, expected to be completed in 2019.

The review of the Scheme should assess how effectively it contributes to the efficient use of scarce airport infrastructure while taking into account regional access and noise management objectives. It should consider reform options in relation to:

- whether slot allocation arrangements generate the greatest benefits to the community or if alternatives that are not based on historical precedence would improve competition
- slot performance monitoring to ensure that slots are being used in accordance with the intent of the Scheme
- the costs and benefits of continued alignment with the latest Worldwide Slot Guidelines, including the effects on competition between airlines.

### **Summary of Sydney Airport's response to Draft Recommendation 7.3**

- Sydney Airport supports the Commission's draft recommendation that the Government commission a public review of the Slot Management Scheme to ensure that slots are allocated in a manner that creates a competitive environment that benefits consumers.
- In addition, Sydney Airport would support a review of the Slot Management Scheme, independent of the IATA Worldwide Slot Guidelines review.
- The Slot Management Scheme should be strengthened to set an appropriately high threshold for the allocation and grandfathering of slots and to disincentivise and penalise slot misuse.

### **6.1 Additional information on the inefficiency of the current Slot Management Scheme**

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- 77 The Slot Management Scheme in its current form gives airlines rights to a scarce and valuable resource in perpetuity. The current scheme encourages airlines to favour protecting their allocated slots over maximising use of scarce airport capacity, often to the detriment of consumers. The Commission notes that the current Slot Management Scheme adversely affects the operational efficiency at Sydney Airport by reducing airline competition.<sup>16</sup>
- 78 Under the Slot Management Scheme, slots are awarded to airlines at no cost and there is no disincentive for an airline to leave a valuable slot unused during a season, other than the potential to lose the slot in the future.
- 79 These characteristics of the Slot Management Scheme put upward pricing pressure on domestic airfares, particularly by:

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<sup>16</sup> Draft Report Page 238.

- restricting supply of domestic fares, as the Slot Management Scheme encourages airlines to operate smaller aircraft at a greater frequency in order to 'hoard' slots. Smaller aircraft have smaller capacity which reduces the total supply of domestic fares. As discussed in paragraph 314 of the First Submission, Sydney Airport has observed a shift to smaller aircraft for the Sydney to Melbourne and Sydney to Brisbane routes; and
- entrenching the position of existing airlines and limiting the ability of new airlines to enter the market to supply domestic services. For example, existing airlines are able to 'hoard' slots by operating smaller aircraft at a higher frequency, which limits the opportunities for others to enter the market, as discussed in paragraph 313 of the First Submission.

80 The upward pricing pressure of the Slot Management Scheme on domestic airfares is reflected in the fact that, while average international airfares have fallen in Australia, data from the Bureau of Infrastructure, Transport and Regional Economics (*BITRE*) shows that there has been an increase in some domestic airfares in Australia particularly over the last five years when slots have become more scarce.<sup>17</sup>

81 A further explanation on the issues with the current Slot Management Scheme is set out in section 10.7 and Confidential Appendix 10 of the First Submission.

## **6.2 Principles and recommendations for improving the Slot Management Scheme**

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82 Ultimately, the purpose of slot management schemes is to maximise benefits to the greatest number of airport users<sup>18</sup> and the current scheme does not work effectively at a constrained airport like Sydney.

83 We support the Commission's recommendation for a public review of the Slot Management Scheme and recommend that applying the following principles would deliver an optimum outcome:

- There should be a higher threshold for airlines to be allocated slots. This would include the ability for the Slot Coordinator to reject slot requests if it reasonably believes that the airline does not have the ability or intention to operate the service as stated. For example, airlines have been known to apply for slots with aircraft they don't possess and seat configurations they don't operate.
- There should be a stronger consequence for holding slots that aren't used. At the moment, the only consequence for not flying a slot is that grandfathering rights are not obtained for the slot that was not flown at least 80% of the time. This is not a deterrent if the airline had no intention of operating the slot in the first place. It would be more appropriate for a broader penalty to be applied such as being given a lower priority for future slot requests and/or the loss of grandfathering rights for other services.
- There should be a higher threshold for grandfathering slots for the next season. This should be set at levels of operation and schedule adherence that reflect an efficient

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<sup>17</sup> BITRE, Domestic Air Fares Statistics available at: [https://bitre.gov.au/statistics/aviation/air\\_fares.aspx](https://bitre.gov.au/statistics/aviation/air_fares.aspx).

