



# ACI EUROPE Submission to the *Productivity Commission* for its inquiry into the economic regulation of airports

**April 2019**

## **Introduction**

Airports Council International Europe (ACI EUROPE) represents the interests of over 500 airports in Europe across 46 countries and has extensive experience in playing a constructive role in the formation of aviation policy. ACI EUROPE's mission is *"to advance the development of safe, secure, sustainable and efficient airports for the benefit of the travelling public and businesses, as well as local and regional communities throughout Europe"*. In carrying out this mission, our General Assembly has mandated us to specifically focus on the interest of passengers and the development of air connectivity to support the economic development of airport communities.

As such, we carefully follow developments in the economic regulation of airports in Europe and around the world, and seek to ensure that airport economic regulation fits current market realities.

Airlines for Australia and New Zealand and Qantas Airlines in submissions to the Productivity Commission (DR106 and DR115) have referenced evidence and reports from Europe to support their claims in the Productivity Commission Inquiry into Economic Regulation of Airports. ACI EUROPE is compelled to correct and provide context about some of these claims.

## **The European Commission has not found any evidence of misuse of market power by airports**

A4ANZ and Qantas state in their filings commenting on the draft report that the Productivity Commission ignored findings of the European Commission. This claim is incorrect for the simple reason that the European Commission has not yet published the report from its ongoing evaluation of the European Airport Charges Directive.

The attempt by the airlines to cast their positions and policy preferences onto the European Commission should be noted and rejected.

The European Commission's Directorate-General for Mobility and Transport (DG MOVE) launched its evaluation of the EU Airport Charges Directive in September 2016 and planned to complete the project by Q3 2017, but it still has not concluded. To be sure, a study by an external consultant (Steer Davies Gleave) was released in December 2017, but that study has been subject to intensive scrutiny and does not reflect the views of the European Commission. It is one of the many contributions that DG MOVE will take into account. It is expected that DG MOVE will publish its evaluation report, which will provide the formal views of the European Commission, at some point in spring or summer 2019.

What DG MOVE has done and stated so far does not sustain the claims in the submissions of ignored evidence that should somehow lead to a change in the Australian regulatory framework for airports.

1. First, and quite clearly, DG MOVE stated on 28 May 2018 that there is, “*no clear evidence of misuse of market power at any airport*”. This was part of a presentation made to airports, airlines, authorities and academics attending a “Seminar on Airport Charges” at the Florence School of Regulation.<sup>1</sup>
2. Second, the delay in this publication, nearly 18 months past initial planning, suggests that the European Commission has not identified an urgent problem that requires fixing.

This makes the statements of A4ANZ and Qantas hard to believe (point 15 on page 10 of the Qantas submission or page 9 of the A4ANZ submission). Qantas Group in submission DR115 (p. 11) makes claims about the findings of the European Commission’s ex-post evaluation report, which cannot be true as the report is not yet published.

The European Commission has not presented any evidence at all in its past and current (yet unconcluded) evaluation of the 2009 European Airport Charges Directive and certainly no evidence that suggests airports are using market power in setting of charges, or any proposals to move towards more ex ante regulation.

### **The market power framework proposed by airlines has been rejected by European authorities**

The Qantas Group submission makes frequent reference to a report by CEG Global economic consultants as if was the position of the European Commission. Here we must be clear that the European Commission’s position is defined by the principles of EU competition law which require regulation only if necessary, proportional and likely to have benefits that outweigh the costs.

The forum of European national airport charges regulators (the “Thessaloniki Forum”) issued a paper in December 2018 which discusses the proposals of ACI EUROPE and IATA/European airline associations for assessment of market power.<sup>2</sup> The paper comments on the CEG report:

- The Forum has not accepted the argument of IATA and A4E (Airlines For Europe) and their consultant CEG that ex ante regulation is required for any airport possessing significant market power. The Forum’s 2017 paper states, “*The Forum recommends that if the outcome of an MPA is that the airport is dominant, there should first be an assessment of proportionality to determine whether it is deemed necessary to impose further regulation.*” Proportionality is essential and the position of the airline associations and the consultancy CEG is not tailored nor proportionate.

