

MELBOURNE AIRPORT

Productivity Commission Inquiry into the Economic Regulation of Airports

**Response to Draft Report
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1 Executive summary

Melbourne Airport welcomes the release of the Productivity Commission's (the Commission) draft report on the Economic Regulation of Airports (the draft report).

The findings and recommendations presented in the draft report are broadly consistent with the views that Melbourne Airport has put forward throughout this inquiry. As set out in this submission, Melbourne Airport only has concerns with one of the draft recommendations – and this is only on the basis that the recommended approach could be improved, not that the intent of the reform is misplaced.

The most significant question facing this inquiry is whether the current regulatory framework for aeronautical services requires reform. The Commission's response to this question in the draft report was unequivocal – that existing airport regulation benefits the community and remains fit for purpose.

Melbourne Airport agrees that the existing light-handed regulatory framework has served the sector well, and that the risks of a mandatory negotiate-arbitrate framework would significantly outweigh any potential benefits. Maintaining the current regulatory framework will support the significant investment that is required at Melbourne Airport, and other airports across Australia.

The Commission's market power assessment found that at Melbourne six of the seven measures used were not consistent with the exercise of market power. While service quality was the only measure where the Commission had noted some concerns, the latest Australian Competition and Consumer Commission (ACCC) monitoring report (released after the draft report) shows that Melbourne Airport's service quality in 2017-18 was rated as good overall, and at its highest level since 2011-12 due to significantly improved airline survey ratings.¹

Melbourne Airport agrees with the Commission's view that the price of airport car parking is not the result of any abuse of market power, but rather reflects locational values, amenities provided, and the need to manage congestion. Melbourne Airport car parking competes directly with at least 15 off-airport car park operators, as well as other modes of transport such as taxi, ride-share, private or public bus.

Melbourne Airport passengers now have more choice in how they can access the airport than ever before, and this choice has been facilitated by Melbourne Airport. Investment in the facilities and services used by landside operators, including the recent introduction of facilities for ridesharing service operators demonstrates how Melbourne Airport has enabled new operators and promoted competition in landside access. Melbourne Airport has been a strong advocate for the construction of rail to Melbourne Airport – a project which will introduce even greater competition and choice into this market.

This submission responds to the specific information requests, findings and recommendations contained in the draft report. Chapter 2 discusses the Commission's information requests and draft findings related to aeronautical services, including how Melbourne Airport shares risk with airline customers and does not make take-it-or-leave-it offers.

Noting that the Commission has reserved judgment on the exercise of market power in landside access, Chapter 3 provides further detail to assist the Commission in response to Information Request 6.1. This includes further information on the landside investment and services provided, the factors that determine how landside access charges are set. It also outlines how the current regulatory framework provides sufficient protection for landside access operators.

Chapter 4 responds to the draft recommendations for changes to the light-handed regulatory framework. An alternative approach to the Commission's recommendation for the provision of more detailed monitoring data by airports is proposed. This alternative remains consistent with the intent behind the Commission's recommendation, but avoids the need for changes to the

¹ ACCC, *Airport monitoring report 2017-18*, p. 75

Airports Regulations 1997 (the regulations). This chapter also outlines Melbourne Airport's position on other changes to the current regulatory settings, including the Commission's proposed changes to the Aeronautical Pricing Principles.

Finally, Chapter 5 briefly responds to the Commission's positions on the provision of jet fuel. A commercial-in-confidence appendix is attached, to provide the Commission additional sensitive information for its consideration.

Melbourne Airport faces a substantial challenge – investment over the coming years is needed to not only to grow the airport's capacity to meet demand growth through infrastructure expansion, but to replace and maintain legacy assets from when the airport was first built half a century ago.

This is a challenge that is not unique to Melbourne, but is faced by airports around Australia. The Commission's recommendations provide for stability in airport regulation, which is critical to enable airports to continue to invest in airport infrastructure. By facilitating the future growth in passenger demand, this regulatory approach will allow airports and airlines to maximise the economic and social benefits that air travel brings to the Australian community.

2 Aeronautical services

Key points:

- Melbourne Airport has demonstrated to this inquiry that under the current regulatory framework, it does not make take-it-or-leave-it offers, and that airlines have significant countervailing market power.
- Melbourne Airport's agreements with airlines are structured in a way that appropriately shares risk with airlines.
- Melbourne Airport welcomes and strongly supports draft finding 5.1. Melbourne Airport agrees that it has not exercised its market power, and that the current regulatory framework has served the sector well.

Melbourne Airport agrees with the Commission's draft finding that it or the other monitored airports have not exercised their market power to the detriment of the community.

Melbourne Airport agrees that the existing light-handed regulatory framework has served the sector well, and that the risks of a mandatory negotiate-arbitrate framework would significantly outweigh any potential benefits. Maintaining the current regulatory framework will support the significant investment that is required at Melbourne Airport, and other airports across Australia.

There are some areas where the Commission has requested further information with regard to aeronautical services. Melbourne Airport's response to these information requests are addressed in this chapter.

2.1 Take-it-or-leave-it offers

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.

In its draft report the Commission found that there was "insufficient evidence to conclude that airport operators make take-it-or-leave-it offers to airlines *and* that airlines are compelled to accept them."²

Melbourne Airport has provided the Commission with evidence throughout this inquiry on how Melbourne Airport has approached negotiations with airline customers. This evidence demonstrates that Melbourne Airport does not make take-it-or-leave-it offers, and that airlines have significant countervailing power in commercial negotiations.