<sup>18</sup> Paragraph 1.2.1, 2017 IATA World Slot Guidelines.



operation. For example, the industry cancellation rate is ~2% so a use-it or lose it threshold that allows 20% cancellations is inappropriate. Additionally, slot grandfathering should also be assessed against operating to schedule rather than just operating. The current test is particularly open to slot gaming by airlines with large slot holdings, so protections are also needed to prevent airlines managing their cancellations at a network level so as to grandfather a larger than appropriate number of slots.

- In all cases where airlines fail the above standards and tests, the onus of proof to receive dispensation should be on the airline (not the slot coordinator). For example, there are provisions in the Slot Management Scheme for an airline to be designated a slot abuser. However, the burden of proof is on the Slot Coordinator to prove the airline's intent to misuse slots and it is virtually impossible to prove such intent.

84 Sydney Airport looks forward to participating in a public review of the Slot Management Scheme and makes the following comments in relation to the review:

- the review should focus on designing a flexible and adaptable scheme that fosters operational efficiencies;
- the review should not be undertaken in isolation and should include a review of the broader operating restrictions at Sydney Airport as these restrictions are interrelated; and
- the review should balance the ability of airports and airlines to plan and make investment decisions, while ensuring that slots are allocated in a manner that creates a competitive environment that benefits consumers and does not inherently favour dominant incumbents.

## Chapter 7: Regional access and pricing

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### **Commission's Draft Recommendation 7.1**

The Australian Government should amend the *Sydney Airport Slot Management Scheme 2013 (Cwlth)* to allow slots that are not part of a permanent regional service series (PRSS) to be used for either regional or non-regional flights. These slots should not become PRSS slots when used for regional flights.

Future Declarations relating to the regional price cap and notification regime should only apply to regional flights operated through PRSS slots, after the current Declaration no. 94 ceases on 30 June 2019.

### **Commission's Draft recommendation 7.2**

The Australian Government should ensure that future Declarations relating to the regional price cap and notification regime at Sydney Airport only apply to aeronautical services that are not covered in commercial agreements between Sydney Airport and airlines operating NSW regional air transport services, after the current Declaration no. 94 ceases on 30 June 2019. Future Declarations should also specify that prices in commercial agreements cannot be used to assess whether Sydney Airport has breached section 95Z of the *Competition and Consumer Act 2010 (Cwlth)*.

### **Summary of Sydney Airport's response to Draft Recommendations 7.1 and 7.2**

- Sydney Airport supports the Commission's recommendation that future declarations relating to the regional price cap and notification regime should only apply to aeronautical services that are not covered in commercial agreements, and that future declarations should specify that prices in commercial agreements should not be used to assess the application of section 95Z of the CCA.
- Sydney Airport suggests the Commission's proposed reforms to the PRSS form part of a crucial holistic review and reform of the slot rules. Sydney Airport considers that regional access could instead be improved by allowing regional services to more flexibly use the slots already set aside under the PRSS.

## **7.1 Additional information on improving the regional access regime**

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- 85 Sydney Airport supports regional airlines and acknowledges the importance of connecting regional communities to Sydney through aviation services.
- 86 Sydney Airport agrees with the Commission's draft conclusion that the regional access regime can be improved<sup>19</sup> and that the regional access objectives should be balanced against the community-wide costs of achieving them.<sup>20</sup>
- 87 Sydney Airport is supportive of the Commission's draft recommendations that:

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<sup>19</sup> Draft Report Page 207.

