

24 July 2001

Ms Margot Hone  
Airports Inquiry  
Productivity Commission  
LB2, Collins Street East  
MELBOURNE VIC 8003

Dear Ms Hone

### **Airports Regulation Review – Ground Facilities Fees**

Canberra International Airport, together with a number of other airports around Australia, generates revenue from a ground facilities fee. Contrary to representations made to airport bidders during the sale process and the government policy intention regarding the treatment of ground facilities fees, the ACCC has adopted a position that these fees fall under the price cap.

Notwithstanding the evidence in support of the position that ground facilities fees are outside the airport price cap as they were always intended, the Department of Transport and Regional Services (DoTRS) and Treasury, as well as their respective ministers, have indicated that they will be looking to the Productivity Commission to resolve this matter as part of the Airports Regulation Review. To this end, I understand that DoTRS has made a submission to the Airports Regulation Review to clarify the intent of government policy in regard to ground facilities fees.

The DoTRS submission clearly delineates the government's policy intention regarding ground facilities fees. This policy must now be brought into effect and the revenues already recovered by airports be identified outside the price cap once and for all. DoTRS' submission merely clarifies the position which was understood by all parties during the privatisation process and serves to correct the ACCC's misinterpretation and treatment of ground facilities fees.

The weight of supporting evidence in favour of the position that ground facilities fees fall outside the airport price cap is included in the attachments to this submission, but broadly the basis for the proposition that ground facilities fees are outside the price cap are as follows:

1. Representations to bidders during the Airport Sale Process

Capital Airport Group, together with other airport bidders, were led to believe that the price cap would not affect the airport operator's ability to introduce ground facilities charges. In fact, it was made clear that the price cap was to apply to existing

aeronautical services defined under the FAC Act, with ground facilities fees identified as a new revenue source and an opportunity to expand the airport business.

Indeed, the initial sales briefings, as well as the airport specific presentations, recognised ground facilities fees as a new source of income for the private airport operator - and therefore justifying a premium being added to the bid price. You will note that the documents in Attachment 1 support the position that ground facilities fees were outside the airport price cap, and were considered in parallel to car parking revenues which were similarly identified as being outside the price cap.

## 2. Government Policy Intention

DoTRS, together with the ACCC, acknowledge that the range of services covered by the price cap is broader than originally intended. Specifically it is recognised that ground facility fees and fuel throughput levies were revenues intended to be outside the realm of price cap regulation. However the ACCC's interpretation of the instruments is raising practical difficulties in the implementation of the price cap leading to inconsistency in regulatory decisions and an uncertain regulatory environment.

## 3. Historical Precedence

The basis of the airport price cap arrangements was the DoTRS Pricing Policy Paper of November 1996. This paper identified, among other things, that *'a price cap would apply to all charges for aeronautical services as presently covered by the FAC Act'* (see attachment 3).

Not only are ground facilities fees not covered as an aeronautical service under the FAC Act, but there is evidence that such charges were treated as non-aeronautical income under the FAC regime. Hobart Airport operates a taxi charge that has been in place since sometime prior to privatisation. This taxi charge had been expressly treated as non-aeronautical income by the FAC. Furthermore this taxi charge continues today and remains outside the price cap applying to Hobart Airport. A similar arrangement exists at Cairns Airport.

Airport operators are bemused at the current situation that sees the regulator ignoring the intention of government policy and, while acknowledging the problems with adopting a position that is contrary to the stated policy intent, persisting with a position that ground facility fees are covered under the airport price cap.

It now appears that DoTRS, Treasury and the ACCC will defer a decision on the nature of the ground facility fees to the Productivity Commission as part of its Airport Regulation Review. However, while this review is targeted at setting the a regime post the initial 5 year regulatory period, an important consideration will be the treatment of revenue recovered from these sources in the first 5 years of privatisation.

The government's position on ground facilities fees, both now and going into the airport privatisation process, is now on the record. Airport operators should not be penalised for acting on representations made during the airport sale process and realising the uncapped revenues upon which bids were based. The Productivity Commission is now being relied upon by airport operators, DoTRS and Treasury to implement government policy and

identify these revenues (past, present and future) as being outside the airport price cap. It is important that the Commission's Report not only confirms for the future that ground facilities fees should be outside any cap (if there is one), but also that this also applies to the first 5 years of the existing price cap.

Capital Airport Group is confident that a pragmatic assessment of the ground facility fee issue, together with a consideration of stated government policy, will resolve the current and future regulatory problems associated with the treatment of ground facilities fees as aeronautical revenue.

Yours sincerely

Stephen Byron  
Managing Director