A recent example is the 2017 Aeronautical Services Agreement (ASA) where consultation and negotiations commenced over twelve months prior to the expiry of the previous agreement, and continued into the next agreement period while negotiations continued. This agreement includes a sculpted price path, which resulted in reduced prices for 2017-18 relative to the year before. Prices then increase each year to reach the 2016-17 price in 2018-19. Higher prices in the final three years of the

² Productivity Commission, *Economic Regulation of Airports, Draft Report*, p. 118

agreement were included to offset lower prices in earlier years. This price path was included at the request of airlines during the negotiation process.

Further detail on our negotiations and agreements for landside access services is included in this supplementary submission, in response to information request 6.1 (chapter 3).

2.2 Sharing of risk with airlines

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.

The Aeronautical Pricing Principles set out that there should be a 'reasonable sharing of risks and returns' between airlines and airports - this is reflected in the way Melbourne Airport's agreements with airlines are structured.

Risk sharing was an issue that was raised in different sections throughout Melbourne Airport's first submission to this inquiry. Given that the Commission's interest in this issue remains, the key points from throughout this submission are brought together here for the Commission's consideration.

2.2.1 Airports assume passenger risk

2.2.1.1 Per passenger pricing

One of the first changes following privatisation and the removal of price caps was to move from charges based on aircraft movements, to charges based on passengers. This change was made at the request of the airline community, and has resulted in greater passenger risk being borne by airports.

For example, under previous arrangements when charges were levied on aircraft landings, the price paid by an airline would have been fixed, regardless of how many tickets were sold on that service. Now, with per passenger charging, an airline will pay less in airport charges for a flight that sells less tickets, despite the same level of service being provided by the airport.

This reduces the risk to airlines. Relative to other costs, such as fuel and staff, airport charges represent a small share of airfares (generally less than three per cent for international services),³ and are only realised by airlines when passengers are flying. The other benefit of this approach, is that it makes marginal services more viable, which should increase the overall supply of air travel which benefits consumers.

One downside to per passenger charging is that it does not provide an incentive to use airport infrastructure efficiently. For example, under per passenger pricing the total amount charged by an airport to an airline for an aircraft using airport services will be reflected in the amount of passengers using that aircraft. So while both smaller (say 737-800) and larger aircraft (say A330-200) generally use a single gate, and a single runway slot, the total fee paid by the larger aircraft with hundreds of

³ Productivity Commission, *Economic Regulation of Airports, Draft Report*, p. 107

passengers will be higher than the smaller aircraft which may only have dozens, even though in many ways both received a similar level of service.

While in this example, airport infrastructure could be used more efficiently, the overall market outcome in the supply of air services, accounting for all the other costs faced by airlines, would be expected to be efficient. This is because the benefits of per passenger charging for airlines, and the higher costs of other airline operations relative to aeronautical charges, would be expected to outweigh the economic costs of inefficient use of the airport infrastructure. This is ultimately why per passenger charging approach is preferred by airlines. In any case, per passenger pricing results in substantial risk sharing between airports and airlines.

2.2.1.2 Aggregate passenger volumes

With air travel being a discretionary spend for both corporate and leisure travellers, aggregate passenger demand can be quite sensitive to external factors such as economic downturns, or disruption in the aviation industry.

Melbourne Airport is exposed to the risk that demand is different from its forecast. There are downside risks if passenger volumes are lower than forecast, and upside risk if passenger volumes are higher. Some aeronautical agreements may include incentives for airlines that exceed passenger growth targets, or provide rebates to airlines for new services. So while airlines share in the upside risk of passenger growth, they generally do not share in downside risk in terms of aeronautical charges.

Passenger volume risk can be exacerbated during periods of strong growth, as the shocks that impact on passenger demand are difficult to anticipate ahead of time and incorporate into forecasts of future passenger volumes.

2.2.2 Stranded asset risk

In the light-handed regulatory framework being driven by commercial negotiation, there is no guarantee that an airport will be able to recover its investment over the entire useful life of an asset. By convention, the assets deemed as aeronautical and agreed in prior agreements form the asset base of future agreements. This understanding prevails with airlines, but it is not set down in contract or firm rules (as is the case with the National Electricity Rules, for instance). Rather, this convention is subject to the commercial negotiation process, which creates a risk carried by airports under the current light-handed framework.

For example, there has been an increase in the book value of aeronautical assets by \$1.4 billion over the 10-year period from 2007-08 to 2017-18. This represents a material increase in Melbourne Airport's contractual risk at the expiry of each ASA agreement, when pricing and service expectations are re-negotiated. In 2022 the asset base risk is forecast to increase to \$2.5 billion, a 5.4 times increase since light-handed regulation commenced in 2003.

2.2.3 Operational risk

Melbourne Airport faces operational risk when delivering airport services. Given the time period over which aeronautical agreements are agreed is usually five to ten years, this comes with a risk that operational costs could be higher than forecast at the time of the agreement.

The Melbourne Airport 2017 ASA includes a 30 per cent discount for international bussed services. This presents a risk in forecasting bussed services. If there are more bussed services than forecast, then revenues will not only be lower, but as bussed services entail a higher operational costs – overall operational costs will be higher.

The 2017 ASA also includes an Immediate Service Failure Rebate, which results in a rebate to airlines if specific Melbourne Airport assets contribute to an on time performance failure.