<sup>20</sup> Draft Report Page 209.

- future declarations relating to the regional price cap and notification regime should only apply to aeronautical services that are not covered in commercial agreements between Sydney Airport and airlines operating NSW regional air transport services;<sup>21</sup> and
- future declarations should specify that prices in commercial agreements should not be used to assess the application of section 95Z of the CCA.<sup>22</sup>

88 These recommendations recognise the importance of maintaining access for regional communities to Sydney Airport, while also supporting improvements to efficiency at Sydney Airport (which in turn will deliver significant flow-on benefits to the economy more broadly). In particular, the implementation of the recommendations is likely to increase choice and competition on existing regional routes and allow regional air service providers to enter into new and innovative commercial agreements with Sydney Airport, without the risk of disclosing commercially sensitive information.

## 7.2 PRSS Recommendation

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- 89 Sydney Airport agrees in principle with the Commission's direction in recommending increasing flexibility around regional slots, however in its current form, the Commission's draft recommendation in relation to the PRSS could lead to less efficient use of slots and encourage slot hoarding. For example, airlines with large fleets can game the system. They would be incentivised to use non-PRSS slots for regional services wherever possible, and still enjoy the protections that the original PRSS slots enjoy.
- 90 Due to the inflexibility of the operating restrictions, approximately 17% of regional ring-fenced slots at Sydney Airport are currently unable to be used.<sup>23</sup> As a starting point, regional access could be improved by allowing regional services to more flexibly use the slots already set aside for this purpose.<sup>24</sup> This could be achieved by measuring the cap over a longer time period e.g. daily or annually. The Commission's intent could also be achieved by removal of regional flights from the cap altogether.
- 91 Any changes to the regional access regime should be undertaken in the context of a broader review of the overall operating restrictions at Sydney Airport to prevent any unintended consequences. For example, removing regional flights from the movement cap could have unintended consequences for the overall availability of slots for non-regional airlines. These effects should be managed holistically as part of any reform to the regional access regime.

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<sup>21</sup> Draft Report Page 228.

<sup>22</sup> Draft Report Page 228.

<sup>23</sup> First Submission Paragraph 291. Further explanation of this is provided at Paragraph 478 of the First Submission.

<sup>24</sup> Draft Report Page 228.

## Part D: Jet Fuel Supply

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### Chapter 8: Jet Fuel Supply

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#### Commissions Information Request 8.1

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

Airport operators:

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

#### Summary of Sydney Airport's response to Information Request 8.1

- The Fuel Throughput Levy (**FTL**) forms part of a pricing structure that was negotiated at arms-length between Sydney Airport and the Joint User Hydrant Installation Joint Venture (**JUHI JV**), both sophisticated parties.
- Given its membership, the JUHI JV has significant bargaining power.
- The FTL is the mechanism through which Sydney Airport accepts volume risk with the JUHI JV.
- Sydney Airport has the lowest fuel price of the Australian airports and has no incentive to increase the price of fuel because, doing so would disincentivise airlines from flying to Sydney Airport.
- Sydney Airport is supportive of the Productivity Commission's recommendations in respect of the supply of fuel and agrees that there is scope to increase transparency and competition in its supply.
- Sydney Airport is exploring opportunities to structure future arrangements in a way that supports open access and competition.

#### 8.1 Justification of the FTL

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- 92 The JUHI JV is currently the provider of jet fuel facilities at Sydney Airport. Its agreement with Sydney Airport (**Lease**) incorporates exclusive use of a leased area (for fuel storage facilities) and a licence over the underground web of hydrant pipeline that fuels the aprons.
- 93 The JUHI JV is a sophisticated counterparty, being made up of four large oil companies – Caltex, Viva Energy, Air BP and Exxon Mobil, and the largest customer of jet fuel at Sydney Airport, Qantas. Two of the JUHI JV members (Caltex and Viva Energy) also own the only two fuel pipelines supplying fuel into the Airport.

