



**Australian Government**  
**Productivity Commission**

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**PRODUCTIVITY COMMISSION**

**ECONOMIC REGULATION OF AIRPORTS**

**MR P LINDWALL Commissioner**  
**DR S KING, Commissioner**

**TRANSCRIPT OF PROCEEDINGS**

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**COMMISSIONER LINDWALL:** Good morning. Welcome to the public hearings of the Productivity Commission inquiry into the economic regulation of airports. I am Paul Lindwall the Presiding Commissioner of the inquiry and my fellow Commissioner is Stephen King. I would like to  
5 acknowledge the Wurundjeri people of the Kulin Nation.

The inquiry started with a reference from the Australian Government in June 2018. The purpose of the inquiry is to investigate whether the economic regulation of airport services promotes the efficient operation of  
10 airports and related industries. We released an issues paper in July 2018 and have talked to a range of organisations and individuals with an interest in the economic regulation of airports.

This has included representatives from the Australian State and Territory  
15 Governments, airports, airlines, industry representative bodies, academics, researchers and individuals with an interest in the issues throughout the inquiry. We held focused public hearings on competition in the market for jet fuel in Sydney and Melbourne in late November 2018 and following the release of our draft report in February 2019, the Commission has called for  
20 further submissions and is undertaking consultations along with these public hearings. We have received 88 submissions prior to the release of our draft report and about 30 since then and they're still growing since its release.

We are grateful to all of the organisations and individuals who have taken  
25 the time to prepare submissions and appear at these hearings. This is the fourth and final public hearing for the inquiry. We will then be working towards completing a final report after considering the evidence presented at the hearings, in submissions, and during other informal discussions. The  
30 final report will be submitted to the Australian Government in June. Participants and those registering their interest in the inquiry will be advised of the final reports released by the government which may be up to 25 parliamentary sitting days after completion.

The purpose of these hearings is to provide an opportunity for participants  
35 to provide comments and feedback on the draft report. We like to conduct all hearings in a reasonably informal manner but I remind participants that a full transcript is being taken. For this reason comments from the floor cannot be taken but at the end of the day's proceedings I will provide an  
40 opportunity for anyone who wish to do so to make a brief presentation.

You are not required to take an oath but are required under the Productivity  
Commission Act to be truthful in your remarks. Participants are welcome  
45 to comment on the issues raised in other submissions and by other participants. The transcript will be made published on our website in due

course and submissions are also on our website. For any media representatives attending today, some general rules apply. Please see one of our staff for a handout which explains those rules.

5 To comply with the requirements of the Commonwealth Occupational Health and Safety legislation, you are advised that in the unlikely event of an emergency requiring the evacuation of this building, please listen for instructions over the P.A. Follow the exit signs to the nearest stairwell. Lifts are not to be used. Please follow the instructions of floor wardens at  
10 all times. If you believe you would be unable to walk down the stairs, it's important that you advise the wardens who will make alternative arrangements for you.

15 Participants are invited to make some opening remarks of not more than five minutes. Keeping the opening remarks brief will allow us the opportunity to discuss matters in participant's submissions in greater detail. I'd now like to welcome the Australian Institute of Petroleum. I think it is Paul Barrett. Is he on the line at the moment? Paul?

20 **MR BARRETT:** Yes I am.

**COMMISSIONER LINDWALL:** Hello, Paul, how are you?

**MR BARRETT:** I'm very well, thank you.  
25

**COMMISSIONER LINDWALL:** Can you hear us clearly?

**MR BARRETT:** I can hear you very clearly, thank you.

30 **COMMISSIONER LINDWALL:** Excellent. All right, would you like to introduce yourself, Paul, and make an opening statement.

**MR BARRETT:** Yes, please. So thank you and good morning, Commissioners. Thank you also for the opportunity to appear at today's  
35 hearings and have another exchange with you. My name is Paul Barrett and I'm the CEO of the Australian Institute of Petroleum, AIP, and I'm also joined in here this morning by a fellow, Nathan Dickens, who is the AIP Deputy CEO. We apologise for not appearing in person but we've had a number of pressing matters that we've been finalising including the national  
40 framework for fuel standards for petrol and diesel.

So I am here to represent the views of four member companies who are BP Australia, Caltex Australia, Mobil Oil Australia and Viva Energy Australia. These four companies have decades of operational experience in Australia  
45 and Asia delivering high quality fuel, including jet fuel, to their respective

customers and have very significant investments in infrastructure around Australia throughout the supply chain. We've invested over \$10 billion in the last decade in refineries and other supply infrastructure and with the finalisation of these fuel standards we anticipate investing a considerable amount more in excess of \$1 billion over the next ten years.

These four companies, as well as the JUHI JV's operating at Australia's (indistinct) have made a significant contribution to this PC inquiry to support the delivery of a robust final report to government. These parties are the only ones that could really assist the PC with the information sought as most of the matters of interest relate to commercial incompetence and contractual arrangement relevant to each party. As an industry association, AIP does not get involved in commercial matters as appropriate. The major contribution of these parties is outlined in AIP's submission to this process which has included a range of detailed submissions from companies and JUHI JV's, 14 (indistinct) and submissions in total detailed by lateral discussions between the PC and each company to share commercial incompetence information (indistinct) emotional sensitivities and attend at public PC hearings.

AIP member companies and JUHI JV's have focused on, to the greatest extent possible and in a public way, the PC's information request (indistinct) related to jet fuel infrastructure owners and jet fuel suppliers. The additional priority information request identified by the particular in discussions with AIP and other claims, conclusions and (indistinct) made in the draft PC report which we've addressed, in our submission, or have been extensively addressed in the JUHI JV or company submissions. AIP's most recent submission summarises key evidence and conclusions from this information and there are four key conclusions. The first that the JUHI JV's are operators of an infrastructure. They are not sellers or suppliers of jet fuel.

The second: third party access to JUHI JV's is readily available on commercial terms and most importantly the nature of the operations of the JUHIs is evolving and will continue to evolve. The third: that airport lease tenure impacts on access by third parties and infrastructure investments at the airport. The fourth: jet fuel prices in Australia are competitive and reflect market prices (indistinct). Our detailed (indistinct) information has been provided to support these conclusions and AIP member companies are willing to share additionally incompetent information where commercial sensitivity and legal constraints are involved. These four conclusions are inconsistent with the PC's drafting finding 8.1 which was strongly rejected by AIP member companies and as a result they see no clear or strong case to justify consideration of any heavy handed (indistinct) options canvassed in the draft PC report. Instead AIP does agree with and supports the PC's

overarching conclusion that the benefits from measures to improve the conditions of competition should be carefully weighed against the potential cost such as changes to incentives for infrastructure invested.

5 Even if the benefits of industry specific regulation are greater than the cost, there may not be a need (indistinct) to facilitate access (indistinct) your infrastructure. This position is underpinned by clear market developments and evident that access models and arrangements are evolving naturally on commercial terms and at predictable times such as (indistinct) negotiation  
10 with leases without government intervention. In addition, AIP and the companies do support the PC's draft recommendation 8.1, open access to JUHI at Western Sydney Airport for the reason that (indistinct) submissions. Primarily, the industry can make (indistinct) and investment plans with a clear knowledge of a future operating environment on this  
15 basis.

Our AIP member companies also support, in principle, the PC's draft recommendation 8.2; establishment of infrastructure consultations forums. If there is a clearly defined role focusing on the discussion of the master  
20 planning and coordination of infrastructure invested at the airport and involving infrastructure owners and operators. These positions are explained in the AIP member company and JUHI JV submissions. I welcome any questions from the Commissioners.

25 **COMMISSIONER LINDWALL:** Thank you, Paul and thank you Nathan too. In submissions and during meetings we heard that the operations and marketing of jet fuel are separated by information barriers in the business. Are you able to just describe how those barriers function in practice?

30 **MR BARRETT:** Okay, I missed a little bit of that but I (indistinct) question of barriers.

**MR DICKENS:** Sorry, Paul, we lost you.

35 **COMMISSIONER LINDWALL:** Sorry about that. I was saying that - I'll repeat it. In submissions and during meetings, we heard that the operations and marketing of jet fuel are separated by information barriers in the business. How do the barriers function in practice?

40 **MR DICKENS:** I think, Paul, that's a question best directed to any of the JUHI JVs or indeed to the member companies that are appearing today. We have no visibility of those arrangements.

45 **COMMISSIONER LINDWALL:** Okay that's fine, Nathan. A common theme in the JV and fuel supplier submissions is the operation of JUHIs are

separate from the business of fuel suppliers. In practice are you able to describe how they maintain those clear lines or is that something that I should ask the fuel companies?

5 **MR DICKENS:** Again, that's a question that you should be directing at the JUHI JV's fuel suppliers. There's no - we don't have any visibility in the inner workings of those arrangements.

10 **COMMISSIONER LINDWALL:** I'll get Stephen to ask a question now then.

15 **COMMISSIONER KING:** I want to ask one but it's slightly - again, you might not be able to answer this one but just looking back through the discussions yesterday, the issue of fuel throughput levies came up. What's your view on fuel throughput levies? We've had different views put to us by different parties. What's your organisation's view of the role of these levies?

20 **MR BARRETT:** Was that you, Stephen?

**COMMISSIONER KING:** Yes, it was.

25 **MR DICKENS:** Yes, thank you, Stephen. Look, I note that we didn't address that matter specifically in the AIP's submission recently tendered to you. We did identify throughput levies in the generic price build (indistinct) I think on page 6 of our submission. We didn't specifically address or articulate an AIP view on throughput levies but I note that a few of our member companies via their company submissions rather than JUHI JV submissions, expressed a view in relation to it. We didn't have or seek a consensus view on that issue across the AIP membership but I note some of our members expressed a view that it's a levy or fee without economic or efficiency basis and they're charging it and passing it straight through to the airlines effectively as a charge from the airport.

35 **COMMISSIONER KING:** All right, so various claims that are made. Is it best that I put them to the individual fuel companies and perhaps get their views? Is that probably better than asking yourselves?

40 **MR BARRETT:** Well, I was just making the point where it (indistinct) organisation and we didn't seek or consensus on that issue.

**COMMISSIONER KING:** No, that's fine.

45 **MR BARRETT:** But some of the member companies have been very clear in their positions in relation to that issue.

5 **COMMISSIONER KING:** Yes. Perhaps just a factual question, and again I'm happy if you say this is better for the individual companies, but there are claims that have been made by airports that these fuel throughout levies are simply part of the negotiation with JUHIs over lease terms and conditions. A simply factual question: do you know if fuel put levies have been either introduced or changed outside negotiations over JUHIs?

10 **MR BARRETT:** Stephen, again that's a question - - -

**COMMISSIONER KING:** Fine.

15 **MR BARRETT:** As we've indicated we don't have any physical (indistinct) appropriate into the internal individual workings of each of the JUHIs, so.

**COMMISSIONER KING:** No, that's all right. Could I ask - - -

20 **MR BARRETT:** (Indistinct) sorry.

**COMMISSIONER KING:** That's fine. No, I understand. In your submissions and in your comments just earlier in your introductory statement, Paul, you said that AIP supports open access at Western Sydney Airport. Could I imply from that that you would support open access at other airports if the access tariff was priced to reflect sunk investments made by the JUHI members?

30 **MR BARRETT:** I think that one of our key points that we really wanted to get onto the record today is that a lot of the JUHI arrangements around Australia have evolved out of past practice and as they've evolved, they've moved, as Melbourne Airport has for example, has moved to open access arrangements. Now, in Western Sydney initially because of the (indistinct) will be involved it will be trust supplied. That will (indistinct) self, more naturally into open access arrangements. Our view is that these arrangements will continue to evolve towards an open access arrangement at different places and you've seen that occur at Melbourne, in particular, but you'll also see that happen in Western Sydney as another example.

40 **COMMISSIONER KING:** Yes, okay. Now, in your submission you noted that AIP and its members support, in principle, the establishment of jet fuel infrastructure consultation forum, and you mention that in your opening remarks too, could you tell me - and you said as long it was restricted to certain types of activities, can you think of any topics or matters that shouldn't be discussed at such a forum or that should be restricted from  
45 the forum?



5 **MR BARRETT:** Well, I think every commercial arrangements, any sort of lease or other charging arrangements, I think it would (indistinct) Western Sydney because clearly being a greenfield site, it's pretty much an open book. I think there could be some very conversations around, and there have been, around potential pipeline routes, potential volumes that the airport considers it will require, which goes then again to trucking routes that will be required in the interim. So it's really a logistic space rather (indistinct).

10

**COMMISSIONER LINDWALL:** Yes.

15 **MR BARRETT:** (Indistinct) the efficiency of the jet fuel supply into that (indistinct).

15

**COMMISSIONER LINDWALL:** All right, yes.

20 **MR DICKENS:** And just to add to Paul's comments, Commissioners, look we'd be more than happy to consult with the member companies and develop or assist the Commission with the development of the terms so (indistinct) a forum on appropriate terms. I think what we did note in our submission is that what we see to be the underlying objective of the forum has occurred and will occur quite naturally in the negotiation of new leases and you've seen that and I understand you've heard directly from companies  
25 who were privy to those negotiations but there are now clear and effective planning arrangements and triggers for investment as part of - triggers for investment in upgraded infrastructures as part of the new lease arrangements.

30 **COMMISSIONER LINDWALL:** Do you think it could address investment, coordination and planning issues that have been raised as concerns of underinvestment at Melbourne and Sydney airports?

35 **MR BARRETT:** Yes, potentially it could assist each of the companies coming up with better collective information and by companies, I mean, all participants involved so there's an agreed set of facts on the table about what potential demands there's going to be out of the airport and how individual companies can align their - not align, can decide their individual investment profile so that there is no underinvestment, as you rightly pointed out, at  
40 Melbourne.

**COMMISSIONER LINDWALL:** Okay.

45 **MR DICKENS:** And I think it's important, Paul, just to – I think it's important to understand that I think impressions and conclusions that have

5 been reached that investment in Melbourne Airport was unlocked as result  
of the forum that was established there I think is flawed. I think it is very  
clear, and I'm sure you can test this with others, that the unlocking of  
investment occurred when security of lease tenure was secured. All their  
member companies can tell you the planned investments that were on the  
table awaiting finalisation of the lease negotiations can move forward, and  
once that occurred they've all been in play and progressed at speed.

10 **COMMISSIONER KING:** So the lease tenure, can you just expand on  
the importance of lease tenure and investment and do you see any role for  
the consultation forum in dealing with that issue or is it really just an airport  
by airport issue?

15 **MR BARRETT:** I'd consider that airport by airport issue but clearly  
underpinning those negotiations are an agreed set of facts around and it's  
particularly a demand equation too. In part the growth of Melbourne  
(indistinct) was quite substantial and I don't really – the airport itself more,  
the company, has really anticipated it would be as significant as it was and  
a forum like the consultation forum would be valuable – since then would  
20 be valuable to assist in having an agreed set of facts on the table between  
all parties.

**COMMISSIONER KING:** So to be clear - - -

25 **MR BARRETT:** (Indistinct) just - - -

**COMMISSIONER KING:** Go on please.

30 **MR DICKENS:** Just coming to your point, Stephen, about the link  
between lease tenure and investment, it's very clear that you're not going to  
spend the tens, indeed hundreds of millions in infrastructure investment,  
particularly on airport, for example in Melbourne Airport, without  
(indistinct) lease tenure. Now I note that most leases are 15 or 20 years in  
comparison to airport leases which are 99 years. So obviously you're not  
35 going to invest that sort of capital in new storage tanks, in truck unloading  
facilities, in pipeline augmentation without the certainty of – that'll you'll  
be able to earn a reasonable return on such investment.

40 **COMMISSIONER KING:** I just wonder if that's a fundamental flaw in  
the – and understand that historically JUHIs and the fuel system into  
airports has risen for historic reasons and so taking that on board I just  
wonder from what you've said then is it a system that in a sense is now not  
fit for purpose because with all the goodwill and consultation and leases  
end, and leases may not be renewed, you will always have issues of

investment as leases come up and this is not unique to the fuel industry it's anywhere where you have long term investment.

5 Would it be actually better going forward to think about a different ownership structure of the JUHIs, so for example the system where the airport takes back control of those because that would get over this issue of investment coordination, uncertainty for the JUHI investors, you know, so is there a better way, is what I'm saying?

10 **MR BARRETT:** The first point I'd make is I wouldn't characterise it as flawed. I'd characterise it as transitioning and you'll see that emerge over time, I believe, as we've seen at Melbourne and as I think we'll see at Sydney because certainly in some of the consultations I've been involved in with New South Wales transport that has been a recognition of the need for  
15 coordination, particularly around the pipeline corridor that potentially could be put through what is, you know, heavily urbanised areas. In terms of the ownership, I don't believe the issues that you've identified – and this is me just putting my economist hat on, I don't think the issues that you've identified really warrant that.

20

**COMMISSIONER KING:** All right I think - - -

**MR DICKENS:** I think - - -

25 **COMMISSIONER KING:** Go on.

**MR DICKENS:** I think it's an airport by airport proposition, Stephen. At the end of the day most of the submissions from AIPs and JUHI JVs, and indeed from the airports themselves, have identified the JV and the  
30 JUHI arrangements as being fit for purpose and delivering reliable efficient fuel supply to quality standards into their facility. But quite naturally in all investment in this industry and throughout the supply chain tends to be lumpy, it tends to be reliant on, you know, long term government approvals, environmental approvals, lease tenure arrangements, town planning, there's  
35 just natural constraints.

40 And in some instances justifiably so to the expansion of (indistinct) fuels supply infrastructure. They're the challenges we face day to day and not just for jet fuel, across ground fuels as well. So I think if there is a better way then that would be something I would naturally assume would be under active consideration as part of any renegotiation of a lease between infrastructure owners.

**COMMISSIONER LINDWALL:** Okay. Well Paul and Nathan I think that's great and on behalf of the Commission, thank you very much for your submission and your commentary today and have a good weekend.

5 **MR BARRETT:** Thank you very much for our opportunity to appear and have a great day.

**MR DICKENS:** Thanks.

10 **COMMISSIONER LINDWALL:** Now we might invite Viva Energy. I'm Paul. Come over here if you don't mind, I'll just turn this volume down. If you'd both like to introduce yourself for the record and an opening statement as you see fit and thanks for coming to help.

15 **MR RIDGWAY:** Good morning, thank you. I'm Daniel Ridgway, I'm the Chief Operating Officer of Viva Energy Australia.