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<sup>1</sup> Seminar on European Regulation of Airport Charges (28th May 2018), European University Institute, Florence School of Regulation Transport Area <http://fsr.eui.eu/event/seminar-european-regulation-airport-charges/>

<sup>2</sup> Selection Criteria discussion paper, Thessaloniki Forum of Airport Charges Regulators (Register of Commission Expert Groups, number E03084) (November 2018), <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=38501&no=2>

- Further, responding directly to the proposal of the airline associations, the Forum states, *“The set of criteria proposed by the airline associations would be used to implement a stringent regime of economic regulation, in the event that any one of the criteria is met. Given the simplicity of the criteria, **the risk of misallocating airports would be very high.**”*
- Finally, the Forum notes that the method proposed by CEG would lead to findings that contradict in-depth Market Power Assessments already conducted, revealing that the CEG proposal is aimed at regulating all large airports, not at identifying proportionate levels of regulation.

On page 11 of the Qantas claim, they claim that there are “better frameworks” for assessing market power but they reference a framework that has been implicitly discarded already by European airport regulators. The claim of Qantas that competition law on its own is insufficient reflects a decision about competition law at one airport. The reality is that today in the UK, it is competition law alone that regulates all airports except for the 2 largest. In fact, the move in the UK and the sentiment of independent experts present at the Florence Seminar of May 2018 mentioned above is that it is time to “normalise the sector” by removing unnecessary sector-specific regulation.

#### **Airline dominance and countervailing power exists in the more fragmented European market**

Both Qantas (“airline countervailing power is a myth perpetuated by airports”) and A4ANZ (“countervailing power argument is neither credible nor relevant”) make strong claims about airline countervailing power.

More than adequate information has been provided in the submissions already made to the Commission and in the Commission’s own draft report to establish the reality and pressure of countervailing power.

Rather than present more statistics, we can simply re-state what European airlines say. Airlines are clear and transparent about their buyer power in their audited annual financial reports. The enclosed document *Airline Say it Best* cites examples from recent financial reports from Europe’s top 5 airlines. A few examples demonstrate that airlines are aware of and exercise their power:

- *“We are growing where the **cost and quality are right**. This is also why we are waiting until next summer to decide, **based on the development of the hubs**, where the new Boeing 777-9 aircraft will be taking off from as of 2020.”* (Lufthansa Group [press release](#) 27 September 2018)
- *“Air France - KLM has **significant leverage** via its procurement policy and purchasing volumes which it can use to encourage responsible practices across the supply chain.”* ([AF/KLM Registration Document 2016](#))
- *“As easyJet increases in size, the airline will drive further economies of scale from long-term deals with airports (...) **management continues to work with airports** that will reward easyJet’s commitment and growth with attractive financial packages. For example, despite 80% of outbound airports being regulated, **airport and ground handling costs decreased by -1.3% per seat at constant currency**”.* (easyJet [Financial Statements FY17](#))

- *“In absolute terms, airport and handling charges increased by 4%, from €830.6 million in fiscal year 2016 to €864.8 million in fiscal year 2017, reflecting the 13% increase in traffic offset by more competitive airport deals....”* (Ryanair [FY 18 annual report](#))

Countervailing buyer power (CBP) is a key part of assessments of market power and recognised as a strong commercial tool in European competition practice. The claims of Qantas/Frontier start with a fundamental flaw in their consideration of their choice and options. In European practice it is clear that buyer power must be seen from the seller’s point of view. Frontier approaches CBP entirely from the perspective of the ‘buyer’. But when assessing CPB, markets must be defined from the seller’s point of view. This nuance is important as it means that an airport supplying into a market where one customer has a large share of purchase is facing a dominant buyer in a nearly monopsonistic market. Intuitively, it is no surprise. In what other sector could a supplier be reliant on one customer account for more than half of its business, and have limited and contracting outside prospects for new customers?

Secondly, the Frontier analysis focuses nearly exclusively on price and ignore the other equally important variable of quality. In Europe, buyer power is often exerted to obtain conditions of service at the airport that are ‘higher quality’, e.g. allowing the airline to have greater operational outcomes which may deliver the airline immediate cost savings, or provide the airline with better facilities at the same cost.

We hope you will find these comments useful. Though we emphasise that regional differences and even within-country differences mean that regulation cannot be one-size fits all, there are still commonalities and lessons to be learned. It is important that claims of airlines about the situation in Europe are carefully examined and verified.

We are available to answer any questions that you may have.