- 94 Under the Lease, Viva Energy pays Sydney Airport a low base site rent for the leased area plus a FTL, based on the volume of fuel provided to the airlines. Effectively, through this structure, Sydney Airport takes the risk of fuel volumes which provides the JUHI JV with a degree of protection in the event of a slowing market. Any decline in the volume of fuel sold will directly reduce the fee payable by the JUHI JV to Sydney Airport.
- 95 The FTL is not a Sydney Airport charge to the airlines. Sydney Airport does not charge airlines any fuelling charge. Arrangements for the supply of fuel are contracted between airlines and the fuel companies. Sydney Airport understands that fuel companies note the FTL on invoices to airlines as a cost that is being 'passed through'. Sydney Airport believes that airport charges are only a very small component of the fuel charges paid by airlines to fuel companies. Sydney Airport understands that the jet fuel price charged by the fuel companies to airlines has been lower at Sydney Airport than at any other major Australian Airport.
- 96 Sydney Airport's total charge to the JUHI JV (including the base site rent and FTL) is intended to cover the provision of property rights in a valuable area which is proximate to aircraft and feeder pipelines, including the licence for the web of JUHI pipes and hydrants throughout the airport, access to airline customers and extracontractual risk including:
- some 50,000 sqm of land surrounding the leased area is subject to restricted uses and may not be leased in accordance with its highest and best use due to the adjacent fuel farm; and
  - Sydney Airport's residual environmental risk post the expiry of the Lease.

## **8.2 Future plans to change lease arrangements to improve competition**

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- 97 Given the extensive bargaining power of the JUHI JV, Sydney Airport is seeking to ensure that in any future agreements, the right to invest in fuelling infrastructure and to manage capacity growth is not constrained by fuel providers.
- 98 Currently, any new investment in fuel infrastructure (for example, an extension of the pipeline to fuel remote bays) requires the agreement of the JUHI JV despite the Lease providing for reimbursement of amounts invested during the last portion of the Lease or Sydney Airport offering to fund investment upfront. A refusal to invest has cost implications for airlines operating at remote positions on the airfield and hinders Sydney Airport's ability to manage capacity growth.
- 99 Sydney Airport agrees that there are opportunities to improve competition in the supply of jet fuel at Sydney Airport through open access.
- 100 In any future negotiations relating to the occupancy of the refuelling site, Sydney Airport will seek an outcome that:
- facilitates growth at Sydney Airport;
  - provides open access to fuel suppliers;
  - provides transparency on the terms of third-party access to the infrastructure; and
  - is fair for all airlines at the airport.

### **8.3 Improving transparency of fuel arrangements**

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- 101 Sydney Airport's ability to promote competition is limited to its ability to negotiate lease terms. Sydney Airport has no visibility over the JUHI Agreement itself.
- 102 Sydney Airport also has no visibility over the upstream agreements between the JUHI JV and its member suppliers, Caltex and Viva Energy or the access available to other suppliers wishing to supply the airport with fuel through those pipelines. Similarly, Sydney Airport does not have any visibility over the downstream arrangement between the JUHI JV and the into-plane contractors or the ability of other operators to enter that into-plane market.
- 103 Sydney Airport supports the Productivity Commission's recommendation for the introduction of a jet fuel supply coordination forum being incorporated into the master planning process to cover matters such as forecast demand, security of supply, capacity constraints, pressure points, linkages between infrastructure, future infrastructure requirements and investment planning. Improved industry coordination would assist to improve transparency, facilitating investment and growth, and increasing the resilience of the jet fuel supply at Sydney Airport.

## Part E:

### Other Suggested Reform

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#### Chapter 9: Clauses in commercial agreements with airport users

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##### Commission's Information Request 10.1

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

##### Summary of Sydney Airport's response to Information Request 10.1

- Sydney Airport considers that there are sound commercial reasons for including Declaration Clauses in agreements with airport users, However, Sydney Airport has noted the Commission's view, and agrees that it will not enforce any such clauses and will not include them in future agreements.
- No Less Favourable Terms Clauses are included in agreements at the insistence of airlines. Sydney Airport will not accept inclusion of such clauses in future agreements.