2.2.4 Investment risk

Melbourne Airport carries capital expenditure risk with regard to investment in aeronautical infrastructure. The 2017 ASA features an annual price reset, which is used in the case where actual capital expenditure falls short of planned expenditure on capital projects. There is provision for some of the savings to be shared if Melbourne Airport delivers projects under budget, which benefits both Melbourne Airport and the airlines. This gives Melbourne Airport an incentive to deliver infrastructure investment efficiently, whilst sharing upside risk with airlines.

In addition Melbourne Airport's Capital Consultation Group processes allow for Melbourne Airport to fund additional capacity improvements in this ASA period without an adjustment to price. In this case, the airport invests with no price benefit or future investment certainty, while airlines receive the service benefits from that investment.

2.3 Market power at Australia's major airports

DRAFT FINDING 5.1

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

Melbourne Airport supports draft finding 5.1 and considers that the current regulatory framework remains the best approach. Melbourne Airport has not exercised its market power, and agrees there is no justification for significant change to the regulation of aeronautical services.

The evidence supporting this position was set out in Melbourne Airport's response to the issues paper for this inquiry. It outlined how aeronautical services operate under the current regime (chapter 4), including how aeronautical agreements are negotiated between Melbourne Airport and airlines (chapter 5). Chapter 6 set out how aeronautical services have been provided at Melbourne Airport, including the investment that has taken place under the current regime.⁴

Chapter 7 of that submission set out how the current regulatory settings work, and the expected impacts of potential changes. Chapter 7.4 specifically discussed the expected impacts from introducing deemed declaration – that it is unlikely to facilitate an improvement in the process of commercial negotiation, it would increase the risk of regulatory error and adversely impact investment. Chapter 7.5 of this submission outlined the anticipated impacts of 'final offer arbitration' – the solution previously proposed by A4ANZ.⁵

In its supplementary submission A4ANZ no longer specifically called for final offer arbitration, but rather set out a broader approach to an airports-specific regulatory framework, including the characteristics that such a framework could include.⁶

Notwithstanding the particular shortcomings of final offer arbitration which were outlined in our original submission, Melbourne Airport considers that a system of deemed declaration of airport services remains unlikely to improve commercial negotiations. Rather, such a system would almost inevitably change the behaviour of participants, risking regulatory gaming and potentially result in arbitration becoming the default end point.

In turn, this would increase the prospect of regulatory error, and reduce the efficiencies and innovations that have come from the commercial negotiation process. Given the other regulatory remedies that are

⁴ Melbourne Airport, Submission 33

⁵ Ibid

⁶ A4ANZ, Submission 83, p. 20-22

available but which have been rarely called upon, the current framework provides the appropriate balance to enable commercially efficient outcomes.

3 Landside access

Key points:

- Melbourne Airport has invested and will continue to invest in facilities that facilitate passenger choice and reduce congestion on the airport road network. The landside access fees charged to commercial operators are intended to recover the costs of providing these facilities and services.
- The prices charged for landside access are based on the operational and capital costs associated with providing commercial operators with access to the Melbourne Airport forecourt. Pricing structures have been designed to incentivise efficient use of the forecourt infrastructure to minimise congestion.
- Much like aeronautical agreements for common user infrastructure, the terms and conditions of landside access need to promote the overall efficient operation of landside services. Melbourne Airport consults with the hundreds of commercial operators that provide landside access services, and while this consultation has resulted in changes requested by operators, it is not always possible to satisfy the requests of all parties.
- There are sufficient protections in the current regulatory framework that safeguard against the exercise of market power against landside access operators by an airport, as this conduct is constrained by the restrictive trade practices provisions of competition and consumer law which target anticompetitive conduct.

Melbourne Airport notes that the Commission is yet to form a view on whether airports have exercised market power in providing landside access. The evidence presented by Melbourne Airport to this inquiry demonstrates that Melbourne Airport has not restricted access to operators, and that landside access charges are appropriate.

In 2017-18 the number of parking transactions at Melbourne Airport car parks declined, despite an additional 1.6 million passengers flying through the airport.⁷ This reflects changes in consumer preferences, including new choices for passengers like ridesharing.

Melbourne Airport has facilitated access for landside operators. Facilities for new rideshare operators have been installed, and upgraded facilities to enhance the passenger experience including taxis, and car rental operators (chapter 3.1). Facilitating this access for other modes of landside transport, many of which are in competition with airport car parking, clearly demonstrates how Melbourne Airport has not exercised its market power by restricting access.

The prices charged to landside access operators reflect the capital and operational costs of providing landside access services, using pricing to manage congestion through the airport forecourt, and the locational value of where landside operations occur (chapter 3.2).

Given landside access charges for taxis and rideshare make up such a small percentage of the overall fare,⁸ they could not be expected to encourage passengers to substitute to Melbourne Airport car parks. Further, the existence of at least 15 different off-airport car parks, and more than 300 individual landside operators in total at Melbourne demonstrates that landside access charges are not impacting consumers by constraining the supply of services available.

All of this has taken place with the current regulatory framework, which safeguards against an exercise of market power through competition law which restricts anticompetitive conduct (chapter 3.5).

⁷ ACCC, *Airport monitoring report 2017-18*

⁸ Melbourne Airport, Submission 33, p. 138

Given the Commission is still seeking evidence on landside access, Melbourne Airport provides further detail on landside access arrangements at Melbourne Airport throughout this chapter, in response to information request 6.1.

INFORMATION REQUEST 6.1

The Commission is seeking evidence on:

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

3.1 Investment in landside access services

In 2016 Melbourne Airport generated an average weekday volume of 118,300 vehicle trips to and from the airport. As a direct result of aeronautical growth, landside travel demand is expected to increase to around 240,000 vehicle trips on a busy day by 2038.

