The Australian Council for Infrastructure Development (AusCID)

Submission to

Productivity Commission 'Price Regulation of Airport Services' Inquiry

Introduction

Who is AusCID?

- The Australian Council for Infrastructure Development (AusCID) is the principal industry association representing the interests of companies and organisations owning, operating, building, financing, designing and otherwise providing advisory services to private investment in Australian public infrastructure.

- The Council formed in 1993 and currently has in excess of 100 members, the majority of whom are Full Members (directly or indirectly own equity in Australian infrastructure). Details are set out in Appendix A.

- As a result of its membership base, AusCID is in a unique position to consider the views of infrastructure owners, equity investors and debt financiers and combine them with the views of infrastructure operators. In this case AusCID can put forward the view of investors in regulated infrastructure assets from many sectors, including the airports sector.

Key Points

Why invest in airports?

- It gives exposure to growth markets (tourism, international business services, high value international goods trade) that is not available in other utilities such as electricity, roads.

- They exhibit risk characteristics more closely correlated with overall activity, largely as a result of final consumption being more closely related to discretionary expenditure rather than "basics".

Regulation of airports is important

- Australian airports are owned to a great extent by Australian fund managers, on behalf of Australian superannuation funds. A distorted investment environment, in which assets become stranded and there is little or no incentive for future investment, can destroy national wealth and degrade services to consumers.

What investors seek in a regulatory system

- Clarity and transparency leading to:
  - Certainty of cash flow.
  - Fair compensation for risk.
  - Surety that when investment is committed to that regulators will not “claw back” returns in periods of high utilisation which are necessary to compensate for low returns in the early years of an assets life.
- Fair and transparent appeals mechanisms.
- If regulatory risk is present investors will shift capital to those sectors and companies which are not exposed to regulation. Capital can easily flow to other sectors, both domestically and globally.

Regulatory risk

- At the time of the airport sales in 1997 and 1998, the Commonwealth gave undertakings that after the CPI-X regime expired, airports and airlines would be not only allowed, but encouraged to negotiate commercial outcomes. Investors bid on the basis that regulation was only an interim measure. Now those undertakings must be upheld.
- Regulation in Australia is lengthy, time-intensive and lacks intellectual rigour. In the instance of airports, it has biased outcomes in favour of airlines, where they capture the rent from reduced charges without passing them on to the travelling public.
- In the current regulatory environment such distortions are inevitable. The ACCC has a track record of biasing outcomes in favour of consumers. Moreover, it has provided little or no certainty across regulatory reviews. It has continuously shifted towards lower returns and in its draft decision on Sydney Airport it has disregarded government policy (on the 'single till') by attempting to regulate car parking revenue by proxy. There is little or no transparency provided by the ACCC regarding its methodology.

Is airport regulation necessary?

- The real question that the Commission needs to answer is not whether airports possess market power but the extent to which they are likely to use it in a way which ultimately reduces output and hence availability of aviation services.
- There is significant competition in most areas of the currently non-regulated business and large parts of the regulated business.

- Airports are not like standard utilities that supply essential services to a wide range of weak customers. Airport services (non airside) are largely discretionary from the point of view of end consumers and the direct consumers, airlines, exhibit large amounts of countervailing market power.

Pricing principles and form of regulation

- The current price path does not provide the appropriate price signals for investment and maintenance, especially where congestion exists.

- An effective price mechanism must deliver prices that ensure airport owners invest when it is optimal to do so, not when they can get existing users (who game the system) and the ACCC to agree to it. The current system involves such close oversight by the ACCC that airport owners cannot make uninhibited businesses decisions. Significant distortions exist.

- Significant investment is going to be required in the next decade and if the Commission does not seize this opportunity to make recommendations to dispose of the current system, then there will be major problems with investment and efficient pricing signals will not occur.

- Land side, non regulated businesses such as retail and car parking are subject to significant competition. For example retail spending at an airport is largely discretionary and car travel to the airport competes with other transport modes. Airport car parks also competes with facilities in other locations.

Recommendation

- There is no overwhelming argument for the continuation of regulation. A Productivity Commission recommendation to extend regulation would increase regulatory risk and create a serious long-term disincentive to investment in regulated airport assets.

- If the Commission determines that regulation should continue, then it should only apply over those services where there is a real likelihood of damaging abuse of market power – this means only major airports, only a limited, well defined set of aeronautical services and absolutely no single till. This is consistent with the views expressed by the Commission in its Draft report on the national Access Regime and the Prices Surveillance Act.

- If necessary at all, airport regulation should be consistent with the regulation of other essential facilities. That is, it should be covered by Part IIIA of the Trade Practices Act[1] and the Trade Practices Act's general anti-competitive provisions. Additional layers of regulation imposed by the Prices Surveillance Act and the Airports Act are unnecessary, add complexity, and should be repealed.

[1] It should be noted that AusCID has considerable concern with the current National Access Regime under Part IIIA of the Trade Practices Act. AusCID has put this view to the Productivity Commission in its submission to the Commission's inquiry into the National Access Regime.

APPENDIX A - AUSCID MEMBERSHIP MARCH 2001

Full Members (Tier 1)
Abigroup
Allco Finance Group
Alstom

AMP Henderson Capital Investors
ANZ Investment Bank
Australian Pipeline Trust
Australian Rail Track Corporation
Babcock & Brown
Baulderstone Hornibrook
CitiPower
Commonwealth Bank of Australia
Deutsche Asset Management (Australia)
Downer Engineering
Edison Mission Energy Holdings
Freight Australia
Hastings Funds Management
John Laing Investment (Hong Kong)
Leighton Holdings
Lend Lease Capital Services
Macquarie Infrastructure Group
MTAA Superannuation Fund
Multiplex Constructions
National Australia Bank
National Express
NRG Asia-Pacific
SG Australia
Statewide Roads
Telstra Corporation
The Hills Motorway
Transfield
United Energy
United Utilities Australia
Vivendi Water
Walter Construction
Westpac Banking Corporation

Full Members (Tier 2)
ABN AMRO Australia
Australian Gas Light Company
Australia Pacific Airports Corporation
BankWest
BNP Paribas
Bovis Lend Lease
Brisbane Airport Corporation
Brown & Root Services
Credit Agricole Indosuez Australia
Deutsche Bank
Dresdner Klienwort Benson
Enetech

Epic Energy
Hyder Consulting
Macquarie Corporate Finance
McConnell Dowell Constructors
National Asset Management
Pacific Hydro
Paladin Infrastructure
Purac
Road King Infrastructure
UBS Warburg
WestLB
Westralia Airport Corporation

Associate Members
Allen, Allen & Hemsley
Arthur Andersen
Arup

Bishop Austrans
Burns Bridge Australia
Clayton Utz
Corrs Chambers Westgarth
Deacons
Deloitte Touche Tohmatsu
Ernst & Young
Egis Projects Asia Pacific
Evans & Peck Management

Freehills
GHD
Hawker Britton
KPMG Corporate Finance
Mallesons Stephen Jaques
Maunsell McIntyre
Melbourne University Private
Minter Ellison
Pacific Road Corporate Finance
Philips Projects Group
Pricewaterhouse Coopers
Pricewaterhouse Coopers Legal
Pyrmont Raw Materials
Quantm
Sinclair Knight Merz

Personal Members
Bill O'Chee
DS Corporation
Finlay Consulting
Hunwick Consultants
Infranet
Infrastructure Advisers
John Bastian
John McMurtrie
Kevin Ford & Associates
Mary Anne Hartley
NLS Consulting
Perry Partners
Symbiosis Solutions
Wilton Hanford Hanover