#### 9.1 Additional information on declaration clauses in commercial agreements

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- 104 The Commission raised concerns in the Draft Report regarding clauses that appear in some commercial agreements between airports and airlines that establish disincentives or loss of contractual rights if an airline is involved in a declaration application under the National Access Regime (**Declaration Clauses**).<sup>25</sup>
- 105 Declaration Clauses are included in agreements to deter airlines from engaging in regulatory gaming. Agreements between airports and airlines give effect to a complex and tailored 'total package' of commercial terms often resulting from extensive negotiations, and include various compromises flowing in both directions. Declaration Clauses seek to create a contractual disincentive for airlines to agree to a package of terms and subsequently attempt to 'cherry pick'. That is, Sydney Airport considers that if an airline, having completed a negotiation leading to a concluded agreement, later expresses dissatisfaction with one aspect of the agreement, it is fairer and more appropriate to renegotiate the entire package of terms rather than allow airlines to seek arbitration to modify one aspect of the agreement while continuing to benefit from other aspects.
- 106 In the light of the Commissions' view on these clauses, however, Sydney Airport will not enforce any such clauses and will not include them in future agreements.

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<sup>25</sup> Draft Report Page 130.

## 9.2 Additional information on No Less Favourable Terms Clauses in commercial agreements

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- 107 The Commission also raised concerns in the Draft Report regarding clauses that appear in some commercial agreements between airports and airlines that require an airport to provide aeronautical services to an airline on terms no less favourable than the terms on which it provides aeronautical services to other airlines (**No Less Favourable Terms Clauses**).<sup>26</sup>
- 108 These No Less Favourable Terms Clauses are included in agreements on request by airlines and indeed operate to their benefit. In the light of the concerns raised by the Commission, Sydney Airport will not agree to include such clauses in future agreements.

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<sup>26</sup> Draft Report Page 130.



## Chapter 10: ACCC Monitoring

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### **Commission's Draft Recommendation 10.4**

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

- show the number of passengers that depart from and arrive at each terminal;
- separately show the costs and revenues in relation to the provision and use of aeronautical services for domestic flights and for international flights;
- for Sydney Airport, also show the costs and revenues in relation to the provision and use of aeronautical services for flights to regional New South Wales;
- separately show the number of users, costs and revenues in relation to the provision and use of at terminal and at distance car parking and the utilisation rates for each type of parking;
- separately show the number of vehicles that use landside access services, charges and other terms of access for each landside service, and the operating costs and revenues in relation to the provision and use of the various landside access services, such as services for shuttle buses, taxis and hire cars; and
- report all costs on the basis that they are specific to a service or common across more than one service (stating the relevant services). In addition, airports should report costs on an allocated basis and should clearly set out the methodologies used for allocating the costs to international and domestic aeronautical services, at terminal and at distance parking, and landside access services.

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

### **Commission's Draft Recommendation 10.5**

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

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

### **Summary of Sydney Airport's response to Draft Recommendations 10.4 and 10.5**

- Sydney Airport understands the objective of the Commission's recommendations that monitored airports should provide the ACCC more detailed information on airport performance and would willingly engage with the ACCC to determine the level of detail.
- Careful consideration would need to be given to the appropriate level of transparency to ensure commercially sensitive information is not able to be 'back-solved'.

- Sydney Airport supports the Commission's recommendation that the ACCC provide advice to the Government (in consultation with airports, airlines and users) on an updated set of quality of service indicators and looks forward to working with the ACCC on this.

