



**Australian Competition and  
Consumer Commission**

**Comments on issues raised in the Department of  
Transport and Regional Services Submission**

**Supplementary submission to the Productivity  
Commission's Inquiry into Price Regulation of Airport  
Services**

**July 2001**

## **Introduction**

In late June the Department of Transport and Regional Services (DTRS) provided the Productivity Commission with a submission to the inquiry into price regulation of airport services. This submission addresses a number of the issues raised in DTRS's submission.

## **Price cap coverage**

DTRS's submission identifies and discusses correspondence between the ACCC and DTRS (dated 22 April 1999 – incorrectly referred to as correspondence dated 19 April 1999). The submission misrepresents the ACCC's position.

On page 15 the submission refers to the letter stating that the ACCC wrote “expressing a concern that the breadth of services covered by the cap seemed to be considerably broader than that envisaged in the Pricing Policy Paper released in 1996.” This is correct. However, the ACCC is also portrayed as suggesting that coverage of the price cap should not extend to “car parks and taxi holding ranks” because this is not consistent with the policy intent. This misrepresents the contents of the letter. The letter was about the lack of distinction between ground access fees attributable to services previously supplied under a lease/licence issued by the FAC (and therefore traditionally regarded as non-aeronautical services), and other (new) ground access charges (such as charges to taxis). This issue was later resolved through amendment to the relevant declarations by the Minister for Financial Services and Regulation pursuant to section 21 of the *Prices Surveillance Act 1983*<sup>1</sup>.

## **Sydney Airport decision**

On page 12 of its submission DTRS states “It took 14 months for the ACCC to process the SACL draft aeronautical pricing proposal”. This is factually incorrect. The ACCC's process was 7 months not 14. SACL submitted its proposal to the ACCC on 29 September 2000. The ACCC released an issues paper in October 2000, a draft decision in February 2001 and a final decision on 11 May 2001.

On page 12 the submission also refers to a letter from the ACCC to DTRS dated 22 April 1999 and implies that the letter states that “it has not proved possible, for administrative and other reasons, to issue instruments that effectively allow implementation of the policy intentions of the prices oversight framework.” This is factually incorrect. In fact the letter explained how the regulatory framework could be amended to give effect to the policy intent. As discussed above, the regulatory framework was subsequently amended to give effect to the approach proposed by the ACCC.

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<sup>1</sup> The amended declarations are Declaration no. 87 and Declaration no. 88. The declarations came into effect in June 2000.

## **Melbourne Airport Domestic Express Terminal**

In August 2000 the ACCC released its decision on proposed charges for use of a “domestic express terminal” to service Impulse, Virgin Blue and other new entrants. The decision followed an application by Melbourne Airport on May 24. On page 18 the submission commented on the decision stating: “Little weight seems to have been given in the Commission’s draft report to this commercial agreement [between Impulse and Melbourne Airport] but rather considerable emphasis was given to determining whether the charges were reasonable assuming certain passenger forecast numbers.”

This statement is misleading. The levy proposed by Melbourne was for a \$2.00 charge – well in excess of that agreed to between Melbourne and Impulse. Furthermore no agreement had been reached with Virgin Blue, the other user of the terminal. In fact Virgin Blue made a substantial submission to the ACCC which strongly disagreed with Melbourne Airport’s proposal. When an agreement was reached between the parties the ACCC approved it.

On page 18 the submission also states that “the ACCC’s draft findings were based on contentious assumptions”. Specifically the submission stated that the ACCC had used “optimistic forecast passenger numbers”. The data underpinning the ACCC’s decision was provided by Melbourne Airport and the airlines on a strictly confidential basis. The data was not made publicly available because it related to highly sensitive information about the plans of Impulse and Virgin Blue. Given this it is hard to see how DTRS could be in a position to form a view about the reasonableness of the assumptions. As it turns out the ACCC used forecasts provided by Melbourne Airport instead of the more optimistic forecasts submitted by the airlines.

DTRS also comments that the ACCC’s decision resulted in “a lower level of risk being assigned to the project than that judged appropriate by the Board of Melbourne Airport and used to determine the minimum return required to permit the investment to proceed.”

This misses the point about economic regulation. As stated in the Government’s *Pricing Policy Paper* the airports regulatory regime aims to “protect users from any potential abuse of market power by airport operators”. The pricing policy paper also notes that: “Market power stems from the fact that airports have natural monopoly characteristics”. The regulatory provisions were never designed to set prices on the basis of what is “judged appropriate by the Board of Melbourne Airport”. Instead they require the ACCC to balance the legitimate interests of the airport operator and airport users to achieve the objectives set out in section 17(3) of the *Prices Surveillance Act 1983*.

The evidence to date lends support to the approach adopted by the ACCC. In this case construction of the domestic express terminal did proceed. Furthermore it was not delayed by the ACCC’s decision or processes.

## **Melbourne Airport taxi charge**

DTRS’s submission comments on the ACCC’s May 2001 decision on proposals by Melbourne Airport to introduce a new taxi charge. On page 16 of the submission

DTRS state that the decision “illustrates an unintended consequence of the regulatory framework which adds considerable delays and expense to undertaking investment at the airports that is directed to improving operational efficiency.”