**MR ADAMS:** And I'm Nick Adams, I'm the Viva Energy Aviation Business Manager.

20

**MR RIDGWAY:** I've got a few opening remarks, I'll try and keep it fairly snappy. So thanks for the opportunity to appear today. We'll just kind of outline a little about who Viva is and what we do, for you, and then clarify or kind of rephrase a few of our key points from our submission. So we are  
25 the operator of both the Sydney and the Brisbane JUHIs and we're also a participant in the jet fuel business as a marketer and supplier and infrastructure owner. So today we're appearing here as Viva Energy the company, but we also can make some statements as the JUHI operator in line with our submissions for Sydney and Brisbane but not outside of those  
30 submissions.

So general background, we're listed in Australia. We're an Australian company in the ASX 200. We were originally formed when Shell Australia sold its business in Australia to a private consortium in 2014. But the  
35 business in itself has been operating in Australia since 1907. So 112 years and we're very proud of that. The business covers commercial B2B fuel sales, retail fuel sales under the Shell brand, our refinery in Geelong and the aviation business which we purchased from Shell in 2017. Moving on to kind of how the fuel business works and I guess our role in it, so obviously  
40 being in the industry for a long time we've built up quite a lot of fuel supply infrastructure.

So we hold pipelines, we hold import terminals, we're participants in a number of JUHIs around the country. Since the closure of several refineries  
45 in Australia, which has been well documented, we've gone from eight

refineries down to four in the last decade and a half. Australia is a large net importer of petroleum products and that includes jet fuel as well. So whilst we manufacture some jet fuel at Geelong Refinery, we import around 40 per cent of our jet needs. The results of that, along with the other participants in the industry importing jet fuel, is that jet fuel is priced closely in line with international pricing benchmarks.

So the reference price is the import parity price, which is what we refer to as a Singapore Platts price or sometimes referred to as Mean of Platts or MOPS price. As we outline in our submission, adding on that Platts price plus transport, those two elements are about 95 per cent of the end user price for jet fuel, typically in Australia and the remain covers infrastructure, insurance, (indistinct) into-plane services and any marketing marginal return on capital.

So in terms of the marketing business for jet fuel and Australia. We place competitive bids in tenders, which the airline air operators put out periodically. Businesses typically tender for contracts of between one and three years, depending on the operator and what they're looking for and that market, we believe, is very competitive.

In general, the fuel jet marketing business in Australia is characterised with low margins, driven by the need for high volumes to drive efficiency of scale in a fairly high, kind of, fixed cost investment environment. Price is an important factor in negotiations to sell jet fuel in Australia, but there are other important factors in particular, track record around supply reliability. And product quality. Product quality being a very key issue in the jet industry as you can imagine.

In terms of supply security, we invest heavily the supply chain to ensure that and that's an ongoing discussion with our customers both as an upstream operator/ marketer and as a JUHI participant. And obviously airlines are looking for supplies that can guarantee them reliable supply at the airport. We believe that the track record of the industry in supplying jet fuel reliably in Australia is exceptionally good as evidenced by the lack of disruptions due to fuel supply issues. And we have a number of major investments which we've made in the last decade and we have a number more that we're progressing at the moment.

You've briefly touched on it in the last session with AIP, we have seen the issue at Melbourne Airport recently in terms of a hindering of investment. We agree with the view that that's largely being driven by lease uncertainty in terms of the tenure going forward and that the new arrangements have unlocked that issue and there are significant plans for investment now underway.

5 Another area of focus of your draft report, which we covered in our submission is that access to JUHI infrastructure in Australia is available on appropriate commercial terms and those terms, we believe, reflect the past investment that have been made by participants in those JUHIs.

10 There have been several (indistinct) applicants to enter JUHI, particularly in Sydney over the last 10 years. And for those who chose not to go ahead with those applications, the number 1 reason was lack of tenure on the outstanding lease in Sydney.

15 And so finally, in respect of our participation in the supply of jet fuel and as a supply partner to Australian and International Airlines, we are concerned by any recommendation by the Commission to introduce regulations which might limit our ability to operate efficiently or that might provide supplies not currently invested in the supply chain with an unfair competitive advantage.

20 But with respect to the recommendation specifically in the draft report, around open access for Western Sydney, and the jet fuel coordination forms, Viva Energy is supportive of those recommendations. Thank you.

25 **COMMISSIONER LINDWALL:** Thank you very much (indistinct words). If I can ask about the lease terms. Not the terms but (indistinct) duration. How many years do you think is the minimum to make a lease for investment in a major Australian Airport viable from an investment perspective?

30 **MR RIDGWAY:** It is a little bit difficult to judge that generically because it would depend a little bit where you are in the investment cycle. So if you've just built a brand new airport with infrastructure that might be quite fit for purpose, I don't think you necessarily need as longer tenure. But you might, I guess, generically consider that you don't want to end up being quickly always in a cycle of coming up towards wanting to renegotiate terms. So I think from our perspective, 10 years plus makes sense in terms  
35 of tenures and maybe longer if you're facing a very significant investment at the commencement of the lease.

40 **COMMISSIONER LINDWALL:** So when you've made a – say it's a 15 year lease, as you're coming up to them near the end, that must make you quite uncertain because you're getting quite close to the end and you don't know what the airport owner wants to do after that. How far in advance of the end should negotiations commence for what might happen after this and

45 - - -

**MR RIDGEWAY:** I think it depends a little bit on the terms of the actual lease and what is documented in terms of what happens at the lease. As you might imagine, some of the past JUHI leases were written a very long time ago and may have different arrangements for how the lease is wrapped up and, indeed, what compensation, if any, the JUHI receives for the lease terminating. So it's kind of – again, not wanting to be unhelpful, but it probably does kind of vary based on that, but I think in general, there usually is a good shared understanding by the airport and the JUHIs of the need to try and negotiate years prior to the end of the lease. And that only tends to not work effectively if there's, you know, a disagreement on either the high level direction, the new lease should take in terms of roles and responsibilities or the terms.

**COMMISSIONER LINDWALL:** So if say, hypothetically, a lease is expiring in two years and the airport operator wishes to buy it out, you strike a price for it, right, and then you would continue operating until the end of that two year period. There wouldn't be any incentive to run it down or something, over that period, do you think?

**MR RIDGWAY:** Yes, so it might be the case that a JUHI agreement already has those terms in it that says if it expires, the airport will buy the assets at this kind of valuation but it wouldn't usually be a fixed dollar number. It might be a number relating to book value or written down values or whatever and so that may still provide incentives right up until the end or it may not, depending on how it's phased.

**COMMISSIONER LINDWALL:** But when you were saying earlier in your comments that some participants, particularly in Sydney, have tried to enter the market, but they were – they were put off, if you like, because the expiry of the lease or the lease term remaining was too short. In a way, that's a bit odd, because all they're doing is providing supply into an infrastructure. The infrastructure, presumably, will still exist and the price at which they would enter surely would reflect that there's only a short period of tenure remaining. It wouldn't be a high price, surely, for a long period, which when there's only a couple of years to run - - -

**MR RIDGWAY:** Yes, I don't think I can tell you the actual terms on which the current JUHI agreement in Sydney allows new participants to enter. But I think you can assume from the actions of the people looking to enter that it's clearly not commercially attractive to buy in if you only have a short period of time to kind of make that investment back.

**COMMISSIONER KING:** Okay. So just I guess to follow up on that point. Do you know if in Sydney, JUHI arrangement, the previous one, or the existing one (indistinct words).

**MR RIDGWAY:** No, existing one.

5 **COMMISSIONER KING:** In the existing one. What the buyback arrangements are if a new agreement isn't reached? So on what basis Sydney Airport will buy the facility back?

**MR RIDGWAY:** Yeah, I don't think I'm able on behalf of the JUHI to disclose what those commercial terms are.

10 **COMMISSIONER KING:** Okay. Okay.

**COMMISSIONER LINDWALL:** What about putting it another way then. I'm a potential – I want to supply fuel to Sydney (indistinct) operator, what can you tell me a bit about the process that I would have to go through to – you don't have to tell about a particular terms obviously, but what kind of process would I have to do and what would you want to do to verify that I'm a bona fide (indistinct) entrant?

20 **MR RIDGWAY:** You'll have to forgive me, because I'm fairly high level, given my role, but in high level terms, you would have to write and express your interest to want to join. You would have to meet the requirements in terms of capability to be a participant from a technical and financial perspective and then you would have to pay to buy your share on the agreed or the documented kind of formula for buying a share in the JUHI.

**COMMISSIONER LINDWALL:** Where did the – again, I'm a potential new entrant to supply fuel. It would be difficult for me, presumably to go to, you know, Qantas or Virgin and agree a price when I don't already have access. So I presume that the sequence would be that I have to, first, do that and then bid for Qantas business or Virgin business.

30 **MR RIDGWAY:** Yes and no. It might be one that Nick can expand on a little bit more but, you know, it's probably not correct to fixate that you have to be a JUHI member to sell fuel in any of the airports in Australia.

So in Sydney for instance there are participants who are selling to airlines without being a member of the JUHI. Maybe you can speak a bit about that, Nick.

40 **MR ADAMS:** Well, and you're right. Working back from the customer, I mean one could put an agreement in place with an airline to sell them fuel. But there are a number of other aspects of a competent supply chain which would need to be established and recognising there's a focus on the JUHI.

45



5 The genuine new entrants would also need to establish a hydrocarbon supply chain, they would need to land that product, come across a wharf into storage. They'd then need to have a physical route into the airport as well. And those agreements, be they ownership or through a third party arrangement also have a term. So having confidence at each step is actually what builds up into a supply chain.

10 So it might not be that it's purely around the JUHI, but if you can have a longer term arrangement at that step that opens up your confidence to build your supply chain.

15 **MR RIDGWAY:** But if you think about it from a Sydney perspective, and there is a player doing just this, as well as our import terminal and Caltex import terminal, you have the Vopak which is an independent tankage terminal. You can rent space in a tank at Vopak; Caltex's path line system to the airport auctions off pipelines space periodically, and then one of the JUHI participants is Qantas.

20 So if you wanted to go to Qantas and say, "I'm open to supplying you at the airport," you could, in theory, throughput through Qantas' JUHI ownership.

**COMMISSIONER KING:** Of course. That's right, yes.

25 **MR RIDGWAY:** There's, then, an into-plane service company which is pooled among multiple players and, again, Qantas is one of those players. So really all you would need to do is go to Vopak, get a price, buy some time on the pipeline and do a deal with Qantas.

30 **COMMISSIONER LINDWALL:** Now, Western Sydney Airport is due to open in 2026, initially, at first, I imagine that there will be trucking in fuel. How much volume do you think you need to justify building a pipeline roughly speaking?

35 **MR ADAMS:** It's difficult to say. I mean I think the evolution of most airports and even some quite mature airports can rely quite well on trucking.

**COMMISSIONER LINDWALL:** Yes.

40 **MR ADAMS:** There might also be public policy inputs which detract from wanting to truck, taking trucks off the road for example. But it's a bit of an intuitive process and we'd need to - you know, I think the Western Sydney Airport program which I think was a very good program in terms of consultation and so on recognising needs, would need to select a route and the pipeline price would need to be established and kind of work back from that.

45

But typically many hundreds of millions of litres would be normal and, of course, it's quite a way away from the coast so the pipeline would be relatively expensive compared to the current arrangement.

5

So difficult to answer and it's not necessarily purely economic inputs in to the decision and even - - -

**COMMISSIONER LINDWALL:** Yes, there could be such (indistinct).

10

**MR ADAMS:** And the planning can take a considerable amount of time as well. So in discussions around tenure, the real estate arrangements around a pipeline can also be quite complicated because it's an asset that can't be repurposed very easily.

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So I mean we do some modelling of course. We don't believe there'll be need for a pipeline initially, but because the time lead to develop it means that you might actually be planning from the outset anyway. So I think it will just be a case that eventually it will need one, it's more maybe driven by the planning process to when that gets kicked off.

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**COMMISSIONER LINDWALL:** And environmental concerns, yes.

**COMMISSIONER KING:** So on Western Sydney you've said you're supportive of open access at Western Sydney. Well, there's different models for open access. Which model of open access do you think should be introduced at Sydney? So if we were to make a recommendation, not just that there should be open access, but there should be open access of the following form, what would you like to see us do?

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**MR RIDGWAY:** I think without getting too much into the details, we believe that what's important in open access is that there's still an incentive for people to invest in infrastructure because new entrants coming after investments have been made to pay their share of that investment. Establishing kind of what that return rate is is kind of probably the bit that needs quite some detail that we couldn't necessarily land today.

35

We also think that it's important that that open access involves some kind of qualifier around the technical capability of the participants and their financial standing as well. But mostly of the technical capability, especially with respect to product quality which is a massively important safety issue in the industry.

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**COMMISSIONER LINDWALL:** On quality, does that imply - I would've thought - maybe you can correct me here - that all of the fuel

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suppliers that you can imagine that would be in Australia would have the same type of quality standards, wouldn't they or are there potential new entrants that don't meet those quality standards?

5 **MR RIDGWAY:** Well, I guess I'm just imagining for the avoidance of doubt.

**COMMISSIONER LINDWALL:** Yes.

10 **MR RIDGWAY:** I mean if you think about say the terminal gate legislation in Australia, it pretty much just says you have to sell to anyone who rocks up in a terminal gate if they want to buy petrol and diesel, I think that you wouldn't want to have such a broad regime and then participants should have to comply with a recognised quality standard.

15 **COMMISSIONER LINDWALL:** Quality standard, yes, fair enough.

**COMMISSIONER KING:** The sort of investment issues that you've raised seem to be because of the ownership of the JUHIs. So we have that separation between the airport and the JUHI ownership. So there's always going to be a lease ending where there's always going to be issues about lease tenure and so on.

20  
25 Would a better system for Western Sydney be that the JUHI infrastructure is owned by the airport and the actual investments are then made by the airports, with fuel companies having access to that infrastructure?

30 **MR RIDGWAY:** Just, firstly, I would say that, although we've kind of highlighted that the Melbourne lease and the Sydney lease endings have created some challenges in terms of continuous investments at the airports, I would also say that if you do look at Melbourne, we've maintained a pretty effective supply chain during that period and now are investing for the future and have already put some new assets into the airport. So I wouldn't characterise it as like entirely unsuccessful regime in terms of making sure that we supply our customers.

35  
40 In terms of say a brand new airport and whether it would make sense to have its fuel assets owned by the airport, I think that is a possible model that can work depending on how it's done. I think there's probably a couple of challenges that need to be overcome.

45 One, is often the airports themselves lack the technical capability to design and operate specific jet fuel infrastructure. So even some of the airports that have looked to own the infrastructure, are then looking for a partner to kind of help them design and operate. So that's kind of our experience in

any case save for the capability and core business kind of question for the airports.

5 And then the second thing that needs to be managed I guess is how the airport then prices access and the return from that asset and ensuring that remains competitive for the end customers.

**COMMISSIONER LINDWALL:** I've been told a few times that there's been a strict separation between operations of JUHI and the actual supply through the JUHI. How, in practise, is the separation managed and ensured?  
10

**MR RIDGWAY:** I can probably only speak for VIVA in that case.

**COMMISSIONER LINDWALL:** Yes, of course.  
15

**MR RIDGWAY:** But we do operate two of the major JUHIs. So, organisationally, we're set up with a - market organisation, under a general manager for marketing, and then Nick, who heads up our sales team within the marketing organisation, kind of sits under that organisation, and that reporting line goes up through the GM of marketing to the CEO of our organisation, and then within my team, I have a supply chain team, and within that team I have a - a jet supply chain group, which is headed up with a person who oversees our JUHI operating role, and so it is one of the things that the industry has, I think, quite good discipline on, in the fact that, say, that person will be very clear on saying, for instance, our submissions to your commission, through - they would have been pulled together by our representative in that team.  
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25

They haven't been shared with Nick prior to being submitted. If he wanted to see them, he would have had to download them from your website, and - and minutes of those JUHI meetings, all those kind of things, the information is shared, kind of, equally across all the members. But it's not shared in any special way back into Viva's marketing team.  
30

**COMMISSIONER LINDWALL:** Now, when an airport, say Sydney, wants to build new tarmac and parking lots for planes, and hybrid facilities to those new parts, and the JUHI's got, say, four - four members, and three of them agree and one of them disagrees, how do you break a deadlock like that?  
35  
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**MR RIDGWAY:** Yes, I mean, it is something that, usually, the - if it's a simple of case, of, "All right, we need to move from here to here," and, you know, "This is how the airport wants to do it, and when they want to do it." I think it's unusual that different members would see that differently, right, because the incentives are usually reasonably well primed, and even on new  
45

investments, I haven't particularly seen is as being a problem, but I'm not involved in the - in the day to day, but I don't - I don't think it's usually that problematic to get alignment within JUHI memberships.

5 And probably a little bit of that is the way the commercials tend to work, in that it's the users of the JUHIs who paid it - who pay the price. So, if you're not using it, then you get - typically, don't pay.

10 **COMMISSIONER LINDWALL:** But you might be asked to make some new investments as a member, though. (Indistinct).

**MR RIDGWAY:** But then you get - you'll usually get some return on that for the people who are using the investment.

15 **COMMISSIONER LINDWALL:** You'd expect so, yes. Sorry, Stephen.

20 **COMMISSIONER KING:** Just coming back to the structure of the JUHIs, where you do have competitors participating together, in the JUHI. Even where there's Chinese walls, competition regulators tend to get very nervous about competitors having joint ventures. The potential for conversations around a board table, or in meetings, can perhaps stray in to areas that would raise competition concerns. Now I'm not - now, I want to make it very clear, I'm not suggesting that any of that happens. But what I would like to know is why should we be assuaged that this joint venture  
25 doesn't raise competition concerns?

30 **MR RIDGWAY:** Yes, I guess I'm kind of struggling to see how it - how it could. I mean, typically the people involved are operational people, in the supply chain, with, kind of, no roles to play in the selling or marketing of fuel, and the JUHI's not involved in that side of the business at all, and secondly, if you look at the way the - the airlines buy fuel in any case, it's a pretty, kind of, aggressive tendering process, with sealed bids, and so, I just - I kind of don't know how it would be a problem.

35 **COMMISSIONER KING:** Okay. The Airlines have actually suggested on the tendering side that they find it very difficult to actually get competitive tenders, that often they'll have only one or two companies tendering, but often the tenders won't be for the full amount of the fuel required by the airline at a particular airport, so why are we getting - you've  
40 said it's a very competitive process. The airlines have said, well, they don't see that. Why that difference?