This has required and will continue to require Melbourne Airport to invest in landside infrastructure to facilitate efficient access. A list of the major landside investments is outlined in Melbourne Airport's first submission to this inquiry.⁹

The following overview is provided to illustrate the type of landside access facilities that are funded through access charges.

3.1.1 Taxi services and facilities

Taxis currently complete over 2.1 million pick-ups at Melbourne Airport every year, making the airport Victoria's largest taxi hub. In order to move this amount of traffic efficiently through the forecourt, Melbourne Airport provides dedicated facilities and services for taxis.

There are primary and secondary holding areas for taxis with 850 parking bays in total. These holding areas are connected by a taxi feeder where there are 35 pickup bays along the inner lane of the forecourt, and another 17 bays located at the Terminal 4 ground transport hub. Dedicated toilet facilities for taxi drivers are located at the primary and secondary holding areas.

The taxi management system involves technical integration between e-tag tolling, boom gates and a licence plate recognition system to ensure that taxis enter through the primary holding area and then travel through the secondary holding area, prior to entering the terminal taxi ranks.

This system was recently upgraded in 2017-18, with the introduction of the faster e-tag only entry to the airport taxi holding areas and ranks. This project delivered a number of benefits including the removal of a requirement for swipe cards and topping up at pay machines by taxis, and improved the ability to optimise traffic and manage taxi flow in real time to improve taxi delivery to the airport ranks. It also

⁹ Melbourne Airport, Submission 33, p. 82

simplified administration for taxi drivers by providing them a single mechanism to manage both road tolls and Melbourne Airport taxi rank access fees.

Staff in the landside operations centre manage the flow of traffic and taxi demand to ensure sufficient taxis are maintained within the system, traffic disruption on the roadways is avoided, and wait times for travellers at the ranks is minimised. Staff communicate with taxi drivers through loud speaker communications at the holding areas as well as through light signals, electronic messaging boards and radio communications.

3.1.2 Car rental facilities

Melbourne Airport provides a number of facilities that are specifically dedicated for car rental operators. This includes space for rental desks in the terminals, and offices within the at At-Terminal 123 car park. Car rental operators have access to around 900 parking bays located on the ground floor of the At-Terminal 123 car park, as well as additional bays at distance for the storage of additional vehicles.

Melbourne Airport has recently invested in a number of improvements to facilitate the ongoing growth of car rental operations at Melbourne Airport. Key improvements have included:

- the delivery of quick turnaround bays within the ground floor of the At-Terminal 123 car park, to deliver operational efficiencies for up to 60 per cent of recirculating rental vehicles travelling to back of house facilities in the outer airport precinct;
- conversion of the rental zone lighting from traditional to LED lighting, significantly improving the lighting levels, amenity, safety and security of the rental zone;
- installation of a number of security measures such as tiger teeth, security bollards, and vehicle inspection cameras to minimise vehicle theft;
- conversion of airport parking bays to car rental bays, to allow for growth within the airport precinct, increasing the number of vehicles that can be staged and stored within the main terminal precinct; and
- a dedicated entry and exit to the car park to improve intuitive wayfinding and customer experience.

3.1.3 Rideshare facilities

With the legalisation of ridesharing by the Victorian Government in 2018, Melbourne Airport has delivered facilities to make access to ridesharing services easily available to passengers. Actions taken by Melbourne Airport to facilitate access for rideshare operators include:

- the allocation of a new dedicated “rideshare kerb” within the forecourt;
- operational changes to facilitate rideshare pick-ups within the Terminal 4 ground transport hub;
- the allocation of 150 bays as part of a dedicated rideshare ‘holding zone’ where vehicles wait prior to making a pick-up from the airport;
- construction of dedicated rideshare driver restroom facilities and cleaning and maintenance within the holding zone; and
- pavement, kerb and line-marking changes to provide direct access from the holding zone onto Airport Drive.

These facilities and collaboration with a number of different rideshare operators has allowed for the transition of this new transport option into the market, responding to customer demand, increasing choice and convenience, whilst minimising any resulting traffic congestion on the airport network for the travelling public.

3.2 Setting the terms of landside access

Melbourne Airport has in place agreements with commercial operators that provide landside access services. This includes taxis, ride-share operators, off-airport car park operators, airport shuttle buses, private hire cars, and SkyBus. In total, there are over 300 commercial agreements in place with different companies that operate landside access services through Melbourne Airport.

The approach to determining the terms and conditions of landside access can vary depending on the type of service that is provided. Where bilateral negotiations are possible and practical, the commercial negotiation process allows for a commercial outcome to be reached, tailored specifically to the operator's needs, such as with SkyBus. This bilateral approach is similar to domestic terminal agreements at Melbourne Airport, where a bespoke commercial agreement is reached between the two relevant parties.

However, the majority of ground access operators access common-user infrastructure and services. The terms and conditions of access that are set by Melbourne Airport need to apply to a wide variety of operators, and the arrangements need to promote the efficient operation of landside access services overall. While Melbourne Airport undertakes extensive consultation on the terms of landside access, it is not always possible to reach an outcome that is preferred by all parties.

This approach shares many characteristics with aeronautical agreements for common-user infrastructure (like ASAs), where certain terms of such agreements need to apply to all users to promote the efficient provision of and use of the relevant infrastructure. The standard terms and conditions for buses providing landside services has been provided to the Commission in-confidence.