## 10.1 Overview

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- 109 The ACCC's monitoring is a critical part of the light-handed Australian regulatory regime. However, as identified by the Commission in Chapter 10 of the Draft Report, the monitoring regime can be improved.
- 110 The importance of the ACCC monitoring report is reflected in the wide-spread coverage received by the 2017-18 ACCC Airport Monitoring Report which was released on 25 February 2019. In particular, Sydney Airport is pleased by the improvement in its rating to 'Good'. It reflects the considerable effort that Sydney Airport has made to improve the experience of the various stakeholders who use Sydney Airport.

## 10.2 Additional information on more detailed financial information

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- 111 Sydney Airport is supportive of improving the robustness of the ACCC monitoring regime including through the provision of additional information. In particular, Sydney Airport is supportive of separately reporting revenue information for domestic and international flights. As discussed in section 9.9 of the First Submission, the aggregation of domestic and international passenger revenue can be misleading.
- 112 As outlined in more detail in Chapter 12, the pricing structures at Sydney Airport are subject to a degree of complexity that reflects the way charges were established by the ACCC at the time of privatisation and the many different agreements that have been implemented since.
- 113 Given the complexity and layering of commercial agreements, providing the level of breakdown requested by the Commission would not be straightforward. Careful consideration would need to be given to what information is shared to ensure it is not open to misinterpretation and does not enable commercially sensitive information to be back-solved.
- 114 Sydney Airport also agrees with the Commission's position that any increase in the information that airports are required to provide to the ACCC should not be so onerous that it would be contrary to the principles of the light-handed Australian regulatory regime. In addition, as noted by the Commission, the benefits of collecting the additional information should exceed the cost of complying with the increased reporting requirements.<sup>27</sup>
- 115 Sydney Airport would welcome the opportunity to work with the ACCC to determine the appropriate level of detail and approach.
- 116 Sydney Airport notes the Commission's draft recommendation that the ACCC should audit and publish a database of information provided by the airports. However, once again, careful consideration needs to be given to whether the information published can be used to 'back-solve' commercially sensitive information.

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<sup>27</sup> Draft Report Page 301.

### **10.3 Additional information on improving quality of service monitoring**

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- 117 Sydney Airport welcomes the Commission's recommendation that the ACCC provide advice to the Government (in consultation with airports, airlines and users) on an updated set of quality of service indicators.
- 118 As noted by the Commission, the service level agreements between airports and airlines are 'increasingly common and codify the matters of quality that are important to airlines'.<sup>28</sup> In addition, as noted by the Commission, using the SLAs 'might be relatively cost-effective'.<sup>29</sup>
- 119 Sydney Airport is looking forward to working with the ACCC on an updated set of indicators.

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<sup>28</sup> Draft Report Page 304.

<sup>29</sup> Draft Report Page 304.

## Chapter 11: Urban encroachment at Sydney Airport

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### Summary of additional information

- The Commission's findings in the Draft Report relating to limiting urban encroachment at Western Sydney Airport are equally relevant to Sydney Airport.
- The inappropriate re-zoning of employment lands in the areas around Sydney Airport, including re-zoning that facilitates the encroachment of high density residential development, must be restricted to ensure Sydney Airport is able to continue to operate as efficiently as possible into the future.

### 11.1 The Commission's findings on urban encroachment

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120 The Draft Report includes the following statement in relation to urban encroachment:

*The Australian Government intends for Western Sydney Airport to operate without a curfew. The Commission supports this plan. The nearest built-up suburban areas will be over 10 km from the Western Sydney Airport runway, compared with less than 1 km at Sydney Airport (DIRDC 2018e, p. 2). Government planning and development activities should promote the efficient operation of the airport and **ensure that the surrounding land is not developed in a way that ultimately creates pressure to reduce the airport's 24-hour operations.**<sup>30</sup> [emphasis added]*

### 11.2 Limiting urban encroachment at Sydney Airport

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121 Sydney Airport supports the need to protect airports from inappropriate urban encroachment. While the statement extracted above is directed at Western Sydney Airport, urban encroachment is a live issue for Sydney Airport, with significant projects being considered that have the potential to impact Sydney Airport's ability to operate efficiently.