**MR RIDGWAY:** I might leave that one for Nick.

**MR ADAMS:** Well, there's quite a broad spread of how tenders are placed. So, I mean, there's an international side to it, there's a domestic side also to be worked with the airlines who are based in Australia. But, sometimes an airline will want to split their volume. So, a tender might be - you might  
5 see the whole tender. Other times, we have to submit a supply cover request. So, can we actually accommodate additional volume throughout infrastructure at that point in time.

10 So there's a number of reasons why a supplier might not tender in that way, and of course putting the product into wing, on the airport, there might be nuances between - it's sometimes off a hydrant, which is quite a vanilla way of delivering fuel. Sometimes it's a bit more specialised, so it's away - it's a stand, which is away from the hydrant, it's a truck delivering, the truck availability, rather than investing in trucks.

15 So there are a number of reasons why a tender might not cover the full volume. But as far as competitive terms are concerned, I mean, business does change hands a lot. So, we might supply, let's say typically, for an international tender, we're supplying fuel, take Sydney for example, to  
20 a customer. It might be for 12 months, maybe for longer, and then there's another tender, and we lose it. So, volume is always moving around as well.

25 So there is evidence to show that there is competition in that space, and an into-plane - there are also different in into-plane, in terms of what service levels that the companies will provide. So there might be some more interaction with the aircrew, which is of value to the airlines as well. So there's a few pieces which come into play there.

30 But on the point about how the JUHIs work, as well, anybody who's worked in a JUHI, and is then coming out - so, if it's a Viva employee who's working there, and is then coming out of that organisation, to go back into a Viva role, they have restrictions around what they can do, as well. So there is a-  
35 it's within the fabric of a JUHI employment structure, that folks coming out of those organisations do have restrictions on what they can do inside Viva going forward.

**COMMISSIONER LINDWALL:** So when there's, say, four operators - sorry, four owners of the JUHI, and one of them's the operator, how is the operator - how do you determine who the operator will be?  
40

**MR RIDGWAY:** That's determined by the members, but it - - -

**COMMISSIONER LINDWALL:** Does that change much?

5 **MR RIDGWAY:** It doesn't usually change, but it could change, if - and I think it's probably more driven around, kind of, technical and operating competence than any other factor. So, I think to drive a change, it would probably need the members to agree that there was someone else who was better placed to operate the - the asset.

**COMMISSIONER LINDWALL:** But there's a - - -

10 **MR RIDGWAY:** And some members will - will have no interest in being the operator, because it just brings some kind of operational complexity and distraction, when things go wrong. There's not really any - any commercial reason to be an operator.

15 **COMMISSIONER LINDWALL:** So, no competitive advantage for - as a supplier, to be the operator?

**MR RIDGWAY:** Not particularly, no, and that's why typically most members are happy for the status quo.

20 **COMMISSIONER KING:** Just two things - - -

25 **MR RIDGWAY:** Sorry, and that - probably that probably relates a little bit to even what I was saying before, where an airport wants to own the asset, or have a single operator of the asset, typically other - other players are still happy to participate under that arrangement, and there's not really any commercial benefit in that, either.

30 **COMMISSIONER KING:** So, just two quick things I wanted to cover off, because I'm aware of the time, and apologies, because I cannot remember exactly who's given us which information, but as you mentioned, there's churn in terms of the contracts. Have you been able to provide us with that from Viva's perspective, their contracts going, contracts lose information? Presumably I mean it's confidential, but - - -

35 **MR RIDGWAY:** Well, we haven't - we certainly haven't done that. It is super market sensitive, I mean, that's the sort of stuff. But we've given a synthesis, if you like, of the cost build up, and, you know, what's built it, it's in words and the pictorial form. That's as far as we have gone with that.

40 **COMMISSIONER KING:** Are you able to able to provide us some sort of churn information, even - you know, it doesn't need to be names of airlines or anything like that. You don't need to say, because you may not know, who you won it off and who it went to but just, you know, "Airline A at Airport X; won contract this volume; lost contract a year later", that  
45 sort of thing, to show us that (indistinct) with - - -

**MR RIDGWAY:** I think - can we just take that on notice as we might be able to do that in the (indistinct).

5 **COMMISSIONER LINDWALL:** Thank you. And the other thing: you presumably heard me comment on the fuel throughput levies and it is an area that we're trying to work out because there do seem to be very different opinions, your view on fuel throughput levies?

10 **MR RIDGWAY:** So again my understanding is reasonably high level but, as I understand it, those are levies charged to the JUHI for five year airports and the JUHI typically passes those costs on to the fuel marketers and whilst I'm not able to tell you whether they are ever changed or introduced with lease periods, my understanding is they're more or less static within leases  
15 but I'm not 100 per cent sure if that's always the case.

**COMMISSIONER LINDWALL:** When a new entrant tries to say enter Brisbane JUHI and you go through that process of bona fides and checking on setting the price law for the rest of that, are they buying someone else's  
20 equity share or they become - say if there is four, they became one fifth of the owners now; is that how (indistinct) happened?

**MR RIDGWAY:** Yes, it depends on the agreements and because some of them are quite old they might be more or less having different arrangements  
25 but, to be clear, they would get a new share as opposed to having to buy someone out.

**COMMISSIONER LINDWALL:** Yes, okay. Now, BARA yesterday suggested that its preferences of workable access arrangements, they were  
30 commercially determined rather than set by a regulator, and that airlines and airports are given consultation (indistinct) or what do you think of that type of comment that BARA made?

**MR RIDGWAY:** So in what context? Workable access to what?  
35

**COMMISSIONER LINDWALL:** To the JUHI's access, as far as I'm aware, do you remember exactly what they said?

**MR RIDGWAY:** Sorry, not off the top of my head.  
40

**COMMISSIONER LINDWALL:** No, we might have to - - -

**MR RIDGWAY:** I'll probably reiterate our point which is by and large we're happy to exist in either an open access arrangement or some of the  
45 existing legacy JUHI arrangements, we think both of them generally



5 provide significant competition and access for new players, as the Sydney  
JUHI has shown where you have people throughputting off other people's  
shares so the boundary condition for us is really that if there is an open  
access arrangement or there is airport operated assets, there's still the right  
incentives for making the investment and getting a capital return which is  
neither excessive, in the case that it's been passed on to customers, or too  
low (indistinct) investment.

10 **COMMISSIONER LINDWALL:** Could I just confirm that if any of the  
airport's views to (indistinct) open access that has been (indistinct) request  
of Sydney, that Viva would actually consider that there's no problem with  
you actually bidding for business there?

15 **MR RIDGWAY:** On the basis that I've just outlined, yes.

**COMMISSIONER LINDWALL:** Obviously you're got to get the right  
price.

20 **MR RIDGWAY:** Yes.

**COMMISSIONER LINDWALL:** I think that's great, thank you very  
much.

25 **MR RIDGWAY:** Thank you. Thank you for having me.

**COMMISSIONER LINDWALL:** Could I invite BARNZ, Justin  
Tighe- Umbers to the table.

30 **MR TIGHE-UMBERS:** Hello, good morning.

**COMMISSIONER LINDWALL:** If you wouldn't mind, Justin, just  
introducing yourself for the record and an opening statement will be fine.

35 **MR TIGHE-UMBERS:** Good morning. I am Justin Tighe-Umbers, the  
executive director for BARNZ, The Board of Airline Representatives New  
Zealand. Firstly, I'd like to thank the Productivity Commission for the  
opportunity to present at the hearing this morning. I'd like to make an  
opening statement for about ten minutes and then we can move on to any  
40 questions you may have. I'll start off by giving a little context on our  
organisation and why BARNZ is here presenting today. We represented 29  
airlines that fly from New Zealand, which is virtually all of the major  
airlines, including Air New Zealand and Qantas and pricing consultations  
with airports and capital plan negotiations, BARNZ represents the 27  
international airline members while Air New Zealand and Qantas group  
45 represent themselves directly.

5 One of my roles is to negotiate with Auckland Airport, their capital  
planning forum which is tasked with agreeing requirements for the current  
\$1.8b capital plan as well. So why is BARNZ here today? Simply put, the  
10 Australian approach to infrastructure regulation matters for New Zealand.  
It is a fact that New Zealand policy makers and regulators look closely at  
Australian examples and innovations and this is just as true for airport  
regulation as other sectors. Equally I appreciate that the Productivity  
Commission is interested in what it can learn from New Zealand as  
15 evidenced by your visit last year, Paul. Listening to the hearings yesterday,  
it's clear that the exact same challenges exist on both sides of the Tasman.  
The recent New Zealand experience of airport regulation has direct  
relevance to the Productivity Commission draft report and I think  
challenges some of the conclusions in that report and I'd like to go through  
some of those examples today.

20 I'm sharing this experience not because I believe that New Zealand is  
somehow a shining exemplar of airport regulation, but rather to illustrate  
how New Zealand's limitations and failings, and improvements, could be  
used to enhance airport regulation in Australia for the benefit of travellers  
in the airlines, and I'd argue ultimately for airports themselves as well. I'm  
here today because a positive outcome in the Productivity Commission  
report can assist the development of better regulation for airlines and  
travellers on our side of the Tasman. At this point I'd like to note that my  
25 comments today are in the context of the three major airports, that they can  
account for the vast majority of airport revenue and are most relevant to the  
big four Australian airports so they don't apply directly to the regional  
airport situation.

30 I'll talk briefly about the airport regulatory settings in New Zealand and then  
the lessons that can be drawn for the Australian contexts in relation to the  
draft report's findings. As you are aware New Zealand has an information  
disclosure regime for airports. That involves the airport publishing detailed  
cost revenue and capital return information at each five yearly pricing  
35 decision. That's then reviewed by the regulator against predetermined  
benchmarks and, in particular, a reasonable rate of return and the regulator  
then publishes its report. Airports are free to decide whether, and if so how,  
to change their prices in response to the regulator's reports. In the New  
Zealand system there are four levels of regulation that can be applied. At  
40 the lightest end information disclosure, which is what we have today, and  
then through to the tightest end which is price regulation and my  
background comes from working as a regulatory manager in  
telecommunications which is price controlled, which I can assure you is a  
very heavy-handed form of regulation from that experience.

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5 Negotiate-arbitrate is actually only the second rung on that ladder. It's built into our Commerce Act - so specific measure there in the regulator's toolbox. It's by no means considered heavy-handed regulation by the Commerce Commission as it's at the lower end of the options available and in fact the next one up the rung from where we are today. The Productivity Commission's draft report does not recommend the adoption of the New Zealand approach or, in particular, the benchmarking approach in Australia and I think this would be a missed opportunity.

10 The setting of benchmark returns in New Zealand has had a positive effect in reducing the magnitude of supernormal returns by airports though I note there is still some way to go. Over time we have seen a trend of the benchmark returns reducing. In 2012 airports were trying to set the returns at the 75th percentile of the WACC range and in some cases even higher.  
15 Today, after some years of legal and regulatory debates, the airports' targeted returns are much lower saving your travellers a great deal of money.

20 So in the latest pricing round that we've just completed with Auckland Airport, they initially sought to recover a 65th percentile return on the invested capital and following strong criticisms from airlines, Commercial Commission and the Commerce Minister himself, they returned this to the 55th percentile. Christchurch Airport sought a return close to the regulator's benchmark and the regulator decided that that was reasonable.

25 So I take you through this brief history to highlight how having a benchmark rate of return has been instrumental and resulted in better outcomes for the travelling community. It serves to contain disputes into a tight scope and provide an agreed reference point for parties to work from.

30 The Productivity Commission rightly notes establishing a benchmark return regime is complex. In New Zealand's experience, we found that after the very robust contesting of the initial methodology and decision, subsequent decisions by the Commission have not been challenged. So there was a religious war around how to actually establish WACC and all of the machinations there. Once that methodology was agreed, the debate then moves on to whether a departure from the midpoint for an airport is actually justified or not. So it's a much more contained practical discussion, rather than getting into the intricacies of WACC.

40 The result has delivered significant consumer benefit; \$66 million has been, or will soon be, returned to airlines and travellers as a direct result of the benchmark return process and I believe the mere fact that a benchmark even exists is instrumental in driving better airport pricing decisions from the

outset and pushing them to set prices that are more reasonable there or even before the regulator holds their review.

5 The reductions in excess of returns by airports couldn't have been achieved without the comprehensive reviews and benchmark and by the regulator. That said, the benchmarking process is inefficient. It has involved over a year of wrangling between the airlines and the airports and a good deal of submissions and cross-submissions, back and forth to the Commerce Commission and this is also after the fact that the prices are set and the  
10 airlines and passengers are paying those rates. It is far more efficient to negotiate on an equal footing and to work to an outcome that is acceptable to all, with recourse to arbitration if needed.

15 Airlines don't have countervailing power to drive better outcomes from airports; I haven't seen any evidence of this at play in New Zealand. At the international airports, Auckland enjoys very similar geographic monopoly position to Sydney Airport, as you know. There's simply no other way to get to the upper north island. Travellers wanting to go to Auckland don't have any realistic alternatives. International airlines can't just simply  
20 withdraw services to take them to another airport in New Zealand, as they face a far greater challenge actually filling the aircraft from the smaller catchment areas. So typically, in that instance what they'll do is just withdraw service from New Zealand altogether.

25 We have actually seen two airlines this year pull out - AirAsia X and Hong Kong Airlines - do that rather than move anywhere else. This, of course, harms competition and I'm aware of some of the dynamics seen at the major Australian airports as well.

30 Like many of my industry colleagues, I am very surprised that the Productivity Commission draft report concluded there is no evidence that airports in Australia systematically exercise their market power to the detriment of the community. I beg to differ and I just point to the evidence that has been presented through A4ANZ and Air New Zealand's  
35 submissions, that were acknowledged in the report by the Commission.

40 There can be many ways that a monopoly can abuse their market power, some subtle, some less subtle. I will give two contrasting examples from New Zealand that I think help illustrate this point. Auckland Airport has some of the highest profit margins in the world and over an extended period, they've maintained their policy to return 100 per cent of net profit after tax through to their shareholders, while deferring some major capital investments - to the detriment of consumers.

5 The reductions in the cost of capital that I mentioned before are welcome but have done nothing to change this dynamic of market power. In Wellington, ironically, we've got the exact opposite problem, which is one of over-investment. Wellington Airport proceeding with preliminary work to invest in a \$300 million runway extension, in a bid to turn it into a long haul destination that none of its airline customers, that I'm aware of, want. So we've got two quite contrasting - - -

10 **COMMISSIONER LINDWALL:** Isn't it the council that wants that?

**MR TIGHE-UMBERS:** The council?

15 **COMMISSIONER LINDWALL:** The council, the local council of Wellington, I think that's what - I had the impression - sorry I'm interrupting you.

**MR TIGHE-UMBERS:** No, that's all right.

20 **COMMISSIONER LINDWALL:** I had the impression that it was a governmental thing, rather than the airport itself wanting to do that.

25 **MR TIGHE-UMBERS:** No, no, it's very much the airport driving the investment and I think looking to convince some councillors that it will deliver fantastic benefits for the region, so there's some councillors who's ears have been bent, is how I'd characterise it - but it's not a push from the region.

30 Both of these examples are as a result of airports having and exercising market power and as we heard yesterday, you don't have to look far for similar examples in Australia - although I admit they're a little bit more colourful over here, in the form of a koala enclosure - we can't claim to have one of those in New Zealand. While the information disclosure WACC benchmarking and building blocks methodology provide a clear framework for airline/airport negotiations, it is still far from a level playing field; the power and balance between airports and airlines persists.

40 Under New Zealand law, airports can simply charge as they see fit and the Commerce Commission has no ability to intervene any airport pricing, only report on it within the constraints of information disclosure. If it chooses to go beyond that point, it needs to make a recommendation through two of the ministers. So airlines consequently, are reliant cap in hand, on monopoly airports behaving well.

45 So what is the way forward? As you know, a successful infrastructure regulatory regime strikes the balance between adequate incentives for

timely investment at a reasonable rate of return, on the one hand with fair pricing and service quality outcomes on the other. This is exactly what airlines want on both sides of the Tasman. There is no objection to airport investors making fair and reasonable rate of return and in fact, as you know, 5 airlines are completely dependent on that investment being made at the right time in order to be able to grow their businesses.

IATA has forecast that the international passenger numbers are going to double by 2036. In order for an already stretched aviation system to cope with this, airlines and airports are going to have to work closer together than ever - and that means that a trust-based relationship is going to be 10 increasingly crucial and it's just not possible to build that trust when one of the parties holds the majority power.

So I believe regulatory settings should be working towards an environment that enables trust to be built, rather than leaving airports with significant market power and crossing fingers that they don't use it. The irrational economic players, in the end they will, as far as they can. The Productivity Commission is rightly focused on the cost benefit test for introducing new regulatory measures but I'd say you also need to consider the cost of not 20 addressing the current power and balance and factor that into the equation.

I believe that if airports and airlines are going to be adequately placed to cope with this doubling of passengers, there needs to be a regulatory model that incentivises sound commercial negotiation and as backstop, by 25 regulation. I found it a bit amusing yesterday watching airports argue on the one hand that there's simply no need for a negotiate/arbitrate model but on the other hand, saying that they're concerned about countervailing powers from airlines, so it leads me to say well why would they not want an arbitrary backstop - because arbitration cuts both ways. The only 30 conclusion I can draw from that is that airports fear a level playing field and having to surrender some of their market power that they currently enjoy.

From a New Zealand context, we've got extraordinary capital build underway at Auckland in the next decade, including a new runway. That is 35 going to require airports and airlines to work closer together than ever before, if it's going to be managed successfully. Similar points apply in many of the Australian airports.

Addressing the current power and balance is critical to allowing such closer relationships to happen. Trust-based commercial relationships can only be truly established if both parties have adequate commercial leverage. We agree with our airline colleagues in Australia, that negotiate/arbitrate is the way forward and we're also calling for this in the context of New Zealand's 40 regime as well.

5 What are the useful conclusions that the Productivity Commission could take away from the New Zealand experience? Well how a benchmarking regime can establish tight parameters for airports and airlines to agree appropriate returns and over time, reduce supranormal returns. Information disclosure or price monitoring is still a limited regime, monopoly airports are incentivised to maximise their returns up to the point of regulatory intervention and this something they've consistently done.

10 A successful regulatory regime needs to go further than just simply assessing whether market power is abused. In today's environment of record growth rates, it needs to be forward thinking. To incentivise the airports and airlines to work closely together to build costly airport infrastructure, which is of critical strategic importance to national economies, regulatory models need to address the current power and balance. Moving to a commercial negotiation model with a regulatory backstop, I believe is critical to airports and airlines both here and in New Zealand in being able to meet this doubling of passenger growth in our region into the 2030s.