3.2.1 A building block model underpins landside access prices

The methodology to determine landside access charges at Melbourne Airport has matured over time. Initially, prices had simply been rolled over from what they were the year before, without detailed consideration of recovering all of the costs of providing landside access. This then evolved to a model that considered the operational costs of servicing ground access operators, which was introduced in 2013.

A more sophisticated model was introduced in 2014-15 that then also included the capital costs of ground access facilities. This model is based on a building block methodology which seeks to recover operational and capital costs of providing ground access services, also known as 'the required revenue'.

Within this model, Melbourne Airport allocates the costs attributable to each mode of ground access. Operational costs, return on assets and return of assets (depreciation) are allocated directly or indirectly, based on cost allocation methodologies.

The distribution of costs are then further adjusted to take into account location; locations closer to the terminal are considered to have a premium. Capital costs are recovered over the asset's useful life.¹⁰ The costs recovered through landside access charges are not also recovered through aeronautical agreements – so there is no double charging.

Once the total costs are estimated and allocated to particular modes of transport, the number of transactions from which the costs can be recovered are forecasted as per usual business planning budgeting processes. This informs the price per transaction. For example, the number of taxi transactions is forecast to determine the price per taxi to meet the total required revenues.

¹⁰ Generally 5 years for ICT developments, 20 years for hardstand assets

3.2.2 Using pricing to reduce congestion

Congestion pricing is used for these operators to encourage the efficient use of landside infrastructure. Operators such as buses and private hire cars can have reasons to spend prolonged periods in the airport forecourt, as these services often wait for specific passengers. These vehicles are charged a flat rate to access the forecourt area, with congestion charges applicable if the dwell time extends beyond the specified flat rate period.

This type of pricing was first introduced following a comprehensive review of the efficiency of bus operations in the Melbourne Airport forecourt undertaken in 2012, and is still in place today. Melbourne Airport found that congestion pricing has been effective, as operators adjusted their operations to reduce dwell time to minimise charges. The current pricing structures for ground access services are available on the Melbourne Airport website.¹¹

3.3 Consultation with landside access operators

Melbourne Airport consults on a regular basis with landside operators. The Landside Operators Committee (LOC) is a forum that meets quarterly. A variety of different landside operators attend this committee, including car rental companies, off-airport car parks, private bus operators, and taxi industry representatives. This engagement provides a forum for operators to provide feedback and raise any issues of concern. This allows Melbourne Airport to consider how to balance the needs of the various different ground access operators, passengers, and other users of the airport.

Typically the agenda for the LOC meetings will include:

- a commercial update – can include updates on changes in pricing and presentation of modelling used to inform price changes, changes to other terms and conditions;
- an operations update – covers issues such as safety, forecast demand, and analysis of forecourt operations; and
- a development update – Melbourne Airport updates landside operators on the progress and planning of relevant developments.

To demonstrate how this committee operates, minutes from meetings held have been provided to the Commission on an in-confidence basis.

¹¹ <https://www.melbourneairport.com.au/Corporate/Partnering-with-us/Commercial-Vehicles/Access-overview>

Box 3.1: Implementation of forecourt efficiency review

Where more significant changes to the terms of landside access are made, more in-depth consultation has taken place. For example, when Melbourne Airport undertook a review into the efficiency of bus operators using the forecourt in 2012. Changes arising from the review included changing the areas that bus operators used in the forecourt, and the introduction of pricing changes designed to reduce forecourt congestion, and recover the operating costs of providing landside access services.

When implementing the changes arising from this review, Melbourne Airport consulted extensively with operators through the Forecourt Bus Operators Forum, and individually with specific operators that had particular concerns. This consultation process resulted in a number of concessions to bus operators from the initial terms and conditions originally proposed, including:

- refunded congestion charges for the initial nine weeks of operation to allow operators to tailor their schedules and practices following experience with the new system;
- reducing the proposed fee structure;
- staggering implementation of the new fee structure over three years; and
- agreeing to additional capital improvements and improved wayfinding signage.

3.4 Response to submissions on landside access at Melbourne Airport

Melbourne Airport notes the concerns that were raised by Andrew's Airport Parking Group in its submission to this inquiry.¹² Issues raised in that submission include price increases for landside access charges, and criticism of Melbourne Airport's approach to consultation. As outlined above, price increases for ground access operators have reflected the development of the cost recovery model, which now includes capital as well as operational costs.

Melbourne Airport consults with all landside operators through the LOC meetings. Given the number of different operators that are part of this forum, it is not always possible to satisfy all operators with the way these meetings are run. However, this forum does provide an avenue for operators to meet and discuss any issues landside operators may want to raise.

The Essential Services Commission (ESC) raised concerns over increases to taxi access charges at Melbourne Airport.¹³ It is important to clarify the role of the ESC in undertaking its review, which was to determine the appropriate fares paid by taxi users. It was not the ESC's role to assess or regulate the taxi access charges at Melbourne Airport. The ESC clarified this in its final decision paper for its 2016 Taxi Fare Review:

To be clear, we reiterate that we have no role in determining the access fee Melbourne Airport charges taxi drivers. We are only responsible for determining the maximum fares taxi service providers (in this case taxi drivers) may charge passengers.¹⁴

Melbourne Airport consulted and provided information to the ESC as part of its reviews. In particular, Melbourne Airport made submissions to both the 2014 and 2016 Taxi Fare Reviews, and met with the

¹² Andrew's Airport Parking Group, Submission 30

¹³ Essential Services Commission, Submission 7

¹⁴ [Essential Services Commission, Updating the Schedule of maximum taxi fares final decision 2016](#), p. 7

ESC to explain the methodology for determining taxi access fees (see chapter 3.2.1), and the need to increase prices as introduced in 2016.