122 Growth in aviation activity at Sydney Airport is driving increased demand for a range of airport and aviation support-related land uses, including (but not limited to):

- airfreight and logistics centres and warehousing;
- maintenance facilities;
- flight training facilities;
- flight catering facilities; and
- car rental facilities.

While many of these facilities and land uses can and will in the future be accommodated on the Sydney Airport site, some will inevitably need to be located in areas outside the airport boundary, particularly given the airport site itself is only 907 hectares in area.

123 For these reasons, it is vital that there be sufficient areas of appropriately zoned employment lands close to Sydney Airport to accommodate required airport and aviation support facilities into the future. However, successive governments have for many years permitted employment lands around Sydney Airport to be progressively re-zoned to permit mixed land

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<sup>30</sup> Draft Report Page 237.

uses. Research prepared for the NSW Greater Sydney Commission shows that the supply of employment land near Sydney Airport has dwindled to a point where it is now well below the accepted benchmark.

- 124 A related concern is that lands adjacent to Sydney Airport that were formerly zoned as employment lands are almost always re-zoned to permit high density residential development. For example, a new suburb of around 12,000 residents and a school of 600 students is currently being considered in an area only several hundred metres from Sydney Airport's busy T1 precinct (an area that is already affected by aircraft noise).
- 125 The loss of employment zoned lands in the areas surrounding Sydney Airport and the ongoing encroachment of inappropriate residential development is creating land use conflicts and will increasingly place pressure on Sydney Airport's ability to operate efficiently. These issues are also likely to lead to calls to place further restrictions on airport activity, the detrimental impacts of which are addressed in Chapter 5 above.
- 126 There are numerous examples where industrially zoned employment lands in the vicinity of Sydney Airport have been historically re-zoned to allow mixed use and/or residential development, including the Mascot Town Centre and surrounds transformed from industrial to residential and business uses and areas in the suburbs of Botany and South Murrumbidgee.
- 127 Other large areas of industrially zoned employment lands are currently being considered for re-zoning to allow mixed use and/or residential development including:
- 20 hectares within the Cooks Cove precinct immediately adjacent to Sydney Airport;
  - 7.8 hectares of industrial land in South Murrumbidgee; and
  - the 3.7 hectare Turrella Industrial precinct.

An as yet unspecified area of industrially zoned employment lands in the Banksia – Arncliffe area is also being considered for conversion to residential and commercial uses. Large industrially zoned areas in the southern part of the City of Sydney local government area have also been periodically the subject of a private member's bill in the NSW Parliament that would, if enacted, convert these areas to allow residential and related development.

## Chapter 12: International charges

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### Summary of additional information

- Sydney Airport's asset base was set by the ACCC in 2001 and reflects characteristics which are unique to Sydney Airport.
- Sydney Airport's revenue per passenger, which has been recognised by the ACCC as a useful proxy for showing movement in airport charges, has gone up the least of the monitored airports over the last decade in real terms.
- Sydney Airport's approach to allocating shared costs among airport users reflects the approach taken by the ACCC in 2001. Sydney Airport considers there may be more effective and efficient ways to allocate aviation charges but notes that any changes to the existing charging structure will impact different airlines in different ways.

### 12.1 Introduction

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128 The previous chapters have responded to specific requests or recommendations of the Draft Report. In this chapter, Sydney Airport provides some further detail around the Productivity Commission's commentary on Sydney Airport's international charges.

### 12.2 Sydney Airport's asset base

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129 The ACCC was responsible for putting in place the existing price structure of Sydney Airport's charges in 2001 at the time of privatisation. At that time the ACCC calculated Sydney Airport's starting asset base (for international and shared asset bases) and determined new charges that reflected the ACCC's view on the actual costs of operating Sydney Airport.

130 Sydney Airport's starting asset base, as set by the ACCC, was three to four times higher than the asset bases at Melbourne Airport and Brisbane Airport at that time, and more than ten times higher than the asset base at Perth Airport. Sydney Airport's asset base per passenger was also set at a higher level than the other major Australian airports.