20 They are just the initial points for the debate, thank you.

25 **COMMISSIONER LINDWALL:** Thank you, Justin. Could I ask about a couple of things on that. Of course, I remember that Professor Samuel, when he was over at Auckland Airport, said that it was - it had been run down in policy and - well on my own experience that perhaps with some investment it could be better, I suppose, in terms of terminal. Could that not be described because the WACC is too low and that therefore there's a disincentive to invest in that airport?

30 **MR TIGHE-UMBERS:** No, we haven't - we haven't seen evidence of that and in fact that's - a lot of this predates the WACC benchmarking regime. I think particularly if you look at the shed that is the domestic terminal there, it's a 1960s building which the airport freely admits just hasn't managed to keep up an investment. So I think it is quite a historical situation. If anything, the airport now is - is really scrambling to catch up with the investment it needs to, and there's no disincentive around the WACC from their perspective. I think they're probably concerned that they've got too much to invest in and how are they going to actually smooth that from a pricing perspective for airlines, but also manage their own cash flow.

**COMMISSIONER LINDWALL:** In terms of the benchmark WACC, is that just for aeronautical services or also for non-aeronautical services?

**MR TIGHE-UMBERS:** It's just for non - sorry, for aeronautical services. Yes. So it doesn't apply to all, so some of the conversations yesterday around, you know, Mercedes dealership wouldn't apply at all. Which is good, it simplifies those conversations.

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**COMMISSIONER LINDWALL:** Do you think that there's another way of comparing New Zealand to Australia is that we have effectively individualised contracts between airlines and the airports; whereas I understand you just have the single contract between an airport and all the airlines. Is the Australian model better or worse than the New Zealand in that respect?

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**MR TIGHE-UMBERS:** Look, I think they're just different and that's largely back to the size difference. So in New Zealand you get a situation where the vast majority of assets are common assets. We just simply don't have enough throughput to justify an individual terminal, for example, for an airline. I guess you could say it simplifies it for New Zealand.

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While it is a common price book that we negotiate to, there are still individual contracts that airlines will undertake with the airport if they want; their own lease spaces or, you know, premium check-ins and those things. So I think we've got the flexibility there for both sides, but the common pricing model is a good, a good level playing field, if you like, to help the airport satisfy the needs of a broad range of customers, so you've got the full spectrum of airlines and those conversations tend to flush out through the common price book.

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**COMMISSIONER LINDWALL:** In New Zealand, with the benchmark WACC, I can't see why you'd need negotiate-arbitrate as that would surely lead the airport and the airline to reach a WACC that they both agree with and by definition it's been set as the benchmark.

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**MR TIGHE-UMBERS:** Yes, I think the reason we still want that is because ultimately it comes back to - there's two things, the inefficiency of the process, so you're having to do it ex-post as well, and you know we've gone through a protracted - really the whole pricing regime three years of fighting to get money back that you can argue was the airlines' in the first place, when you're looking at other recoveries that the airport has put. So that's a frustration, it's highly inefficient, but then also, you know, you look at an example like the Wellington Airport runway. You've got no ability to countervail that, so whereas if you have a good negotiation around what's required from the airlines and then you reach an impasse on that, then you have that backstop that you can fall back on. And I think, look, I don't think either parties want to rush to using that backstop. It's there. Because there's uncertainty at the end of the day with an expert arbitrator, and I just believe

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that the motivation there is to get as closely - equally disappointed as you can in the outcome, but as close as you can to where you're both satisfied without having to put it in the hands of an arbitrator.

5 **COMMISSIONER LINDWALL:** In New Zealand, just one more question. In New Zealand are there examples where negotiate-arbitrators are used in other industries?

10 **MR TIGHE-UMBERS:** No, look I don't believe it's been tested in other infrastructure. Certainly not in telecommunications. I could be wrong on energy but I don't think it has, so it would need to be developed, yes.

15 **COMMISSIONER KING:** As you note in some of the discussions yesterday, so around the negotiate-arbitrate, we're just thinking of how it would work. For example, in the case of Wellington Airport and the runway, which is obviously a common infrastructure, in that case you said that no airlines were supportive. But if it was the case that some of the internationals were supportive, perhaps Air New Zealand said, "No, we're not interested in a longer runway", and that has to be dealt with through a negotiate-arbitrate, would you then see it's really an arbitration with all the airlines in the airport, or would you see it being bilaterals, and if it was bilaterals who would it work?

25 **MR TIGHE-UMBERS:** Sure. Well by virtue of the fact that, you know, an asset the size of a runway is going to end up in the price book for all of the customers in one shape or form, either openly or clandestinely through maintenance charges or whatever else, it would need to be an negotiation with all of the airlines, albeit as I said the other two parties, Converse and Air New Zealand may do it bilaterally themselves. But ultimately it comes back to a position of the airport putting forward a case as to why it's justified and how it will be charged for. If they've got a strong case they shouldn't be afraid of arbitration, and then equally airlines will have a case. I think you're then forced to be on a fact base around costs and benefits for both parties. An arbitrator, if it had to go that far, would intervene.

35 **COMMISSIONER KING:** How is that actually different to the sort of capital evaluation or investment evaluation process, I assume occurred in New Zealand, certainly it occurs here where the telco company, for example, says, "Well we want to roll out the following infrastructure", and there's a regulator who they go to, to get some sort of approval for that so that it can be rolled into the asset base and they can allow a rate of return on that, and obviously the regulator talks to the customers to work out if it's - it seems like it's the same thing, just called negotiate-arbitrate rather than Telco regulation.

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**MR TIGHE-UMBERS:** Yes, sure. Well the difference is the leverage that you've got as a customer. So telcos are quite a different example because it's very rare that you get customers arguing that they don't need My World and new fibre connections rolled out, or mobile networks. The infrastructures, the customers want it; it's just a question of how much they want to pay for it. In an example like Wellington where none of the customers are wanting, you know, significant investment and asset extension, in the current regime under information disclosure there's (recording malfunction 10:27:01) anything about that, whereas you can move one more rung up the ladder to negotiate-arbitrate, you have that regulatory backstop which should hopefully force an agreed outcome between the two parties. But if it doesn't, as customers we've got an ability to go to arbitration and say, "Well here's why it's completely unreasonable, it's going to end up in the RAB or in the price book. We'll be paying for an asset we're not using" and put the facts on the table.

**COMMISSIONER KING:** Can I come back to the New Zealand - because my own ignorance, I didn't - I wasn't with Paul over in New Zealand, so when you were running through I thought, "Damn, it's been pretty effective". As you said, it seems to have got prices down. The rates of return have come down for the airports. Auckland now is investing after having a bit of a capital strike for a while. You know, I guess I was convinced by you that, you know, that is still light-handed with a negotiate-arbitrate seems to be working pretty well. I mean but that isn't the lesson that you seem to want us to take away, so I'm just wondering.

**MR TIGHE-UMBERS:** Sure. Look, it's part of the lesson I think to take away and it is working well because of that established benchmark, and that really does allow, as I said, contain conversation around a particular data point, but it still hasn't gone far enough. The drawbacks, as I said, are really around establishing trust-based relationships. The Wellington example is - well both examples, Auckland and Wellington, are where, you know, trust - it's very difficult to have a trust-based when you see asset investment being deferred or investing in an asset that none of the customers want. You just feel completely powerless as a customer to go ahead and build something that none of you want. So I strongly believe that, you know, there's growth that we're going to be faced with and we're already at a system that's creaking at the seams. There's just no two ways about it, that the airlines and airports, and that symbiotic relationship are going to have to work very closely together. But to do that you absolutely have to have trust, and it is very hard to be sitting there, depending on the benevolence of one of the parties who has all of the major power, to have a true trust-based partnership, is what we've called for to move forward. And I just think just to - it is light-handed regulation just to move into a backstop process where you have an arbitrator that comes along and applies it. It's just built on top

of the information disclosure and data that we've got there around reporting and building blocks, model and WACC, all it is is agreeing how an arbitration process might work. From a Commerce Commission perspective it's still pretty light-handed in terms of their involvement because, of course, it's the two parties going and having the conversation, then working through with the arbitrator. So once it's established it's still very light touch, but I think it just allows you - it sets the scene for that trust base.

10 **COMMISSIONER KING:** Do you see, because you said building on top of the current approach, so do you see, in general, that to make negotiate-arbitrate work, you do need that, for example that benchmark WACC, to be built in there?

15 **MR TIGHE-UMBERS:** Yes, I think so. It think it - look, whether you need it is probably a question for further analysis, I think it's helpful because again it just gives you a data point that you're centring a lot of the conversations around from a pricing perspective. The other set of conversations of course are what go into that asset base and that's where, you know, you just have, which is what we do in our form with Auckland Airport, is just have a free range of conversation of, "Right, what is your vision for the future? What's the master plan? What is it airlines want and how to we make all of that work?" So you just continue with that as normal but when it comes to pricing of building blocks model, then WACC would help get that on a firmer ground of - well, a more constrained discussion, if you like, around what the appropriate pricing should be (indistinct).

25 **COMMISSIONER KING:** So just - sorry - - -

30 **COMMISSIONER LINDWALL:** No, keep going, keep going.

**COMMISSIONER KING:** There's two things I want to actually say. So one of the issues that's come up, and BARA mentioned it yesterday and in their submission, that others have mentioned that the focus on WACC or rate of return means that the focus becomes on prices and you lose focus on quality services and the sort of services that different airlines want. So low-cost carriers need different services and want different services to full service carriers; has that been the experience in New Zealand or in fact, and again - sorry this reflects my lack of knowledge of the New Zealand system, does the regime involve service benchmarks? If not, would that be a good part of the regime? Is that a problem with the current regime and how would it be addressed?

45 **MR TIGHE-UMBERS:** Sure. Look, from BARA I think that is a fair comment. You do find, you know, 80 per cent of negotiations is devoted

to WACC rather than service quality which is - and we're looking to try and move that more into the service quality space, under information disclosure. There are some metrics, service level metrics if you like, that the airports have to provide but they're far from adequate. Coming from a telco industry where quality of service, (indistinct), are very tightly defined. I've been quite surprised to come across here and find the airline industry pays, you know, \$.5 billion a year to airports but there aren't actually defined service levels between the two and/or penalties. I'm not necessarily a fan of penalties because they can drive distorted behaviour but certainly having an agreed set of what good service performance looks like is critical.

So we are working on that with the airport to try and develop those. It's a little bit more complex in New Zealand possibly than here in that you've got a lot of other parties involved, other than just directly the airport, because of the border agencies that control the customer experience all of the way through so we try and get them involved as well. I think there was the comment yesterday in some of the discussions that a multi-party development of those service levels is appropriate and that's certainly what we're trying to do in New Zealand. To your other question on, "Does it allow flexibility of service?". There are aspects where you can do that in New Zealand and I think the example I gave was at the premium end, you've got that.

At the other end, while we haven't got there with Auckland Airport, I think there would be an opportunity if parties wanted it to choose things like, all right, elect to take bus services all of the time instead of a context stand. Right, what would a price look like for that? And we've sort of had occasional conversations with the airport about that and I think if we wished to pursue it, their willingness to develop those services and a rate card for them if we pushed for them.

**COMMISSIONER KING:** The final one from me before I pass back to Paul.

**MR TIGHE-UMBERS:** Yes, yes.

**COMMISSIONER KING:** We have benchmark WACCs, and again perhaps I'll shift down the other end where you've actually had rate of return-type approaches or building block-type approaches, certainly the experience I think in Australia, and again apologise for not knowing the New Zealand experience, but in those industries where they've had quite heavy-handed regulation, the economics warns, "Well, that would lead to operational inefficiency and to overinvestment" because they're ways that you can reach the benchmark WACC without, you know, essentially taking the profits through everyone driving around in their corporate Mercedes and

5 just overbuilding your facilities, "gold-plating" as it's sometimes called, because that's a way of pushing up your revenue and making your shareholders happy, and there's been some very - I'm not even sure they would be debated anymore, some of the areas in Australia where that has pretty clearly occurred.

**MR TIGHE-UMBERS:** Right.

10 **COMMISSIONER KING:** Just when you said, "Oh, Wellington wants to build a runway and none of the customers want it"; that just raised issues to me is all this New Zealand situation with that benchmark WACC starting to push that sort of overinvestment and perhaps taking the - you know, "corporate Mercedes" for want of a better word, is it starting to push the airports down that approach and how do we protect against that?

15 **MR TIGHE-UMBERS:** Look, I don't think that particular example is as a result of trying to somehow game WACC returns and get the largest returns that they can. And again when you look at the size of the operation at Wellington with a finite number of airline customers flying into there, it's probably difficult to push that too far before you start to get to breaking point with pricing.

20 In terms of the broader challenge overinvestments, it's difficult for me to comment on that and I think because coming from telecommunications, when I've been in the industry it's been heavily in growth mode so they're trying to roll out the infrastructure of the next 50 year asset in terms of fibre connectivity. Equally it's the same here in airports in terms of catch-up. It's in growth mode to try and meet this coming demand so it's difficult to spot if, you know, if there's gold-plating going on deliberately. I just don't think there's any need for the infrastructure providers to do that, if you like. They've already got more CapEx investment acquired on their books than they need.

25 **COMMISSIONER KING:** Okay, so given that - yes, it is a growth industry where the passenger numbers are going, it's probably not that bigger concern.

**MR TIGHE-UMBERS:** Yes, yes.

30 **COMMISSIONER KING:** Fair enough.

35 **COMMISSIONER LINDWALL:** I think my observation of New Zealand airports, I wouldn't say they're gold-plated. I mean, the only gold-plated airport I've ever seen my life is the one in Doha actually. That literally is gold-plated with gold everywhere.. I'd just ask about - in 2014

Wellington Airport returned excess profits to customers, you said in your submission. How was that manifested and you meant customers as in airlines or to passengers?

5 **MR TIGHE-UMBERS:** Yes, well their return they went for a significantly higher WACC percentile, I think beyond the 75th. The Commerce Commission gave a very strong report about it and indeed I think some of the airports even tried them and convinced them to lessen that.

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In terms of passing on, so that did reduce, I can't remember the precise numbers, I think it was about \$20m from where they initially had it. In terms of the pass through to customers, you know, there was obviously a lot of conversation about this yesterday with the airlines, and that particular scenario that was before my time, but certainly it comes back to the competition of the routes and, in particular, Trans-Tasman served out of Wellington is one of the most competitive routes in the world so I think there's every incentive on airlines to pass that back through and the pricing wars that result, so.

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**COMMISSIONER LINDWALL:** And going back to the runway at Wellington, and correct me if I'm wrong, I thought, for example, and I haven't asked Singapore Airlines this, but I think my knowledge of it is correct, that they were running the older 777s because they couldn't land the newer ones on the length of the runway at Wellington and therefore that reduced the competitiveness of, say Singapore Airlines wanted to fly from Wellington to Singapore to Europe or wherever, and I also thought I heard that Air New Zealand was the one that didn't want the runway extended in particular, so isn't that an example perhaps of an incumbent airline trying to restrict competition?

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**MR TIGHE-UMBERS:** Right, sure. So two questions there: in terms of Singapore Airlines I'm not privy to specifics if that, you know, the 777 variant they're using. What I understand with wide bodies is they can comfortably operate in and out of Wellington at the existing runway links for dealing with Trans-Tasman because they've got a much lighter fuel load so that can do that and in fact I think during our fuel pipe outage a couple of years ago, Air New Zealand flew one in there to fill up fuel and back out, so.

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**COMMISSIONER LINDWALL:** But they may not have taken a full load of fuel on board.

**MR TIGHE-UMBERS:** Yes, not sure exactly. It was empty so it might have been able to do that. In terms of - is it one airline looking to prevent

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5 competition in and out of Wellington? I don't think that's the case there at all because, as I've said, none of the other airlines that I'm aware of have indicated any interest in it - and you've only got to look at the economics of the region to see why to fill a wide-body aircraft consistently, you really need two million people in a catchment area ideally and it's very rare below that, that you have examples - and Wellington is 500,000 people, it's just - no airline is going to be able consistently fill a wide-body aircraft out of there.

10 **COMMISSIONER LINDWALL:** Fair enough. My final question - unless you've got any more Stephen - my final question is on negotiate/arbitrate. I think you told us before that it requires the Commerce Commission to recommend to the minister to change to negotiate/arbitrate - so the Commerce Commission hasn't done that?

15 **MR TIGHE-UMBERS:** No, that's right, they haven't and you know, that's up to us to press our case as to why it's needed. The recent change we have had in legislation previously, there was an anomaly with airport regulation in particular, where to be able to move up one of those rungs in the ladder, it actually took a rewriting of law, which is a much higher hurdle to get through - particularly when you've got a coalition government - but recently, we had a Commerce Act amendment bill which changed that, which means now it just needs to be a recommendation through the two of the ministers and then it will take place. So we are pleased that that's happened because it makes that - - -

**COMMISSIONER LINDWALL:** I think we were discussing that change to the law when I was over there - - -

30 **MR TIGHE-UMBERS:** Yes, that's right so that got passed and you know, that's a much more credible regulatory threat because you know, the airports can feel well we can get pushed up there fairly easily.

35 **COMMISSIONER LINDWALL:** Just one more. We very briefly touched on single-till dual-till or hybrid tills and other things. So in the Australian parlance - and I'm not sure if it's used everywhere - but in Australian parlance, the monitoring regime is a dual-till, it's focused on aeronautical services. I think you were present yesterday for some of the discussion about you know, the broader effects and whether the profitability of the airport as a whole should be taken into account in the spill over benefits that occur between different parts of the airport. From the New Zealand experience, is your view that the single-till is the way to go, would a better approach be the whole of airport approach, I am just interested in your views.

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**MR TIGHE-UMBERS:** Yes, I mean like some of the respondents yesterday, I think there's a recognition that there's pluses and minuses in both single-till and dual-till. I'd probably say we have a preference towards single-till but you need to be able to address some of the challenges with it.  
5 Regardless of the model, I think it's about you look at the outcomes that you want and the outcomes you want as an airport operator, to be focused on its core business - which is on the aeronautical side - and the rest that you have, particularly with larger landholding airports, is there can be a distraction and a diversion of investment into more profitable commercial activities, at  
10 the expense of the fundamental airport operational ones.