As a result of the consultation that took place through this process, to ensure transparency it was agreed that the price of the taxi access charge at Melbourne Airport would be advised to the Taxi Services Commission, published both on the Melbourne Airport website, and in a daily newspaper generally circulating in Victoria. With these conditions met, the ESC allow taxi drivers to pass on the access fee, as set by Melbourne Airport, on to passengers.

3.5 The current regulatory framework for ground transport

There are sufficient protections in the current regulatory framework that safeguard against an exercise of market power by an airport with regard to landside access. Melbourne Airport set out how the current regulatory framework for landside access is fit-for-purpose in its first submission to this inquiry.¹⁵

The conduct of airports in providing ground transport access services is constrained by the restrictive trade practices provisions of the *Competition and Consumer Act 2010* (CCA), which target anti-competitive conduct. Those provisions have particular relevance in this context since airports are vertically integrated in ground transport services (through the provision of on-airport car parking services), and therefore compete other providers of ground transport services.

In addition, the regulatory framework for ground transport services potentially includes the application of:

- the pricing inquiry and notification regimes under Part VIIA of the CCA; and
- the National Access Regime under Part IIIA of the CCA.

Chapter 8.2 of Melbourne Airport's first submission to this inquiry addresses the relevance of general competition laws to Melbourne Airport's provision of ground transport access services in more detail.

Melbourne Airport engages directly with the ACCC on a regular basis to update it on the provision of airport services, including ground access. This engagement can involve briefings on changes to how ground access services are provided, including changes in pricing and the methodology on which pricing is based.

¹⁵ Melbourne Airport, Submission 33, p. 127

4 The light-handed regulatory framework

Key points:

- Melbourne Airport supports efforts to improve the monitoring of services at Australia's major airports, given the importance of monitoring in the light-handed regulatory framework.
- However, it is Melbourne Airport's view that the changes to the regulations in draft recommendation 10.4 proposed by the Commission are unnecessary to achieve the Commission's objectives.
- The ACCC currently has powers to request data from monitored airports through ministerial instructions under the CCA. This allows the ACCC to monitor airports, including the collection of information it requires to undertake this task. This makes the proposed changes to the regulations unnecessary.
- Melbourne Airport supports that the ACCC consult with industry to improve the quality of service monitoring framework.
- Melbourne Airport supports amendments to the Aeronautical Pricing Principles to state that certain types of clauses should not be included in aeronautical agreements.
- Periodic reviews by the Productivity Commission are an important pillar of the light-handed regulatory framework. Melbourne Airport supports another inquiry being held in 2024.

Melbourne Airport supports the intent of the small changes to the current regulatory regime that have been proposed. Improvements to the light-handed regulatory framework that has served the sector well, will help ensure it remains fit-for-purpose into the future. While the intent of all the Commission's draft recommendations is supported, Melbourne Airport considers that the intended outcome from changes to the monitoring framework can be more effectively achieved.

4.1 Monitoring of airport services

Melbourne Airport considers that the monitoring regime is an important part of the light handed regulatory framework, and agrees with the Commission's position that it should be maintained. Monitoring provides both transparency and accountability to airport behaviour, and gives regulators an 'early warning system' to help identify the potential exercise of market power by an airport.

4.1.1 Monitoring of second-tier airports

DRAFT RECOMMENDATION 10.3 DISCONTINUE SECOND TIER AIRPORT MONITORING

The Australian Government should issue a statement that the voluntary self-reporting system for second tier airports is discontinued.

This recommendation applies to the voluntary self-reporting system that applies to the smaller second tier airports only. Melbourne Airport notes the Commission's draft recommendation.

4.1.2 Regulatory requirements to provide information on airport performance

DRAFT RECOMMENDATION 10.4 MORE DETAILED INFORMATION ON AIRPORT PERFORMANCE

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

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

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

Draft recommendation 10.4 proposes changes to part 7 of the *Airports Regulations 1997*, prescribing in greater detail the information that airports are to provide to the ACCC for monitoring purposes. Melbourne Airport does not support this recommendation on the basis that the recommended changes are not necessary to achieve the objective of improving the quality of the monitoring regime.

Under the current regulatory regime, the ACCC monitors:

- the prices, costs and profits of Melbourne Airport's aeronautical services and car parking services, pursuant to a ministerial direction under the Prices Surveillance provisions in Part VIIA of the CCA;¹⁶
- the financial accounts of Melbourne Airport, which involves Melbourne Airport providing annual regulatory accounting statements and financial reports to the ACCC;¹⁷ and
- the quality of service of Melbourne Airport's aeronautical services, pursuant to the *Airports Act 1996* (Cth) and the *Airports Regulations 1997* (Cth).¹⁸

Further, the ACCC has powers to require the production of information and documents which are relevant to the supply of the services it monitors pursuant to a ministerial direction under the CCA. These arrangements give the ACCC flexibility to undertake the monitoring of airports in the way it considers best, giving consideration to issues such as the regulatory burden imposed by information requests, and the reliability or commercial sensitivity of the information it asks airports to provide.

Given the existence of those information gathering powers, there is no need for regulatory change to prescribe further information to be provided to the ACCC.

¹⁶ The ACCC does so pursuant to a direction under s95ZF of the CCA issued by the former Assistant Treasurer, Mr David Bradbury, on 12 June 2012.