The comment about considerable delays in making the decision is factually incorrect. The Commission’s process took 7 weeks (including public consultation). There was no delay to the works undertaken by Melbourne Airport or the commencement date for the new facility. The ACCC is not aware of any significant expenses added to the investment process as a result of the ACCC’s role in evaluating the Melbourne Airport taxi charge.

Similarly other new investment decisions have been addressed quickly by the ACCC given the assessment and public consultation requirements of the regulation framework and the contentious nature of some of the issues. Some recent examples of the time between application and decision are as follows:

- Brisbane Airport package of new investments (June 2001) – five weeks.
- Coolangatta Airport new passenger terminal (May 2001) – four weeks.
- Canberra airport new apron facility (August 2000) – 10 weeks.
- Melbourne Airport package of new investments (October 2000) – 16 weeks.
- Melbourne Airport domestic express terminal (August 2000) – 12 weeks.

### **Fuel throughput levies**

On page 14 of its submission DTRS states that “This report [the ACCC’s 1998 report on fuel throughput levies] was particularly contentious in that it did not adequately reflect economic efficiency considerations and the depth of analysis and robustness of conclusions drawn and recommendations made were open to being challenged”.

These assertions are unsupported by evidence or argument. The ACCC provided a detailed analysis of the issues in its 60-page report drawing on information provided by the airport operators and submissions from interested parties. As part of its reporting process the ACCC carried out an extensive public consultation process. It received 14 submissions from airport operators, airlines, oil companies and other interested parties. In preparing the report the ACCC also received detailed advice on legal matters from the ACCC Legal Group. On the basis of the economic analysis, the processes and the legal assessment undertaken the ACCC is not aware of the basis on which its conclusions are open to challenge.

### **Perth Airport runway overlay**

In December 1999 Perth Airport sought ACCC approval for an increase in landing charges to cover the costs of a runway overlay. DTRS comment on the decision on page 7 as follows: “While the \$2.7 million required by Perth Airport to undertake the overlay was acknowledged by the ACCC to have a ‘new investment’ component, the

Commission was not prepared to accept it all as new investment. Hence the proposed investment was disqualified from being able to be passed through the price cap under the application of the ‘necessary new investment’ criteria in the pricing policy framework. As a result, restrictions have been placed on the use of the runway thereby limiting the capacity of the Airport.”

These comments are misleading. The ACCC is not well placed to form a view about what type of runway overlay is required or what part would be “new” or “replacement”. Given this it is more appropriate that where possible such matters should be the subject of consultation between the various parties. The ACCC’s decision did not rule out a price increase to fund the costs of the runway overlay. Instead it encouraged further consultation on outstanding issues.

### **General comments - new airline entry and economic efficiency**

DTRS’s submission makes some general assertions about the impact of the ACCC’s administration of the regulatory framework on new airline entry and economic efficiency.

In relation to new airline entry, the submission states on page 11 that: “The operation of the domestic terminal leases, and more recently the weighting given by the ACCC to the ‘user support’ criterion under the new investment assessment guidelines, appears to have empowered the commercial position of incumbent domestic carriers in a way that can potentially frustrate the entry of new airlines.”

The submission provides no discussion to support this position. It is an assertion not backed up by reasoning or evidence. The claim made by the submission that the ACCC’s decision has frustrated airline entry is a serious one.

Far from supporting DTRS’s position the evidence suggests a number of positive outcomes. Domestic facilities have been provided by the regulated operators at all of the airports the new entrants have sought access to so far. New facilities have been constructed and are now operational at Sydney, Melbourne, Adelaide, Canberra and Coolangatta airports. At other airports (Brisbane, Hobart and Townsville) facilities were already available. No delays have resulted from the ACCC’s processes.

In relation to economic efficiency the submission states: “It is our observation that, unfortunately, the interaction of the requirements of the *Prices Surveillance Act 1983* and instruments issued thereunder, has resulted in shadow management of Airport businesses by the regulator without appropriate regard to achieving higher order efficiency gains in the aviation market from facilitating structural adjustment and competition in the airline industry.” Again this is merely an assertion. DTRS does not provide any reasons for this position or evidence to support the claim.

The ACCC considers that while there are areas for improvement there is considerable evidence to suggest that the airport regulatory arrangements have provided a number of positive outcomes for the industry in terms of dynamic, productive and allocative efficiency. For example:

- The ACCC has accepted that around \$250 million in new investments at the privatised airports should be “passed through” the price cap.
- The airport operators have provided new facilities to accommodate new entry - and the regulatory arrangements have provided the incentives to do this.
- The Phase I airport operators have achieved substantial reductions in aeronautical operating and maintenance costs since privatisation (the reductions have averaged around 4 per cent per annum in real terms).
- The price cap has been relatively effective in addressing the market power of large airport operators. It has constrained charges for the services covered by the price cap. In turn this has protected downstream industries such as tourism from the potential impact of increased charges on traffic volumes.

These economic efficiency issues are discussed in some detail in the ACCC’s 1 June submission to the Productivity Commission’s inquiry.

Details on each of the ACCC’s decisions are available on the ACCC’s web site at [www.accc.gov.au](http://www.accc.gov.au).