You know, at Auckland, there's concern that some of the commercial activities have added to the traffic problems there, for example, coming in and out of the campus. Sometimes we're looking for site and particular  
15 infrastructure and there might be other commercial uses at an airport that they're thinking of for that land and that makes conversations difficult, so you want - whatever the model is, it needs to strongly incentivise airports to invest in their core first and then I think it's a case of moving to a recognition that rather than adversarial, if you move to a - what they call an  
20 abundance mindset these days and I sound like we're talking about joining hands and singing Kumbaya here but when both parties succeed - when airlines are successful and bringing an increasing number of passengers, the airports just gain enormously from that, through the expenditure and their well-developed terminal. So it's win/win if you get this right for both parties  
25 and grow bigger than the current adversarial approach we have, I think.

**COMMISSIONER LINDWALL:** Thank you for coming over from New Zealand, a long way to come Justin, so we appreciate - - -

30 **MR TIGHE-UMBERS:** Not too far thankfully.

**COMMISSIONER KING:** Thank you.

**COMMISSIONER LINDWALL:** How about we take a five-minute  
35 break or so and Caltex is next.

**SHORT ADJOURNMENT** [10.45 am]

40 **RESUMED** [10.53 am]

**COMMISSIONER LINDWALL:** So I'm Paul Lindwall and we've got  
45 Stephen King. Say hello to Rohan.



**COMMISSIONER KING:** Hello, Rohan.

5 **COMMISSIONER LINDWALL:** Rohan, if you mind introducing yourself and giving an opening statement to whatever you want to say, that'd be great.

10 **MR DANGERFIELD:** Okay. Good morning. My name's Rohan Dangerfield. I'm the General Manager Supply Operations at Caltex Australia.

**COMMISSIONER LINDWALL:** Good morning.

15 **COMMISSIONER KING:** Good morning, Rohan.

**MR DANGERFIELD:** I'd like to thank the Productivity Commission for allowing Caltex Australia another opportunity to discuss the Commission's work in their draft report into the Economic Regulation of Airports. Caltex is a strong and long-standing participant in the supply of jet fuel to  
20 Australian airports, and the design, construction, operation and maintenance of key supply infrastructure for jet and other fuel types.

Caltex is a joint venture, or JV, participants in joint user hydrant installations, the JUHIs, at five major airports. We are also either the sole  
25 owner, JV partner, in two key jet supply pipelines in Sydney and Brisbane. In addition, we are either the sole operator or the JV partner in 19 seaboard terminals around Australia, and the owner and operator of the Lytton Refinery in Brisbane.

30 At this time, we would reiterate our previous comments, that Caltex Australia firmly believes in jet fuel supply markets in Australia operates in an effective and competitive matter, through the presence of multiple supply participants, competing for volume, strong tender processes and through various established supply infrastructure routes, which provide  
35 efficient, cost effective, competitive and reliable methods of delivery.

We would also state again that we also do not believe that there are barriers to prevent new market entrants, as has been complained by some parties, including the Productivity Commission in their draft report, and to that  
40 point, we don't support draft finding 8.1 of the draft report.

With that in mind, Caltex is supportive of some of the draft recommendations made in the Productivity Commission's draft report, namely establishing a JUHI, or a fuel facility at Western Sydney Airport, with open access arrangements, and in the development of a Jet Fuel Supply  
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Coordination forum, provided it is designed with suitable protections to commercially sensitive information, and has demonstrable benefits for communication between parties, which could improve future planning for developments or extensions.

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I'm happy to take any questions you might have.

**COMMISSIONER LINDWALL:** Thank you very much for that, Rohan. On your basis that you support open access, I mean would that be to say that you're indifferent is airports move to open access, you would still want to supply fuel at those airports, provided that you get the right price, obviously.

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**MR DANGERFIELD:** We would supply fuel through open access arrangements. Just because in any location there is an open access arrangement, doesn't mean we would necessarily supply fuel to that location.

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**COMMISSIONER LINDWALL:** Of course.

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**MR DANGERFIELD:** Depending on other parts of our supply chain, and the attractiveness of the, you know, that location.

**COMMISSIONER LINDWALL:** Yes, yes. Now, a common theme that we've had is from conversations with various participants, is that the joint venture JUHI and the fuel supply - supply itself, are completely separate. In your business, how do you maintain that separation so that there's no risk of information flowing from one part of it to the other?

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**MR DANGERFIELD:** Yes, so the way it works would be, when it's a joint venture, the representatives report through our Distribution division, in the Aviation Operations team. Participants in joint ventures only have visibility of their own information, which is their volume flowing through the facility, and they would usually also get visibility of the total volume through the facility. They wouldn't see what other participants were putting through in a joint venture facility. So, you only get to see, say, location A, Caltex is putting through 500 million litres, maybe the total airport's putting through a billion litres a year, and we'd know that our throughput is 50 per cent of what was going through the facility. We would have no visibility on what volume each of the other participants are putting through.

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**COMMISSIONER LINDWALL:** Who the other were, and what their volume is?

**MR DANGERFIELD:** Well, we would know who the other equity participants were, but we wouldn't have any visibility on if there were multiple participants, yes, who put through what quantities. The Operator of a joint venture would have visibility of some of those, for the purposes  
5 only of efficiently operating the facility, such as stock reconciliation and the like. They need to keep a record of who's delivered what, and who's withdrawn what product, and that information is only visible to a small number of people within the operations team for that purpose.

10 There's protocols within the industry in addition to local Australian competition law, for the aviation fuel facilities, usually have in place, although it's termed the Core Principles, which is from the Joint Inspection Group, which provides some additional restrictions. One of those is people who work in operations of a joint venture, can't work within a marketing  
15 and sales business, I think, for a period of 12 months after working in a joint venture on an airport.

Our Sales and Marketing team, who manages jet fuel sales, reports through quite a separate line in the business and they have no visibility of the  
20 sensitive information that the Operators see and I think that is pretty strictly followed around the industry and joint ventures that I've seen in Australia.

**COMMISSIONER KING:** I mean, I understand all the protocols and the various - - -

25 **MR DANGERFIELD:** Sorry, the other comment I would make is the JUHIs themselves are not fuel marketers and so they have no visibility of market pricing. So even in an airport a joint venture, the site manager might be coordinating deliveries for three different fuel companies and delivering  
30 them onto the planes for those companies, the joint venture operator has no visibility of pricing for that product. That would be handled through the marketing company's head office and their sales team, and the people on airport have no visibility on pricing to airline. All they see is the cost - the joint venture operator only sees the cost of operating the facility on airport;  
35 things such as the lease cost, the electricity cost, the staff and labour cost on airport. They only have visibility of costs of operating onsite, they have no visibility of pricing.

**COMMISSIONER KING:** Yes. So understand the protocols and the  
40 Chinese walls and so on, can I come to what I think is the practical basis. Let's say that Caltex has lost a contract with an airline at a particular airport, so you know what you bid; it's a small group of players, you've all got interests into the into-plane services, I would have thought it would have taken, you know, maybe two or three days at the most before your  
45 into-plane guys notice who's filling up the planes of the customer you've

lost. That would immediately be known to your sales staff so it strikes me that, you know, you can have all the Chinese walls you want but the practicalities of a small number of suppliers operating in what is a very confined space to a relatively small number of customers, it wouldn't take  
5 an Einstein to work out who's got what where, who you've lost customers to, who's gained customers, what sort of volumes each party's doing; I mean, practically isn't that the case?

**MR DANGERFIELD:** Well, there's a few things to your comments.  
10 I think, you know, if you go to an airport like Brisbane Airport, for example, a member of the public can go and stand in the public access area and observe which fuel company's truck is servicing which aircraft. So you can stand at a window and you can look out there with - airline A's plane is there and fuel company B's truck pulls up to put fuel in it. So I think it's quite, in  
15 that sense, observable to the public what's going on. And then I think probably through the, you know, if a sales team bids on a contract they may get an indication back from the airline as to, you know, they know whether they've won or lost the business. They may also get an indication of how far off - you know, if they lose the business they might get some indication  
20 on, "You were out of the market by so much...", you know, or "You lost out by a certain percentage or tolerance" to give them some idea on how far they're out of the market and why they didn't win. I think that's probably the case of, you know, how this works.

**COMMISSIONER KING:** And again in a practical sense, you've got the meeting of the JUHI participants. Yes, of course there's no discussion of sales and so on in the meeting but you're sitting around at the coffee break - are we really to believe that the conversation doesn't come where, "Look,  
25 we know you guys nicked customer A from us at this airport. What are you trying to do, screw the market?", you know, "Pull your heads in, guys", you know, "Why should we be doing this to each other?"; surely those conversations occur?  
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**MR DANGERFIELD:** No, I categorically deny that characterisation of joint venture discussions. In joint venture discussions they're only as highly  
35 sensitive to competition law obligations, and discussions like that do not happen. To the point people wouldn't eat lunch together, or wouldn't go out for dinner after a meeting.

**COMMISSIONER KING:** Okay.  
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**MR DANGERFIELD:** They wouldn't. People don't interact outside that forum.

**COMMISSIONER LINDWALL:** Okay, Rohan - - -  
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**MR DANGERFIELD:** We might, you know, have a coffee and a 20 minute lunch, like, in the morning tea break but those things that you characterised would not be discussed.

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**COMMISSIONER LINDWALL:** Okay, Rohan - - -

**MR DANGERFIELD:** And - - -

10 **COMMISSIONER LINDWALL:** Sorry, did you want to say more?

**MR DANGERFIELD:** No, I think (indistinct).

15 **COMMISSIONER LINDWALL:** All right. Rohan, I was going to ask how the bidding process works with your airline customers. Well, I think, in practice they're sealed bids, is that correct, and so the airline won't say, you know, "There's a volume of fuel over this period at this airport" and they put a bid out for one or two or three years; is that pretty much the way it works?

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**MR DANGERFIELD:** Yes, it works probably slightly different between airlines depending on the scale of their operations, how many locations they're in, but yes they would indicate they may have a fuel requirement that one or more airports, they're looking for offers for whatever time period, you know, one or two or three years might be common, and they would ask for submissions from the aviation fuels marketing team as to get their offers on that business, like, any sort of tender would work and - - -

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**COMMISSIONER LINDWALL:** Do they set a price that they're trying to seek or they leave it to the parties to bid on the price?

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**MR DANGERFIELD:** Sometimes there would be multiple rounds of offers in a tender where, you know, they might ask for buyers and then they might narrow it down and fuel might be given feedback as to where their bid was compared to what they thought the market was.

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**COMMISSIONER LINDWALL:** Okay, yes.

40 **MR DANGERFIELD:** So you might put in a bid at - MOPS plus 20 cents a gallon and they might give you an indication that they think you're two cents off the market and then if you have second round you can choose your bid at 20 again, or go in at 19, 18, 17, or do you think that market's at 21 and that should be a number, right, like (indistinct) work and then the airlines, I guess, presumably take either the best offer on price or they may weigh off against other services that may be offered or, you know,

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reliability of different fuel suppliers or things like that may factor into the decision as well. Some airlines will choose to split their supply contracts for supply reliability. For example, they may not choose to place all their volume with just the cheapest supplier.

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**COMMISSIONER LINDWALL:** Okay. When participants have spoken to us about Melbourne and the problem with supply they had a few years ago, the issue was announced that it was to do with the duration of the term of the lease for the JUHI. How long do you think is normally required for them to provide certainty for your investment profile? Is it a ten year period, 15/20 or something period?

**MR DANGERFIELD:** I guess sort of twentyish years (indistinct) number that used, dependent on some of the (indistinct) about what happened at the end of the term. Obviously once you get into a term, as you approach the end of whatever that was even if, you know, it's 20 years to start with; when you're five years out from the end of the term, to make any investment in an asset would, you know, tens of millions of dollars, some uncertainty as to what's going to happen at the tenure is important. That's possibly been an area that is (indistinct) that some facilities have been lacking.

So what happens to the assets at the end of the term? My experience would be usually the JUHI Operator would engage with the airport, you know, three to five years before the end of term to talk about, you know, an extension for the next periods and that certainly happened in the case of Melbourne, however it took - yes, that wasn't resolved for quite a number of years.

**COMMISSIONER LINDWALL:** Sorry, just to clarify one thing that you said there. So in some of the JUHI contracts, is it actually not particularly clear what happens in terms of say the airport buying back the infrastructure, how much the airport will pay - are those sort of terms not clear in some of the JUHI contracts?

**MR DANGERFIELD:** So in the leases, there's a whole variety of arrangements and depending on what that is, would influence investment decisions, if you make an investment today and you know that the lease expires in three years, if there's uncertainty in what happens in three years or even if there's certainty, well then the business case would need to pay out to make a rational economic investment.

**COMMISSIONER LINDWALL:** Yes, okay so - that's right.

**MR DANGERFIELD:** So even if it was clear as to what happened, that those numbers would be factored into an investment decision and it may or may not make an investment attractive.

5 **COMMISSIONER LINDWALL:** Yes, so for example, if it were a fixed payment at the end of lease, if the airport wanted to take back the facilities, obviously the JUHI is not going to be pouring money into the facility in the last five years, when there's a potential that they'll simply get a fixed payment, regardless of whether they've made new investments or not?

10 **MR DANGERFIELD:** That's correct, yes, so a fixed payment or if - even if there's some - you know, it's not uncommon, some leases might leave it a bit open as to what happens to the assets ah, maybe there's elements to (indistinct words) handback (indistinct) um, that would you know, that - if  
15 you got no residual value on your asset, well that significantly impacts an investment decision.

**COMMISSIONER KING:** Yes, okay.

20 **MR DANGERFIELD:** I think the other one that's been an uncertainty in the industry is if there's provisions in a lease or what could happen at the end of a lease, where a JUHI facility might be asked to relocate - perhaps the airport wishes to expand a terminal or cargo facility or something, where the current JUHI premises is, if you're going to be asked to demolish the  
25 assets and build new assets in another location, that would significantly impact investment decisions.

**COMMISSIONER KING:** You disagreed with Draft Finding 8.1, fair enough. Now what you're saying by disagreeing, to my knowledge, would  
30 be that you don't think that an open access JUHI owned by a company that's not a fuel company, is any more competitive than a JUHI that's owned by fuel companies. Would that be fair?

**MR DANGERFIELD:** There's probably a few things. I'm not - you're  
35 talking about it being characterised by conflicts of interests where whoever the party is has a variety of interests - whether that's the airport or the airlines or the fuel suppliers or an infrastructure company, you still have a variety of interests and interests of those different parties all obviously intersect. I think that's just by the nature, such arrangements, lack of open  
40 infrastructure arrangements, I think we said we're open to open access arrangements, we see that it's then coming. You have the through putters, as we see that becoming more common in the industry and we're okay with that, as long as where infrastructure is owned they can get an adequate return. I'm unclear on - even if there's transparency on access, our feedback

from airline customers is they're not quite sure they even want to pay or be exposed to the transparent fee.

**COMMISSIONER KING:** Yes, so that varies by airport, that's true.

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**MR DANGERFIELD:** That varies by airport, so I guess Melbourne and Darwin I think are probably a couple of leading airports in that space, moving towards an open access model. Our feedback from the market is airlines still prefer to contract for a fixed period or fixed margin over the MOPS jet price and they wish the fuel suppliers to take on the risk of changes in fees. So I think there's a number of aspects there that we find a little bit challenging, as to whether they would actually help deliver - the changes will deliver to lower prices. I think our observation is, by formalising and/or regulating the returns and fees, our experience or perspective of the prices will not improve. If anything, if you carve out returns at each point of the supply chain, the aggregate of those might actually increase the returns.

**COMMISSIONER KING:** Okay. Now could I move away from that to look at the overall fuel supply in Australia? Of course, the OECD has a particular rule or objective, in terms of supply. Are you confident that Australia's network of fuel supply, including its refineries and its importing capacity, is sufficient to cope with the posited growth rate in aviation fuel demand, over the next ten to 20 years?

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**MR DANGERFIELD:** I think the industry has got a good track record of making investment where required, to support you know, reliable, safe and efficient supply to airlines, airports and all parts of the fuel supply chain for fuel supply works well.

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**COMMISSIONER KING:** And the consultative forum that we spoke of in our draft report, would that assist if it's as you mentioned, some caveats about confidentiality and so forth, in trying to give some formulation about the types of infrastructure that needs to be constructed to meet that posited demand?

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**MR DANGERFIELD:** So I guess there's a - there's (indistinct) on airport and off airport investments or I think on airports. It makes sense obviously, where I usually say is, if the airports are supportive in investment and the airlines are supportive of investment and realise it'll come through in higher charges, well then the fuel infrastructure providers should - you have to make an investment and so you're getting good alignment on those, it's important, amongst some of the other submissions other parties have made, talking about a non-fuel infrastructure sometimes what the airport is seeking to do versus what airlines think is a reasonable place of investment. It

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doesn't always align but it makes it hard for a fuel infrastructure provider, where feedback from airlines and the airports sometimes are at cross purposes as how much infrastructure should be built if they were building infrastructure and are unclear how they're going to get that return. Do they  
5 want to build things that people aren't prepared to pay?

**COMMISSIONER KING:** Of course, yes.

**MR DANGERFIELD:** I think that's a challenge. On airport infrastructure  
10 is usually one set of assets are built, to provide efficiency and practicality and so if that makes sense. Off airport, I think some of the consultative forums can be helpful, although when there's multiple supply routes to the airport, it's always a little bit unclear as to how you know, one party's trucking, there might be multiple pipelines, there's multiple import  
15 terminals. While it might be obvious that more import tankage say is required in a location, I think that's pretty obvious to (indistinct). The caveat is then how do you - who makes that investment and on what terms and if it's multiple people owning facilities, who puts up the money and whose, or what throughput goes through each facility. In that context, the  
20 different infrastructure owners are perhaps competitors and can't really, those things can't be co-ordinated, in that sense.

**COMMISSIONER KING:** Okay. Could I - - -

**MR DANGERFIELD:** Having some level of co-ordination with industry  
25 though can be useful I think, in Melbourne and Sydney, examples over time at specific points in time, it made sense.

**COMMISSIONER KING:** Okay.

**MR DANGERFIELD:** Arguably, similar outcomes could have or should  
30 have been achieved without them.

**COMMISSIONER KING:** All right. Could I ask - - -

**MR DANGERFIELD:** I think the other observation I would make is,  
35 I think Brisbane is an interesting example of where - there's multiple import terminals, multiple pipelines and significant investment has been made on and off airport over the last number of years and the significant reason for that is servicing of tenure on airport and good engagement by the joint  
40 venture of the fuel infrastructure, provided it's with the airport and has provided the certainty for off airport infrastructure, parties have invested in tankages with their joint venture partner build a new pipeline to the airport. So we actually see in that case now - where there's certainty each of the  
45 different parties make their own decisions on investments and actually

(indistinct) it's a good infrastructure good reliability of supply and, we believe, quite efficient fuel pricing as well.