¹⁷ Pursuant to Part 7 of the Airports Act and Part 7 of the Airport Regulations.

¹⁸ Pursuant to Part 8 of the Airports Act and Part 8 of the Airport Regulations.

4.1.2.1 Guidelines issued by the ACCC

The ACCC uses the authority of both ministerial directions under the CCA, and the regulations under the *Airports Act 1996* to inform the *Airport prices monitoring & financial reporting guideline* (financial monitoring guidelines).¹⁹ These guidelines were last published in 2009, and sit alongside the *Guideline for quality of service monitoring at airports* which was last updated in 2014.²⁰

While these guidelines have not been formally updated since, the reporting requirements have continued to evolve over time. Airports have provided additional monitoring data when requested by the ACCC, through the update of the financial reporting templates.

More detailed data provided includes schedules of aeronautical charges, breakdowns of aeronautical revenue, operational statistics, car parking revenue and costs, and landside access charges and revenue.

This demonstrates that the ACCC already has sufficient powers to request more detailed information beyond what is required by the regulations, and that airports do provide the ACCC with additional information.

4.1.2.2 Proposed data reporting requirements

Some of the data reporting outlined in recommendation 10.4 could potentially be commercially sensitive, or difficult and costly to report in a robust and way. This could reduce the usefulness of this information, potentially limiting what could be published, or how useful the data is to assess airport activities.

Passenger numbers by terminal

Total passenger numbers by airline flying through Melbourne is considered to be commercially sensitive. Melbourne Airport's agreements with airlines do not allow for this information to be publicly disclosed.

Due to the terminal configuration at Melbourne Airport, a single airline can and does occupy an entire terminal, such as Virgin Australia operating out of Terminal 3. Publication of passengers using Terminal 3 would publicly disclose the number of passengers flying in and out of Melbourne with Virgin Australia, information that would otherwise not be available publicly.

Splitting aeronautical revenue by domestic and international services

Melbourne Airport currently has three domestic terminals:

- Terminal 1 – Qantas (currently operated under a domestic terminal lease);
- Terminal 3 – Virgin Australia; and
- Terminal 4 – Jetstar, Tiger, Virgin, Rex, AirNorth.

Unlike common-user infrastructure at Melbourne Airport (such as the airfield infrastructure and the international terminal), the arrangements for use of domestic terminals are reflected in bespoke bilateral agreements between Melbourne Airport and relevant airlines. The details of these agreements are strictly commercial-in-confidence.

The Australian domestic market is made up almost entirely of two airline groups (Qantas Group, Virgin Group). In this operating environment, the publication of domestic revenue information may allow these two airline groups to determine the prices paid by each other (their primary competitor) with relative accuracy.

¹⁹ [ACCC, Airport prices monitoring & financial reporting guideline, June 2009](#)

²⁰ [ACCC, Guideline for quality of service monitoring at airports, June 2014](#)

If made publicly available, domestic revenue information could result in these airline groups being able to determine competitively sensitive information, which is otherwise strictly confidential under the confidential terminal agreements. Melbourne Airport considers that in this case it could undermine the effectiveness of commercial negotiations between airlines and airports.

Challenges in allocating costs

There would be some expected difficulties to allocate costs to specific services provided at Melbourne Airport.

Unlike other major airports in Australia, Melbourne has a unique co-located domestic and international terminal. These terminals share landside access, taxiways, some apron space and the runways. This asset co-location, while a great benefit to passengers and airlines (it reduces operating costs for airlines), can create challenges in allocating costs. Currently Melbourne Airport does not attempt this subjective allocation for aeronautical services. Similar challenges exist for allocating costs for car parking and landside access services.

Currently the regulations require that the accounts provided to the ACCC under the regulations are audited. Depending on the reliability of the approach to cost allocations, this could result in a qualified audit opinion for some of the data reported.

It is important to ensure that any additional data included in the monitoring reports should be reliable, to avoid the risk misleading conclusions being drawn. Different cost allocation methodologies across airports, or the level of rigour behind cost allocation methodologies will affect the quality and reliability of the reported costs. There is a risk that this could result in the data showing confusing or misleading results, as trends over time or comparisons between airports could be driven by the methodology used, rather than the trends underlying the data.

4.1.2.3 Published database of monitoring data

Melbourne Airport does not have concerns with the ACCC publishing a database of the data that is provided by monitored airports. As with what is disclosed in the monitoring report, the ACCC should give regard to issues of commercial confidentiality and accuracy of any data that is published in a publicly available database.

4.1.2.4 Commercial confidentiality

Currently, where information is provided to the ACCC by an airport which the airport considers is commercial-in-confidence, the ACCC has the discretion to decide whether or not it will publish that information. While the ACCC has to have regard to the need for commercial confidentiality, it also considers whether the disclosure of that information is necessary in the public interest.²¹

If the proposed changes to the regulations from draft recommendation 10.4 are made, Melbourne Airport considers that the confidentiality provisions outlined above should apply to any additional reporting requirements included in the regulations, and that the ACCC should continue to have discretion over what reporting information is made available to the public.

²¹ [ACCC, Airport prices monitoring & financial reporting guideline, June 2009](#), p. 3

4.1.3 Improving quality of service monitoring

DRAFT RECOMMENDATION 10.5 IMPROVING QUALITY OF SERVICE MONITORING

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.

Melbourne Airport supports draft recommendation 10.5, and considers that a review of the quality of service monitoring framework would improve the monitoring regime.