131 Sydney Airport's significantly higher asset base reflected the particular characteristics of Sydney Airport compared with other major Australian airports, including:

- a higher proportion of long-haul international passengers (who use more of the airport's facilities and are more expensive to process as they are likely to travel with more baggage and require border services and a higher standard of security screening);
- a higher proportion of transfer and transit passengers (requiring more complex baggage handling infrastructure);
- operating restrictions at Sydney Airport that drive traffic volumes in peak periods and increase average aircraft size;
- a location within Australia's most expensive city in close proximity to the Sydney CBD;

- three runways (all built on reclaimed land), compared to most airports of comparable size worldwide which have two runways, and in some cases have only one runway (such as London Gatwick Airport);
- the significant capital investments made in conjunction with the 2000 Olympics;
- a relatively small and congested site compared to some major airports, which increases the costs of construction; and
- three separate terminals in two distinct terminal precincts, which results in the replication of some facilities and costs of transfers between the terminal precincts.

132 The international charges at Sydney Airport have been based on the initial charges decision of the ACCC and have increased by less than 1% p.a. in real terms in the 17 years since.<sup>31</sup> Therefore, there is no indication of Sydney Airport exercising market power.

133 In addition, the 2017-2018 ACCC Airport Monitoring Report found that of the monitored airports, '[t]he growth in revenue per passenger over the last decade was the lowest at Sydney Airport (16.6 per cent)'.<sup>32</sup> The ACCC has recognised this metric as a useful proxy for showing movement in airport charges.<sup>33</sup>

### 12.3 Simplifying charges

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134 Since the ACCC set prices, the Australian aviation industry has evolved, with several significant industry changes reflected in the timing, type and pricing structures of agreements negotiated between Sydney Airport and its airline customers including:

- the collapse of Ansett and the advent of Virgin Blue (a low-cost carrier (**LCC**) with a markedly different operating model) with whom Sydney Airport entered into a seventeen-year terminal agreement with an agreed price path, then the subsequent move from Virgin Blue to the premium Virgin Australia;
- the entry of Jetstar and Tiger (also LCCs) into the market leading to different length agreements with agreed price paths; and
- multiple international agreements struck at different times and during different economic cycles.

135 These circumstances have resulted in a degree of complexity, difference and layering in agreements across the airport depending on the individual airline. For example, some airlines have preferred agreements that charge on a Maximum Take Off Weight (**MTOW**) basis, while some prefer a per passenger basis. There is little consistency across agreements.

136 In addition, the allocation of costs reflects government policy such as the protections around regional pricing which have seen regional prices reduce by ~50% in real terms since 2001 meaning that domestic and international services are cross subsidising regional services.

137 Sydney Airport would prefer to take a different approach to structuring its pricing. If all pricing and charges were reviewed today Sydney Airport would adopt an approach that was

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<sup>31</sup> Based on the current commercially negotiated agreements with BARA airlines.

<sup>32</sup> 2017-2018 ACCC Airport Monitoring Report Page 17.

<sup>33</sup> 2017-2018 ACCC Airport Monitoring Report Page 15.

simplified, consistently applied, and, as suggested by the Commission, would respond to issues of high demand in a congested environment to make the most efficient use of scarce capacity e.g. by including peak/congestion pricing.

- 138 A previous attempt in 2005 to move all domestic airlines from an MTOW charge to a per passenger charge was opposed by Virgin Australia (formerly Virgin Blue), who sought and obtained declaration of Sydney Airport. The basis for the declaration was that the proposed change by Sydney Airport would adversely affect LCCs (such as Virgin Australia at the time) as against full cost carriers (such as Qantas).
- 139 Sydney Airport believes that a simplification of the charging structure is desirable given the reasons outlined above. The complexity and differences in charges that have layered over time across multiple agreements, however, means that any change in Sydney Airport's pricing structure will impact different airlines in different ways – there will be winners and losers.