5 **COMMISSIONER KING:** I wanted to ask you a bit about the bio jet fuel trial in Brisbane. Now, firstly I understand that bio jet has a much denser molecular structure than traditional Jet A1. I don't know if you can comment on that but a) could you talk us through the trial? How it worked, what the lessons from it were and what do you posit the future of bio jet fuel over time?

10 **MR DANGERFIELD:** Yes, so we worked with one of our customers to trial putting a bio jet product through our Brisbane supply chain and we were approached by that customer Virgin and we worked with them to put that product through our tankage at our Lytton refinery, through our pipeline and off airport terminal arrangements and then by pipeline into the airport. I think we worked collaboratively with the other joint venture participants to ensure that was achieved.

20 The particular bio jet that was trialled at the time wasn't compatible with both industry standards, however the other infrastructure provider owners at the Brisbane JUHI worked cooperatively to enable us to trial that and subsequently, there's been some changes to standard since then but it's been done a number of times quite easily and efficiently. But I think we've demonstrated proof of concept, it can be safely and effectively done and it's open for people to do for fuel suppliers to do that in the future. I think it's quite likely we might just see more of that both in Brisbane and elsewhere around the country and the world.

30 **COMMISSIONER KING:** And, of course, at the moment it will just be mixed product. Is that correct? Because obviously the planes are not just filling up on bio jet I assume, it's just mixed?

35 **MR DANGERFIELD:** So what we put in there, we mix it with regular jet fuel and it's transferred through the supply chain, I think it comingled at the airport and, indeed, passes through the fuel supply going to all planes filling up during that period.

40 **COMMISSIONER KING:** In our draft report we recommended a number of options for reform. We've spoken of a couple of them, like the open access. One of them - and I just wanted to see what you thought about this and I assume you wouldn't like it, but I want your thoughts on it about the implications of it - would be recommending the Minister for Infrastructure apply to NCC for a recommendation to declare jet fuel infrastructure services or introducing an industry-specific access regime.

So clearly that has costs and benefits and implications. Could you give us your thoughts about that?

5 **MR DANGERFIELD:** I'm just looking through the copy of the report. Which recommendation was that one?

**COMMISSIONER KING:** I think it was near 8.1, so let me try and find it for you.

10 **COMMISSIONER LINDWALL:** It may actually have been in the text I think.

**COMMISSIONER KING:** Yes, it was in the text rather than a formal finding or a recommendation.

15 **MR DANGERFIELD:** Yes.

**COMMISSIONER LINDWALL:** It's on page 265, 266 or thereabouts. If you've got nothing to say about it that's fine. It's just if you had any thoughts about that declaration process. I mean Stephen can talk more coherently about that type of thing than I can.

20 **MR DANGERFIELD:** So, I think there's a whole range of access regimes that could, you know, could be put in place. I think we're comfortable with the current ones, and are supportive of the NCC findings from, I think it was 2011.

**COMMISSIONER LINDWALL:** So that was presumably where Sydney airport JUHI wasn't declared.

30 **MR DANGERFIELD:** Correct.

**COMMISSIONER KING:** Yes.

35 **COMMISSIONER LINDWALL:** Okay. Just on - - -

40 **MR DANGERFIELD:** I think that was ours at the time. I think what we put forward was, we thought it was quite an efficient model that is delivered, and we're still of that view, probably added, per my opening remark and my comments earlier, that we see there is a trend towards the more open access models, but we think industry together with airports is progressing down that path. And that's, I think, some would say that's a welcome addition to the industry.

5 **COMMISSIONER LINDWALL:** So, a couple of bits where we sort of feel like we've got holes in our information, first, the equity buy-in approach to access. So, for example, I understand that's what operates at Sydney Airport, or has operated at Sydney Airport, and again, we get different views put across from access seekers, saying it's overpriced, from participants in the JUHI saying, "No, no, it's a - it's completely reasonable." Either here or in further submissions to us, are you able to provide us more information in exactly how the equity buy in works? And in particular, what I'm interested in is how the value of the equity is measured.

10 So, is it done on some sort of historic cost of the equity, is it done on some sort of re-evaluation? If it is done on a re-evaluation, is it - does the re-evaluation include the risk of - of the lease, there being a buy back, for example, when the lease expires? Because again, this feeds back to everyone saying, "Well, this uncertainty about the end of the lease," but on an equity buy in, that shouldn't matter, because it should - that uncertainty should be built into the value of the equity. So, are you able to help me there? You know, and as I said, either here or in further submissions, just to understand that?

20 **MR DANGERFIELD:** I probably can't go into any specifics here. I think the - the challenge people have is, depending on, you know, the arrangement might be different across different - specific arrangements, equity buy in might be different across locations, but even following a - you know, a replacement cost less fair wear and tear or a DORC model or something like that that might be - you know, some models that might be talked about. That might be the value of the equity, and a fair value of a point in time. I guess, how that plays in over - over tenure, and the - you know, five, 10, 20 years on is quite important.

30 **COMMISSIONER LINDWALL:** Yes. Yes. So, if you're able to provide further information to us, and I realise this is a sensitive area, so - but if you can provide further information, if some parts of that need to be redacted - I mean, as much public as possible is what we prefer. But, because it is an area where we just don't understand. We just haven't got the information to be able to understand exactly what's happening there. So, for example, if it's a depreciated optimised replacement cost, so a DORC as you mentioned, would need to understand how that fits in with the termination of the lease, or potential termination. So, more details on that would be fantastic.

40 **MR DANGERFIELD:** Obviously, if you make an investment with five years to go, and you make a \$10 million investment in an asset that's going to last for 30 years, I guess the challenge is, how do you - yes.

45 **COMMISSIONER LINDWALL:** Yes. I understand.

**MR DANGERFIELD:** Get a business case to put in - put in the investment at that point, and then if someone wants to enter between there and when the lease terminates, what's the right buy in price, and what happens - what's going to happen at the end of the lease. I think they're things that people struggle with, both in the initial investment, people who may wish to buy in as equity participants, when there's only a short period to go before the end of the lease, and where there's significant uncertainty on how airports with leases to go for the next period, are all - or what the residual value of the assets might be, or liabilities that might crystallise at the end of the lease, they're all quite important considerations.

**COMMISSIONER LINDWALL:** Yes. I agree completely. It's more helping us - it's helping us reconcile the fact that (indistinct) seem to view it as overpriced, and (indistinct) participants say no, it's not. It's purely to answer that question.

**MR DANGERFIELD:** Well, the participants have made significant capital investment over prior years. Obviously, they don't wish to sell their share of their assets and be diluted at less than for a fair number. But of course, trying to - it seems like part of the tension is trying to find what is a reasonable price.

**COMMISSIONER KING:** Different parties may have different views of what is fair.

**MR DANGERFIELD:** That's true, it's a good observation. At least in one location, an airline bought in and found that that was acceptable. So it can and does happen. I think there was a comment earlier from (indistinct) Paul. You asked around how people - what happens when people would buy in. It possible both for an equity participant to sell their share, so sometimes that would happen - or, if companies merge, there might be - equity shares might be combined. Alternatively, when a new entrant comes into a joint venture, commonly the existing equity holders would be diluted. And so if you're being diluted of your equity share, getting a fair turn on that is important.

**COMMISSIONER KING:** Yes. Can I just turn to another bit of information, and apologies if we've already got this from Caltex - I can't remember what we've got exactly from whom, and I discussed this briefly with Viva before as well - information on churn of customers. So how often you find you gain and lose customers, where you gain customers, where you lose customers; understand the commercial sensitivity of that.

And we don't need to know the names of customers; we don't even need to know the names of airports, but just understanding – the claims are made, this is a competitive, dynamic industry, and churn of customers is what we would expect to see in such an industry, and making sure we've got that information from all of the major participants I think is important. So if you've already provided that, apologies for bringing it up again. But if you haven't got it, we'd be very keen to get that information in an appropriate form.

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10 **MR DANGERFIELD:** I'm not sure whether we've provided anything previously, but I can say there's significant churn of customers, and customers are regularly both renewed – new customers won and customers lost as they move to other – to our competitors. That happens on a very regular basis, that customers churn between suppliers. The fact that for the airlines, there's practically not much to do. People will still have established assets and into-plane services. It can happen – usually airlines churn at very short notice. It's not uncommon for airlines to change a fuel supplier, and that fuel supplier changes at the end of the month.

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20 **COMMISSIONER KING:** Yes, so just making sure we've got the full data on that. It's going to be very helpful from our perspective. Statements about churn are helpful, but the data, of course – in an appropriate form, because it is commercially sensitive – but getting that in an appropriate form I think would be valuable. Last part from me. We had different views on fuel throughput levies. It has been put to us that these are simply opportunistic prices, they're opportunistic fees put in place by airports. They're simply using the refuellers as a backdoor way of getting an illegitimate price increase from the airlines, and that these are opportunistic.

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30 For example, they're introduced and potentially changed at the whim of the airport. The alternative view that has been put to us is that fuel throughput levies are explicitly part of the contract with JUHIs, that it's simply another way of charging the JUHIs, that it could be a per-litre charge that was just directly in the JUHI contract, and calling it a fuel throughput levy, everyone is getting excited about the name, not about the content. From Caltex's perspective, which, if either, of those views that's been put to us is more correct?

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40 **MR DANGERFIELD:** So, across airports that I'm aware of, there's – some airports have the cent per litre fuel throughput levy, or sometimes it goes by another name, like a license fee or something. Some airports have a fixed annual charge that's quite significant. It does a similar thing. It's not for leases of the land; it's just an arbitrary fixed fee. So there's a couple of models. Some of the other airports I think in their submissions have confirmed they did not have such a fee.

I think I've said in my – at the prior hearing, I think we would generally subscribe to the IATA principle that these should be for services provided, and that would still be our view. I think in one of the submissions, there was some commentary around whether it reflected other risks and things that were taken on by an airport, in which case, I guess, if that was a fair and acceptable argument, the question would be on, what's the right quantum?

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10 **COMMISSIONER KING:** So would you view a - - -

**MR DANGERFIELD:** So if there is risk being taken by a party, having a fair return is reasonable, and the question becomes, what is that fair and reasonable level?

15 **COMMISSIONER KING:** As you noted, it has been put to us by the airports that they're taking on some passenger risk, or I guess some fuel risk, by having a throughput charge. Do you think that is a reasonable argument? Is that actually risk sharing? And from Caltex's perspective, do they want to share that risk, if it exists, with the airport?

20 **MR DANGERFIELD:** So there's I guess lots of views of what the different risks might be. Interestingly, there's a range of different views from different airports. Generally, our view is, it would be appropriate to pay a lease for the premises where the tankage is located, and any other fees should be for a service provided, or genuinely a risk taken on. But it's not always clear as to how that risk is determined, and is it properly quantified. That's probably all I can comment on.

25 **COMMISSIONER KING:** Are you aware of any fuel throughput levies or equivalent cent-per-litre charges that have been either increased, put on, established, decreased, removed, that haven't been connected with JUHI lease negotiations?

30 **MR DANGERFIELD:** The ones I'm aware of would usually be incorporated in a lease or a license. If they weren't in such a lease or a license, I don't know how they would be contractually imposed. So unless it's part of some contractual obligation, I'm not quite sure how it would be imposed and charged.

40 **COMMISSIONER KING:** I'm just thinking back to - - -

**MR DANGERFIELD:** So that's usually where they would be specified.

5 **COMMISSIONER KING:** I'm just thinking back to – I think the original throughput levy was by Brisbane Airport, about the day after it got privatised. The fuel throughput levy wasn't part of the price cap. I don't know contractually how they put it in place, but it would be an interesting coincidence if that just happened to also be with the JUHI renegotiation. But it may be; I'm not saying it wasn't. I don't know.

10 **MR DANGERFIELD:** Some leases may have a provision for the airport to charge a throughput levy, and even if, at the date of commencement of a lease, there's no fee, there may be – some leases would have in them the ability for an airport to do that, at which point, if they exercise that right, well, then, that would happen.

15 **COMMISSIONER KING:** Thank you, we'll - - -

**MR DANGERFIELD:** Other arrangements – they would be specified what that schedule of increases would be. What dates.

20 **COMMISSIONER LINDWALL:** Okay, thank you very much for speaking with us today, Rohan. I think that's been very helpful and I hope that you have a great weekend.

**MR DANGERFIELD:** Excellent, thank you. Have a great day.

25 **COMMISSIONER LINDWALL:** Thanks Rohan.

**COMMISSIONER LINDWALL:** Would you mind just introducing yourself and give an opening statement?

30 **MS ARBLASTER:** Yes, I would like to do that, thank you. First of all, my name is Margaret Arblaster and until 2010 I was a senior manager at the ACCC. In terms of my experience, it dates back to the early 90s when immediately after the deregulation of airlines, when I was working at the PSA and I think one of the first responsibilities I had there was monitoring  
35 airfares, and my experience followed through the FAC period leading the inquiry into the FAC, the introduction of price caps and monitoring to about 2008.

40 I am here today because I am concerned that the PC draft report has not addressed some important issues I have raised in relation to economic regulation of airport services in my advice attached to the A4ANZ submission.

45 I would just like to note that I've raised some similar issues in other contexts, which have similarly been ignored by the PC in the past and also



were ignored by the Harper review competition policy. The arguments I have put in my submissions and in published research papers, have been factually based and I am not aware of any responses that have either disputed or countered arguments that I have made in the past.

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I made a submission to the PC draft inquiry in 2011 and that was particularly focused on the credibility of a threat of further regulation, and I made two submissions to the Harper review and they were focused on the prices surveillance provisions, Part VIIA of the Competition and Consumer Act.

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My submission on the draft report has addressed an important aspect, particularly the approach to economic regulation of aeronautical services, and it is generally described as periodic review and threat of regulation including by comments by Dr Harry Bush.

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As a general comment I feel the PC generally takes a fairly abstract and conceptual sort of approach, and I don't think there's sufficient attention given to institutional arrangements for economic regulation and the context in which they operate. Further, the actual experience with the current policy framework, doesn't seem to be given enough attention in my view.

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In assessing economic regulation, it is important to bear in mind that economic regulation – as Stephen, of course well knows – appropriately operates in legal and institutional frameworks, and the foundation of the current framework is based primarily on Part VIIA of the Competition and Consumer Act, but it is also supported by regulations in the Airports Act, of course.

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Now, as I have sort of said in my submissions, the Part VIIA framework was designed in a completely different era with different objects to the one used by economic regulation today, and it has been relatively unchanged since that time. The application of prices surveillance provisions to complex monopoly pricing issues in the 2000s, essentially involved the development of work around arrangements including through the development of operational procedures in the early 2000s to expand the time for consideration of proposed prices beyond the statutory period. It is not best practice regulation.

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Price monitoring was incorporated into competition policy legislation in 1995 which formalised a function being applied to oligopolistic industries like domestic airfares and industries where there were concerns about inflation and price levels. This provision was applied to monopoly infrastructure for the first time in 2002. It was not designed for the purpose of economic regulation of long-lived privatised infrastructure assets, such

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as airports. Specifically the provisions give the ACCC the power to monitor costs, prices and profits when directed to do so by the Minister. It is not yet established that publically reporting these three indicators of firm performance on an annual basis, is a suitable regulatory approach for long-lived monopoly infrastructure, especially without a credible threat for stronger regulatory action.

The current framework does not have a credible threat for strong regulation if a review finds that market power has been used. I did not think the proposals in the draft report have provided a credible threat either to support the light-handed monitoring framework and this is common with the PC's recommendations related to credible threat for stronger regulation of airports in 2007 and 2011.

In the 2019 draft report, the PC opposes increased information provisions, in addition to the existing regulatory measures currently available. Increased information provision could potentially increase the probability that the use of market power can be identified, however PC still primarily relies on Part VIIA of the prices surveillance provisions in the Competition and Consumer Act as the stronger regulatory intervention if regulation is considered to be warranted.

I have argued in my submission on the draft report and in my advice incorporated in the A4ANZ submission, that price controls through the prices surveillance provision under the Act, are not suitable to apply to privatised airports. They would be an unsuitable and ineffective response to the use of market power.

There are key issues associated with introducing prices surveillance and I have gone through them in a number of context including that – you know, they are voluntary and only relate to price increases, and the industry doesn't want them, so why would government apply something that either party wouldn't want, and another thing is, the wording of the prices surveillance provisions is difficult from a legal point of view and the directions that impose price caps were redrafted a number of times.

Outside the prices surveillance provisions, there's the suggestion that – sorry, price inquiry as Stephen would know, is it can be an extremely resource intensive exercise, and this was particularly the case for the petrol inquiry in 2007. And further, it is difficult to see what a prices inquiry would achieve in their current environment with the PC having reviewed every five years.

Outside the prices surveillance provisions, there is the suggestion that a stronger regulatory approach could be through the Minister invoking a

5 declarations process under Part IIIA. However, this is another uncertain action, presumably the NCC would first have to make an assessment under the declaration criteria before the minister made a decision and as experience has shown, these declaration procedures are protracted, costly and uncertain.

10 In relation to negotiate-arbitrate regulations in the PC's draft report, I think there are points that have not been given sufficient attention or overlooked. To date there's no evidence that the Part IIIA legislative provisions which have been operating for over 20 years, have been used lightly by the parties involved. Arbitrations are rare and I understand that this is in common generally with dispute resolution processes. People don't, sort of, generally leap into them, they are fairly cautious before they – my understanding is – before they use them, and the approach adopted by the NCC and the ACCC 15 in the cases that have been dealt with to date, under access in context of airports has generally been to narrow rather than broaden the scope of the assessments under Part IIIA.

20 Negotiate-arbitrate is a flexible approach and is scalable to suit the circumstances of particular cases. I don't think it's necessarily a disproportionate response to a situation. The approach adopted for the arbitration of the Sydney Water dispute involved minimal use of legal and economic consulting resources, for example, the access seeker in this case was quite a small party, and the process involved – which hopefully Stephen agrees – was a fairly efficient process in terms of the resources consumed 25 in the time period which it was carried out.