As outlined in the first submission made to this inquiry, Melbourne Airport raised some concerns with the current approach to the quality of service monitoring process. This included the way quality of service measures were benchmarked by the ACCC against quality outcomes, the reliability of airline surveys for the use of measuring quality, and the usefulness of using objective indicators to measure quality.²²

The Commission may want to consider whether quality of service monitoring could be undertaken through ministerial instruction rather than being specified in the regulations as it is currently. This may give the ACCC greater flexibility in how quality of service monitoring is undertaken, as is the case for financial monitoring activities.

4.2 Clauses in commercial agreements

INFORMATION REQUEST 10.1:

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

Melbourne Airport notes information request 10.1. Melbourne Airport has assisted the Commission with its inquiries to date, and has no further evidence to present.

DRAFT RECOMMENDATION 10.1 PREVENTING ANTICOMPETITIVE CONTRACT PROVISIONS

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

Melbourne Airport does not object to draft recommendation 10.1. The Commission's proposed approach to amend the Aeronautical Pricing Principles is supported, as it is a low cost, effective way of implementing reform.

²² Melbourne Airport, Submission 33, p. 92-95

4.3 Future Productivity Commission reviews

DRAFT RECOMMENDATION 10.2 FUTURE PRODUCTIVITY COMMISSION REVIEWS

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

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

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

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

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

Melbourne Airport supports draft recommendation 10.2. Productivity Commission inquiries provide important regulatory oversight as part of the overall regulatory framework, and Melbourne Airport has no concerns with maintaining the five year period until the next inquiry.

Melbourne Airport has cooperated with all of the requests made by the Productivity Commission throughout this inquiry. If the Commission considers that additional guidance from government being included in the terms of reference would support the undertaking of the next inquiry, then it seems appropriate that this is included in the terms of reference.

5 Jet fuel

Melbourne Airport has engaged with the Commission during this inquiry on the issue of jet fuel, including an appearance at the jet fuel public hearings held in November.

DRAFT FINDING 8.1

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

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

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

Melbourne Airport notes draft finding 8.1. The Commission's finding is consistent with the experience at Melbourne Airport in the past. As has been outlined to the Commission, Melbourne Airport has addressed a number of these issues through the introduction of new features of the Joint User Hydrant Installation (JUHI) agreement that commenced at Melbourne Airport in late 2017.

INFORMATION REQUEST 8.1

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

Fuel infrastructure owners:

- fuel companies' return on assets for the terminals, pipelines, Joint User Hydrant Installation (JUHI) infrastructure and into-plane services
- terms of third party access, including price, to infrastructure services for the provision of jet fuel
- the number of applications for access to JUHI infrastructure that have been successful and unsuccessful over the past 10 years
- details of the JUHI access application process, including the information required from access seekers, time taken for a decision on access to be made and reasons as to why access seekers were unsuccessful
- the assessment process for granting access to JUHI infrastructure at individual airports.

Potential entrants:

- the reasons why third parties have not sought access to infrastructure services through the National Access Regime (Part IIIA of the Competition and Consumer Act 2010 (Cwlth))
- the extent to which the terms and process for granting third party access to infrastructure services reflect an exercise of market power by fuel infrastructure owners, and why.

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.

Airlines (both domestic and international):

- prices paid per litre of fuel at each capital city airport
- the number of fuel suppliers tendering for contracts, and the number of successful tenderers, at each capital city airport
- the estimated additional costs (including, for example, the price differential) faced by airlines due to a lack of competition in the jet fuel supply chain
- the extent to which airlines substitute the location where they uplift fuel to take advantage of better prices.

This information should be provided to the Productivity Commission in a form that can be published and scrutinised by others.

As previously outlined to the Commission, Melbourne Airport entered into a new agreement with the Melbourne Airport JUHI in late 2017. This included a number of features to improve competition relative to the previous agreement, including provisions for open access.

While open access is now provided for in the agreement, access is yet to be granted to another party. This does not indicate that the open access regime is ineffective, as it may just be too early to tell. It is important to note that access to the JUHI facility is just one point in the jet fuel supply chain, and that access to facilities such as refineries or import facilities would also be required to facilitate open access.

A fuel throughput levy is not charged to airlines operating at Melbourne Airport.

DRAFT RECOMMENDATION 8.1 OPEN ACCESS JUHI AT WESTERN SYDNEY AIRPORT

Through the Shareholder Ministers of the Western Sydney Airport Corporation (the Minister for Finance and the Minister for Urban Infrastructure), the Australian Government should recommend to the Western Sydney Airport Corporation Board that the Joint User Hydrant Installation infrastructure operate on an open access basis and that this should be a condition of any future privatisation.

Melbourne Airport notes draft recommendation 8.1.

DRAFT RECOMMENDATION 8.2 INTRODUCING A JET FUEL SUPPLY COORDINATION FORUM

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

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

Melbourne Airport supports draft recommendation 8.2. As outlined to the Commission at the public hearings, Melbourne Airport found that the consultative forum established by the Victorian State Government was beneficial. Holding a forum of key stakeholders involved was extremely helpful in dealing with issues that Melbourne faced at that time in terms of fuel supply. The forum provided an avenue to ensure that everyone was aligned in the approach to addressing these issues.

Melbourne Airport considers that this is a model that rolled out more widely across airports would have positive outcomes. However, it is important to ensure that the forum has clear, agreed objectives, and that it is flexible enough to deal with the range of different issues that would inevitably emerge at different airports. Incorporating the forum into the master planning process is a sensible approach.