30 **COMMISSIONER LINDWALL:** I think you have the two Commissioners involved in the only ever - - -

**MS ARBLASTER:** Yes, I wouldn't disagree - - -

**COMMISSIONER LINDWALL:** - - - arbitration in the room so.

35 **MS ARBLASTER:** That's right. And other parties can join in – in terms of an arbitration, other parties can join an arbitration so to give wider context to an issue being considered under arbitration, and if you look at the Sydney Water case the arbitration did consider the legislative framework that was applicable in New South Wales so it wasn't narrowly confined, and 40 there are appeals provisions in relation to an arbitration so if a party felt that the ACCC, if it was doing the arbitration, got it wrong, there is scope for review. Some protection.

45 And I think another thing that is important is that arbitrations are designed to deal with quite a wide variety of circumstances, not just price, and some

of the instances where people have sought to use an arbitration provision in an airport context, haven't just been related to price.

5 In conclusion, I would just like to say that based on my experience and research, I think there are three elements that are important related to the effect of a light-handed approach to regulation in the case where an airport might have significant market power.

10 One is the degree of transparency under the regulatory approach. The other is that there's a credible threat for strong regulatory measure if poor performance is identified, and the third is that regulatory compliance administrative costs associated with the approach used are fairly minimal or not onerous.

15 If you look at the PC's proposals in the draft report in relation to light-handed regulation, they potentially increase the degree of transparency of airport performance. They do not provide a credible threat of a stronger regulatory action in my view, and it could – some have argued that the PC draft report could have actually weakened the threat of stronger regulation, and they also increase the compliance, the administrative costs of the light-  
20 handed regime.

25 So there are costs and benefits associated with what the PC is proposing, and I think that the PC should re-examine its proposals in relation to light-handed regulation that are in the draft report, and I am hoping that you will take a closer look at the institution and legal framework of which the current framework for economic regulation of airports operates in, and also experience.

30 **COMMISSIONER LINDWALL:** Thank you, Margaret. I might start and then handover to Stephen. This issue about the lack of a credible threat, obviously we've tried to outline the types of analysis that would lead us to recommend to the government for a higher level of regulation which could be negotiate-arbitrate, it could be a price cap, it could be a number of other  
35 things. We did mention Part VIIA, but I don't think we hung our hats on that and I take your view about the weaknesses of Part VIIA. I mean, if you took our report if we'd removed entirely Part VIIA from it, would not the credible threats be there for you, because I'm saying that effectively the PC, if it found, and it might find in the final report, that there was an exercise in  
40 market power would recommend - - -

**MS ARBLASTER:** Would it recommend – sorry.

45 **COMMISSIONER LINDWALL:** Would recommend increased regulation, we haven't articulated which form yet.

**MS ARBLASTER:** Well, I think that's the problem. I mean, there is no articulation that – of a direct declaration – sorry, deemed declaration for certain airport services. That was strongly - - -

5

**COMMISSIONER LINDWALL:** So you think it should be more articulated is the - - -

**MS ARBLASTER:** Well, it should be and I think that the recommendation that the minister could then ask the NCC to go through a declaration process is very distant and uncertain.

10

**COMMISSIONER LINDWALL:** Could I ask one other question before I hand over to Stephen?

15

**MS ARBLASTER:** Yes.

**COMMISSIONER LINDWALL:** You have criticised Part VIIA as being out of date and this is more a general point rather than for this report. Should it be repealed or can it be saved? Is there a way of reforming it to make it more useful?

20

**MS ARBLASTER:** Years ago, I was aware that there was some constitutional difficulties the Commonwealth has in relation to pricing, but I'm not a lawyer and I am not sure whether that is still the case. At the moment Part VIIA – well, apart from airports – the price surveillance provisions just apply to Airservices Australia which is a government owned corporation, and I think through the Minister's involvement has incentive to sort of comply with Part VIIA.

25

30

And similarly, Australia Post letters – well, letters are almost a dying industry, I think you could say, and also Australia Post is a government corporation, they are not a privatised company. But I mean the PC was strongly opposed to the airport specific access regime in 2002, and I didn't see anything in this current draft report that suggested that you would support that again.

35

**COMMISSIONER LINDWALL:** I've got one more question before – some people will say that because this is the fourth PC inquiry, if we recommend the same things as we did in our draft, that the credible threat is reduced because of that. You agree with that, do you?

40

**MS ARBLASTER:** I think so.

5 **COMMISSIONER LINDWALL:** On the other hand is it not, could it not be said that it is an efficient outcome and it is working because the analysis that we had in our draft was that the market power was not being exercised. Couldn't that not be said that the credible threat has been working because they haven't been exercised in market power if we take out - - -

10 **MS ARBLASTER:** Well, I really don't want to get into the assessment of your market power, but just from what I understand – I mean, a lot of it is generally reliant on sort of price benchmarking prices.

**COMMISSIONER LINDWALL:** Yes, yes.

15 **MS ARBLASTER:** And I am aware – I mean, there are a lot of people who are a lot more expert in benchmarking than I am. I've been to quite a few of the ATRS's conferences, and I have heard, Tae Oum, who is present of the ATRS actually say, you know, it is designed to assess operational efficiency. Whenever the results are presented each year at the conferences they are presented on the basis of regions. They are not – and the awards are given by regions. They are not presented across the board and I've never  
20 heard it claimed that they're an appropriate tool for assessing airport market power. So, you know, I just have some doubts about that but because it's not my area of expertise, - - -

25 **COMMISSIONER LINDWALL:** No, that's fine.

**MS ARBLASTER:** I just wouldn't want to get into that, yes.

30 **COMMISSIONER KING:** Sort of a follow-on from that, there is obviously disagreement in this area about whether there has or has not been an exercise of market power by the airports. I think the representative of IATA yesterday says, "The process is, you know, find out if there's a problem then if there's a problem, look at the solutions". So I'm wondering your perspective on that. So, let's say that, you know, clearly if the PC determines that there has been exercise of market power against the  
35 consumer interests or against community interests in our final report, we would be addressing what needs to be done to, you know, what baseball bat needs to be brought out, for want of a better word.

40 **MS ARBLASTER:** Yes, I mean that's what you should do, yes.

**COMMISSIONER KING:** But if in our final report we have the conclusion there has not been or is there no evidence that there is an exercise of market power to the detriment of the community, why would we need to go any further on that? So you're talking about credible threats. If there isn't  
45 a problem, why would we want to then go down and explore and say, 'Ah

but if there is a problem which we haven't seen, then this should be the solution'. Can you expand on that?

5 **MS ARBLASTER:** One is, I think - well, it depends on the adequacy of the assessment and, you know, what your - - -

**COMMISSIONER KING:** Well, let's assume we're competent and it's an adequate assessment.

10 **MS ARBLASTER:** I mean, I don't disagree you are not competent people but, you know, it's just that the assessments that have been made in the past have been very light. And, you know, I think it was the 2011 reports that you have said, "Oh, you know, based on a comparison with other airports, they don't seem to be all that out of alignment" but when some - I mean, I'm  
15 aware of other people like the Grattan Institute study and that, you know, and other work that, you know, (indistinct).

**COMMISSIONER KING:** They were looking across the entire airport (indistinct).

20 **MS ARBLASTER:** Yes, who have got sort of different impressions.

**COMMISSIONER KING:** Yes, but if we find in our report - - -

25 **MS ARBLASTER:** Okay, assuming you do find but I mean I think there still has - I mean, the idea of light-handed regulation is that to have the incentive effect you need to be, I would have thought it was reasonable to expect that, you know, if you don't do what - the performance isn't consistent with, you know, reasonable competitive efficient outcome, that  
30 there would be some penalty and - - -

**COMMISSIONER KING:** Yes, but wouldn't we not want to be too precise about - well, it is about the company working if we find that there is - if our evaluation, and you can criticise our evaluation, but "if" our  
35 evaluation in the final report is there hasn't been an exercise of market power to the detriment of the community, doesn't that say, "Well, for whatever reason and despite differences of views and whether we need a bigger or a different baseball bat, that doesn't need to be addressed because we haven't found the problem."

40 I mean, it seems to me that there's a lot of debate here about solutions in search of a problem. The people that are saying, "Ah, well we've decided there's an exercise of market power so here's our solution", our draft report says, "We don't see that" and so we see all these solutions out there saying,  
45 "Oh, if there was a problem please choose us, please choose us" and with

all due respect you're another person who says, "If there's a problem, please choose my solution".

5 **MS ARBLASTER:** Well, if you'd like to compare with price cap regulation, price cap regulation is said to work because there's an incentive, you know, and the incentive with a price cap is that if you can decrease your costs more than was the forecast with the underlying of price cap, you could increase your probability so there's an incentive for (indistinct) in theory, you know, to be efficient.

10 **COMMISSIONER KING:** Yes.

15 **MS ARBLASTER:** Now, if you assume that you found that the airports were misusing their market power and you assume that the assessment, you know, is valid and - where is the incentive going forward for continued - you know, like you have an incentive with a price cap going forward because you can increase your profitability but there's no - - -

20 **COMMISSIONER KING:** Margaret, with all due respect aren't you falling into the economist's trap of, "It seems to work in practice but it doesn't work in theory, therefore we have a problem"? I mean, if we say in the 17 years since 2002 and the numerous and you can - and I am working on the basis that we - wherever we end up, and I'm not saying we "will" end up here but it is a possibility that the PC will be competent and they will reach this conclusion and after 17 years I do worry about falling into this trap of saying, "Damn, we've got something that seems to be working but in theory there's a problem so we need a solution".

30 **MS ARBLASTER:** I mean, there's also the ACCC reports which have, based on their assessment, identifying problems going back into (indistinct) which are not resolved. I mean, you've got issues that are not resolved.

**COMMISSIONER KING:** So are you saying that simply, "If the PC - - -

35 **MS ARBLASTER:** And the other thing is that price is just one aspect of performance. I mean, it's an important aspect.

40 **COMMISSIONER LINDWALL:** But isn't it only contractual between airlines and airports, that's the way it's working at the moment, they negotiate and they come with an outcome and they come up with service level agreements, they come up with a price, they come up with a plan of infrastructure investment and so on, yes again Stephen is exactly right. We don't know where at this stage where we'll end up in the final report. I mean, we have to logically take the evidence before us but if we do end up saying, as we did in the draft, that there has not been an exercise of market power,



I don't see where there's a problem with the actual airport and airline negotiations then because that would be our finding.

5 **MS ARBLASTER:** Well, it depends on, you know - well, I suppose your assessment of the negotiations and whether or not they are, you know, how they compare with other peoples' assessments. I mean, the airports themselves are in one.

10 **COMMISSIONER KING:** We can't second-guess negotiations. I mean, they're commercial negotiations between two parties who know a hell of a lot more about their business than we do. We're just seeing whether there's any evidence that would point to them using their market power to some detriment and there's a lot of reasons, well there are some reasons, why they might not and there's debate about countervailing power, there's debates  
15 about different business lines and so on.

**MS ARBLASTER:** And the airlines aren't the only users - - -

20 **COMMISSIONER KING:** Correct, correct.

**MS ARBLASTER:** - - - which is, you know, another point. But, I mean, it just would seem odd to me that, you know, if you've got sort of all this other information out there, like the ACCC who have been monitoring year in and year out, and raising problems and concerns.

25 **COMMISSIONER KING:** Yes, but we've addressed that. We've looked at the monitoring reports and likely there's a strong principal here that a regulator should not be trying to dictate policy, that's the PC is a separate body to the ACCC. If the ACCC was to determine whether there should be  
30 more regulation of airports, they would say yes because as far as they can see the ACCC - - -

**COMMISSIONER LINDWALL:** (Indistinct) put it in their submissions saying that, so.

35 **COMMISSIONER KING:** They regulate just the courses of monopoly. Our view, the PC's view has been always that monopoly per se is not sufficient to regulate. You need to have the proof that there's an exercise of market power.

40 **MS ARBLASTER:** But if you've - I mean, if you come to that view and, I mean, it has to be - there are a lot of dimensions to performance and you've come to that view with a sound, well, basis on every aspect?

45 **COMMISSIONER KING:** Well, sorry - - -

5 **MS ARBLASTER:** I mean, if you do come to that view, I mean - well, it's a question of - well, hopefully - well, maybe people would accept that but it will still be the issue of what it would be going forward and, "Have you evaluated right back to 2002", you know, has it always been the case?

**COMMISSIONER KING:** The ACCC hasn't looked at every aspect when it said there are problems.

10 **MS ARBLASTER:** No.

**COMMISSIONER KING:** I mean, are you saying that the onus of proof here should be that, "We assume there's a problem unless it is proven otherwise"?

15 **MS ARBLASTER:** What I'm saying is that with light-handed regulatory frameworks, from my research, the general properties of them is that there is a threat - there is an incentive embedded in them. When they're applied to sort of strong monopolies, there is an incentive for good performance. Like with a price cap there is - the way the price cap is designed, there is an incentive for good performance if there's not a credible threat of a stronger regulatory framework, then the framework does not have any incentive for - or there's no incentive effect for good performance. And, you know, the proposals about regulation is just vague and we've been through the Part VIIA approach which, you know, is pretty weak and - - -

20 **COMMISSIONER LINDWALL:** Don't you trust the PC that if it says, as I've said in speeches, I'm sure Stephen has, and we've said it in our report, that if we found an exercise of market power, we would not hesitate in recommending more regulation.

25 **MS ARBLASTER:** But the PC has had a very consistent approach not only in relation to airports but also in relation to other regulatory measures. They've been totally opposed to any increased regulation so it's hard to sort of believe that the PC would recommend something like sort of a direct access arrangement, quite frankly.

30 **COMMISSIONER KING:** Are you familiar with the New Zealand approach to regulation by the way?

35 **MS ARBLASTER:** Yes, I am. Well, I mean, not the last couple of years I haven't been following it so much, but.

40 **COMMISSIONER KING:** But you'd be aware, it's not - it's light-handed, it's got some features that are different to Australia.

**MS ARBLASTER:** Yes.

**COMMISSIONER KING:** For example, there is a - - -

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**MS ARBLASTER:** Yes, has a lot of features different to Australia.

**COMMISSIONER KING:** - - - set rate of return but again, the Commerce Commission there analyses the performance of the airports, it puts forward a report but that report, very much like price monitoring, is not binding.

10

**MS ARBLASTER:** No.

**COMMISSIONER KING:** The airports can say, "Up yours, well do something else".

15

**MS ARBLASTER:** Well, except that the - sorry, go on. I shouldn't interrupt, go on.

**COMMISSIONER KING:** No, no. But I'm keen, and today we heard from the airline representatives for New Zealand airlines that operate out of New Zealand. They said they felt that there should be more, and I don't want to pretend that they said they were happy with regime, but the testimony before us was that that regime has seen a drop in the returns to the airports and has been effective so what's your view on the New Zealand regime?

20

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**MS ARBLASTER:** Well, my view is that the framework is quite different to what is here because there are credible alternatives that could be easily instigated if, you know, poor performance was identified and they are credible. I mean, for example - I mean, the legislation was passed in 1998 and there are a variety of different forms of price controls and they're far more modern than the prices surveillance provisions. There's also negotiate access regime in the range of regulatory tools that are available and the New Zealand Commerce Commission gets very detailed information, even more detailed and more based on economic principles that proposed in the PC draft report.

30

35

So the New Zealand Commerce Commission is in a position to identify whether airports are sort of creating excess profits. It also evaluates performance. It gets quite a number of different measures, not just profits, you know, innovation and things like that so I think it - - -

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**COMMISSIONER LINDWALL:** But it still hasn't recommended negotiate-arbitrate.

45

5 **MS ARBLASTER:** No, but Auckland Airport has - you know, it has identified that it's been able to do that because of the information it gets. Auckland Airport has actually sort of reduced its charges and I think there's Wellington Airport that is or has been identified as having some higher charges. But Wellington Airport, I understand, has also made some changes as well as a result of the assessments made by the New Zealand Commerce Commission.

10 **COMMISSIONER KING:** So just to understand how to then improve what you see our system as being forward - so we've said in our draft recommendations that we think there should be more information gathered and brought to the PC. Is it your view then - well, is it a step in the right direction? Does it not go far enough? Should we be saying, "No we need more information like New Zealand" or another jurisdiction. I just sort of  
15 wanted to understand, so is it an information problem that we've got here?

**MS ARBLASTER:** Well, I mean, information is one aspect and potentially, you know, your proposals can improve the transparency of  
20 airport performance over the current situation but look, as I understand, that they are still based sort of basically accounting sort of data and I know, for example, in New Zealand there was a lot of debate on some of that with elements of the information before it was actually implemented in the information disclosure regulation. And in relation to, for example, the 2001  
25 Sydney Airport price determination, there were a lot of elements of price there that were really quite contentious and had significant bearing on how you would assess the profitability of prices. I mean, airport land is one in particular. You know, it is fairly difficulty to value, or put an economic value on it and it was quite contentious.

30 So I think that, in terms of information, it is probably an improvement. What you would get as a result of the - I mean, you're still not proposing common methodologies? I'm not suggesting that that necessarily should be the approach but I'm saying that it's not clear that the information that  
35 ACCC would get, as a result of your proposals, is going to be sufficient to actually identify economic profits.

**COMMISSIONER KING:** All right. So we notice both the costs and benefits of our proposed extra information in our draft report. I assume it's  
40 your view that any information, you know, if we wanted more information and uniform across that, that would need to go through a cost benefit analysis.

45 **MS ARBLASTER:** Yes it would, yes.

**COMMISSIONER KING:** Okay.

5 **MS ARBLASTER:** So that's one element and the other element is what you do when you've got the information? You know, I mean, so you get the information and so - - -

**COMMISSIONER KING:** And also puts out a report - sorry, New Zealand Commerce Commission puts out a report.

10 **MS ARBLASTER:** They put out a report but they are backed - and they put out a report and they're in a position to do a (indistinct) because of the information they get, they can assess pretty accurately, you know, the performance of the airports more accurately than you'd be able to assess with the extra information proposed.

15 **COMMISSIONER KING:** So, I mean - - -

**MS ARBLASTER:** And then there is all the other credible alternatives that could be put in place if the New Zealand Commerce Commission identifies that - - -

**COMMISSIONER KING:** Such as - - -

25 **MS ARBLASTER:** Such as negotiate-arbitrate regulation.

**COMMISSIONER KING:** Or such as deemed declarations.

**MS ARBLASTER:** Such as that, yes.

30 **COMMISSIONER KING:** So that's an option that we would have if we found a problem in Australia? We could recommend that the airports be declared under, or effectively deemed declared, under Part IIIA; would that be appropriate for Australia?

35 **MS ARBLASTER:** It was applied, as you'd know, when the airports were first privatised and I think it worked effectively then.

**COMMISSIONER KING:** But they were under a price cap regulation rather than a - - -

40 **MS ARBLASTER:** Well, they were but there was also - well, Virgin, for example, applied to have coverage of that provision but the ACCC said, "Well, you've got a price cap so, you know, we won't do it".

45 **COMMISSIONER KING:** Okay.

5 **MS ARBLASTER:** I mean, that did restrict its application I agree but it was interesting that there were a number of other parties that actually used that provision at the time.

**COMMISSIONER KING:** Yes, but again coming down to credible threats; we have that credible threat.

10 **MS ARBLASTER:** Well, the question is: how credible is it when the PC has this very long history of being totally opposed to any - - -

**COMMISSIONER LINDWALL:** Different commissioners each time, it's not like it's the same person.

15 **COMMISSIONER KING:** And let's imagine that the reason is that the PC has had inadequate information: if we had the adequate information along the lines that you've suggested and we have, as we do now, the threat that if we find there's a problem we could recommend, for example - and I'm using deemed declaration as an example because I think you mentioned

20 deemed declaration in your introduction.

**MS ARBLASTER:** Yes.

**COMMISSIONER KING:** So we could recommend deemed declaration at the airports. So that strikes me that you're suggesting we improve the current system, not that - - -

25 **MS ARBLASTER:** Well, if you had the deemed declaration, that would improve the current - - -

30 **COMMISSIONER KING:** The threat of deemed declaration.

**MS ARBLASTER:** Yes. Well, I don't know - - -

35 **COMMISSIONER KING:** Do you believe that even in the absence of evidence of an abuse of market power, the airports should be deemed declared?

40 **MS ARBLASTER:** Well, I think what I've been saying is that it gets to the credibility of the assessment of the absence of the exercise of market power.

45 **COMMISSIONER KING:** No, no, as of today given your knowledge of expertise and your background in this area, is it your opinion that the airports should be deemed declared today?

5 **MS ARBLASTER:** Well, I can't see that it would be harmful for that to occur because of all the protections that are available under the Part IIIA provisions.

**COMMISSIONER KING:** Well, remember we're going passed a whole bunch of protections because we're not going through declaration. But you believe basically that - - -

10 **MS ARBLASTER:** Well, yes we've discussed the problem with - I mean, if declaration wasn't such a long costly and uncertain process, then maybe that's - - -

15 **COMMISSIONER KING:** Hang on, let's go back to that. Because of course the most recent example that I'm aware of with an airline, Tiger applied to have Melbourne Airport declared and the process was all so fast. The NCC didn't reach a decision before Melbourne and Tiger had done a deal so that doesn't seem to me to be an example of a failure of Part IIIA.

20 **MS ARBLASTER:** Well, that's one example but there are a lot of other examples that are.

**COMMISSIONER LINDWALL:** I think we'll have to finish.

25 **COMMISSIONER KING:** Okay. All right, we'll finish up.

**COMMISSIONER LINDWALL:** I think that Margaret would (indistinct). So thank you very much for speaking to us today.

30 **MS ARBLASTER:** Thank you very much.

**COMMISSIONER KING:** Thank you very much.

**MS ARBLASTER:** Thank you.

35 **COMMISSIONER LINDWALL:** Could I invite Peter Forsyth, Professor Peter Forsyth. How are you today, Peter?

40 **MR FORSYTH:** Fine, thank you.

**COMMISSIONER LINDWALL:** Good to see you. Peter, if you wouldn't mind introducing yourself and give any opening statements. By the way, the notes of your points of discussion. Do you want us to treat that as a public submission?

45

**MR FORSYTH:** I'd say whatever you - they are informal notes but if you think that they're useful - - -

5 **COMMISSIONER LINDWALL:** I think if you're happy for them to be treated like that, they'll be a public submission. It doesn't amplify, it just records.

**MR FORSYTH:** Okay, then.

10 **COMMISSIONER KING:** Yes, if you could just say your name for the transcript.

15 **MR FORSYTH:** Yes, I'm Peter Forsyth. I'm an Adjunct Professor at Monash University. Thank you very much for having me here. I have provided a few notes. They are fairly simple notes and they are rather going in a rather sort of different directions, in a sense, so it's not as though it's a sort of very specific approach to looking at whatever. So essentially there are six points which I highlight. There are a couple of other things that I could mention but depending on time and so forth. Okay, the first point  
20 was the rationale of light-handed regulation and this was made by way of a comment about the way things are going. The original idea of light-handed regulation, as I understood it, perhaps in the 2002 airport regulation report, was that light-handed regulation would improve efficiency and also investment.

25 Now, in the current report avoidance of excessive returns seems to be the main objective and so there seems to be something of a move from one to the other. Originally that light-handed regulation was all about keeping, you know, basically looking at productivity: if it's good, great. If it's not,  
30 there's a problem. Whereas now the emphasis is to be, "Is there market power being used?" Now, it could be a possibility. It might be that market power is being used. Let's say that prices are 10 per cent higher than they should be, okay. It still might be the case that productivity under this arrangement has been extremely good. Now, as it turns out the evidence on productivity,  
35 particularly over time, is fairly good. Now, there are some questions about the last few years, I've addressed that in my submission, but nonetheless (indistinct).

40 So I'm not saying that you should, you know, forget about how much basically whether prices are too high or low or everything else, but I'm just saying that that was something that was a real emphasis in the earlier approach and therefore is a question to what extent do you sort of really want to emphasise mainly (indistinct) about prices relative to costs.

45 **COMMISSIONER LINDWALL:** I hear you, yes.



**MR FORSYTH:** The second thing, the report seems to argue that there is little passthrough of charges to passengers because there is strong oligopoly in the airline industry. Now, let's take it that there is strong oligopoly in the airline industry, it's still perfectly possible that under that arrangement or situation there could be substantial passthrough. In other words, I'd like to see a bit of a model which justifies those sorts of statements. I think that the passthrough, whether you think whether it's very important or not, I'm not so sure that - you've tended to be very, shall I say, blasé about the scope for passthrough. Now, whether you think that's an important issue or not, I'm not commenting upon that. I'm just saying that you really need to justify that more perhaps with a simple model or whatever.

Now, that comes up to the next one; countervailing power. And again this is the same sort of issue that I think that the PC in its report has more or less said, "Well, okay. Here's the situation. We don't think there's much of a problem. Let's go on to the next issue." Now, in the case of countervailing power, it's still quite possible that airline passengers could be badly affected, let's say, if an airport is using its market power substantially.

Again, this is a matter that you do need to have a bit of a model to see what's actually going on. Now, this I think is a bit more important because it may well be that there are other benefits from aviation. It had been argued in certain cases there are wider economic benefits from aviation. Now, if that's the case, the use of market power could be more costly in terms of (indistinct) terms than people such as myself have argued and, I think, the PC has argued.

The next point is about monopoly and relocation rents at parking places. I really don't think the discussion of parking rents is very convincing. Now, if there is a low opportunity cost of land, low prices are efficient as long as there's no particular constraint no matter how convenient the actual car parks are. As long as you've got low opportunity costs of land, then low prices are in order.

Now, that means that there really needs to be some empirical assessment (indistinct) the opportunity costs of land in different airports. Now, I don't think that - well, in the case of say Sydney Airport, I see it's very built-up and the land value of Sydney Airport is around about, according to my calculations and other people's calculations, about \$10b around that area and so on.

So in other words Sydney, I think, could have a perfectly legitimate claim to say, "Look, the prices that we're charging reflect opportunity costs of our land". On the other hand Melbourne, is that really the case? I mean, when

5 you look at Melbourne it's a lot further out and there's quite a lot of land around and so on. Of course there are location rents in the inner areas of Melbourne parking but what about the outer areas. Now, I really don't think that the comparisons between Rod Laver Arena and all sorts of other places really are justified.

10 This is the sort of thing that airports claim, that they say, "Well, our airport is out in the sticks but in the city you'll pay an awful lot more for parking". That really doesn't cut it. You really have to get some sort of indicator of how - well, basically of the opportunity cost of that land and you have to do that with some sort of empirical work and I don't think that that's been done in the report. It basically says, "Well, we believe it is the case that they are high opportunity costs for the land". Well, that could well be the case in say Sydney but may not be the case in Melbourne.

15 Okay. (Indistinct) was talking about, and I have some notes on, the rationing price at Sydney Airport. Now, I think the issue of rationing prices will be a major one from now on and think it would be useful if the report could give some more guidance about the role prices may play. Now, there's some statements, they are somewhat vague such as on page 171.

20 The issues I think need to be analysed more thoroughly. Higher prices in a case of excess demand could be a very good walkway of rationing demand but there are other ways as well, there are slots. Then becomes the question, "How efficient are the slots?" and so that becomes (indistinct). Furthermore, and this is a more subtle point, airport prices as we start with embody a (indistinct) price structure. In other words, raising revenue to cover costs. But when you've got excess demand, that issue doesn't really come in anymore and you can have lower prices and so on.

25 And so all in all, particularly with (indistinct) pricing and so on and so forth, one shouldn't necessarily assume that if the airport is in high demand, then higher prices are the only way of achieving efficient ration (indistinct). There are other ways, and one really needs to go through them and discuss them and evaluate them, it's not to say that they could be a good way but slots have been used in lots of very busy places such as London and that seems to work quite well.

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35  
40 On that, I support the idea of a review of the Sydney slot management system but I think it's important to really have tradable slots then on the agenda because otherwise I wouldn't be surprised if there is a review, let's say, that the people who are involved in such a review are more, shall we say, administratively minded and basically tradable slots might be docked off the agenda and I think that that would be a real pity.

45

5 It's quite possible that the revised IATA system may also be bringing more regulations and also which might lower (indistinct). So I think you really need to spell out what you mean by, "You think it's a good idea to have that sort of review of slot management system and what issues it might look at and how it might address them (indistinct).

10 Finally, airport lease conditions: the discussion at page 287 is very brief. How much of a constraint on behaviour does the Commission really think these pose? Now, I must admit that I haven't even looked very much at these conditions but in the talk that Stephen gave last week, you did seem to put a lot of emphasis on that and that could well be the case that that could be a real constraint on behaviour.

15 If so, I think it really needs to be expanded a lot more because if it's going to be so critical, and it's only about less than half a page and it was almost actually tending to downplay that role so I think that that is - that was something that I hadn't really thought much about. I thought it was just some technical legal-type stuff and it wasn't very important but it could well be and so I - - -

20 **COMMISSIONER LINDWALL:** Well, thank you very much, Peter. I don't really have any questions apart from maybe on countervailing power because I think you've been very clear here about where we could improve our report in the final and areas that we should look at so I think the way I think about is that we'll go away and talk about some of these. We might come and talk to you some more if we need to clarify anything. I mean, in terms of countervailing power I guess my question would be, "Do you think that if an airline has countervailing power, does it act as a constraint on monopoly power?".

30 **MR FORSYTH:** It would be - yes, but that's not the end of the story.

**COMMISSIONER LINDWALL:** Yes, that's what I'm saying.

35 **MR FORSYTH:** You have to go further down - deep down (indistinct) and see what happens (indistinct).

40 **COMMISSIONER LINDWALL:** I understand where you're going there. All right, thank you.

45 **COMMISSIONER KING:** Okay, actually to, because that was one of the questions I had, so is the concern on countervailing power - so, you know, there's two starting models - the first year undergraduate models that you can think of with a chain of monopoly airport - let's for the sake of arguments say less than competitive downstream monopoly airlines and

then the passengers. So, you know, model 1 that you first give for  
undergraduates is airport sets a price, then that price gets marked up at the  
next stage and the customer ends up in complete strife and, you know, that's  
a terrible outcome for the customers. Their countervailing power would be  
5 that middle section pushing back on the airport and leading to a benefit for  
end users, so that's model 1.

Model 2 would be airport and airlines get together in a room, negotiate  
together, come up with a scheme to maximise joint profits, they fight about  
10 who's going to get what share, and the customer's, end users, end up facing  
essentially an integrated monopoly profit. Countervailing power there has  
no benefit to the customers because all it is is about rent sharing. When  
I read your point here, I thought that might be what you were getting at but  
I have to make sure.

15 **MR FORSYTH:** Yes, indeed you've put the words more effectively than  
I have so, I mean, that's one of the sort of things I was thinking about, yes.  
And I think in your discussion of it, I think that it would be nice to have  
some sort of simple modelling saying, "Okay, this effect could be possible,  
20 that effect could be possible".

**COMMISSIONER KING:** And thank you very much by the way for  
these points because there's a number of points here where I was reading  
through and my reaction "Oh if you've got that impression, we need to  
25 improve our exposition" because I thought, for example, on investment  
I thought we'd done quite a bit but it may be - you know, one of the issues  
when you're writing one of these things is you think, "Ah yes, we've got on  
top of that and here's the half page and we move on". For someone coming  
with fresh eyes and sort of saying, "Oh we've dismissed this quickly" so  
30 thank you very much for that.

**MR FORSYTH:** Yes.

**COMMISSIONER KING:** The other one I had was on the opportunity  
35 costs because that's really interesting because of course it's the opportunity  
costs to whom and let's focus on those inner car parks. We haven't really  
seen complaints about say the long term car parks and so on. It really tends  
to be those at terminal where people get quite upset and the opportunity cost  
I would have thought there is the opportunity cost to the airport. So if, for  
40 example, there was less terminal car parking at Melbourne Airport, we  
probably know what the next best use of that land is because they're already  
doing it. They have a great big hotel sitting there and so probably the  
opportunity cost is the potential for having a hotel on that site rather than  
having the car parking. Whereas you tend to say, "Well, the opportunity

cost would be farmland if it wasn't used for car parking" which isn't - it may have been an opportunity cost when the airport was built but is not today.

5 **MR FORSYTH:** Well, I think there's still farmland around. I think there's some - - -

**COMMISSIONER LINDWALL:** Well, because of the rules.

10 **MR FORSYTH:** Okay, I'm thinking about sort of the median area around the terminal, yes I think that that's very much what you said. On the other hand when you start going a little bit further, what is (indistinct) and so you would then look at the sorts of prices that they are charging, sort of middle to further distance, and they seem to be higher than other places very close by but it is just they're outside the airport area. Now, I think you'd have -  
15 well, you've have to check the actual data on that (indistinct) impression was. And so yet somewhat inconvenient car parking but some of it could be a lot more convenient. For example, I car park usually in a place that's very close to the terminal actually but, you know, there's a barrier there.

20 Now, that actually comes back to the Commission's point that's saying, "One thing that you need to - if you think that there is a bit of a problem in terms of market power being used, try to lessen it."

25 **COMMISSIONER LINDWALL:** Yes, (indistinct) of landside access, yes.

30 **MR FORSYTH:** And so looking at landside access, particularly at Melbourne Airport and so on, is that designed as it were to bolster the use of market power or can be used to lessen any degree of market power?

35 **COMMISSIONER KING:** Yes, and I think that's the approach that we've taken is that if there's a problem there, let's make sure that the competitive alternatives, such as off airport car parking, have the best possible chance to compete.

**MR FORSYTH:** Yes. May I give just a couple more sort of observations.

**COMMISSIONER LINDWALL:** Yes please, yes.

40 **MR FORSYTH:** One thing is that when you're measuring, when anyone's measuring, the use of market power and you look at rates of return in airports, I think it's important to recognise that a lot of airports are publicly owned and others are, if not publicly owned, they're not-for-profit organisations (indistinct) and - - -  
45

**COMMISSIONER LINDWALL:** Yes, councils (Indistinct).

**MR FORSYTH:** And you can't necessarily assume that they are maximising profits.

5

**COMMISSIONER LINDWALL:** No, that's right.

**MR FORSYTH:** So looking at different rates of return and saying, "Well, the Australian airports rates of return are higher than anywhere else", I think you really need to take that very much into consideration. Of course what you'd then do, you say, "Well, we need better data on costs, prices and rates of return" (indistinct) be a good idea and I think that that's where the ACCC is going as well. I think they would like to see more better data on trying to measure the actual rate of the economic profit on airports. And so that's, I think, something that - - -

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**COMMISSIONER LINDWALL:** I understand where you're going, yes.

**MR FORSYTH:** So don't read too much into what's going on. International comparisons, I think in this particular case have some real problems but I'm not saying they shouldn't ever do them, but yes.

20

**COMMISSIONER KING:** So just on that though, a lot of international comparison airports are also regulated so in a sense, do they provide - you know, if you're saying, "Well, how do our airports go compared to a regulated alternative?"

25

**MR FORSYTH:** Okay, you'd really need to have privatised, and genuinely privatised, airports to make a good comparison. But quite a lot of airports are in a sort of partly privatised situation, others are government owned, and also I don't consider that all airports that are "privatised" always maximise their profits.

30

**COMMISSIONER LINDWALL:** Correct, yes.

35

**MR FORSYTH:** Now, in my view I think Sydney is a good example of a profit maximising firm. I'm not so sure about others. I am very doubtful about Adelaide and I think also, in the case of Brisbane, which until recently was publicly owned until 2010, was owned by other firms that were publicly owned, that they necessarily have been right at the forefront of maximising profits and as a result maybe they've been very keen to invest, for example, in the new terminal and runway - well, in the case of the runway there doesn't seem to be a lot of congestion and yet the runway is due to open next year. It's quite a contrast with Sydney where they're quite

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slow in responding but I think are arguably optimal. Yes, so I think those were the points that I was going to make.

5 **COMMISSIONER LINDWALL:** Well, thank you very much for speaking to us, Peter.

**MR FORSYTH:** Just a comment on your discussion with Margaret.

10 **COMMISSIONER LINDWALL:** Yes.

**MR FORSYTH:** You say that if the system's working well, why change it, okay, but I think that there is another thing in terms of, "What about the future?" The next time that you guys will have a look at it will be in seven years' time. What about if over the next, you know, few years the airports really start pushing up their prices well above, let's say, costs, okay. What can we do there? So in other words I'm looking not just at the past, so far okay, in the future, next seven years, what is there?

20 If the various constraints are not as strong as you're suggesting, what happens, is there some role for some sort of negotiate-arbitrate sort of system which is put in place and I have been rather sceptical of that. I think now I'm beginning to think, "Well, maybe there could be some sort of backstops that doesn't necessarily get triggered very easily". It actually could be quite difficult to trigger but is there as something if the airports do start excessively pricing. So, in the future.

25 **COMMISSIONER LINDWALL:** (Indistinct) about that.

**MR FORSYTH:** And I don't want to have - well, I wouldn't suggest a very detailed and substantial - but something that actually has, you know, at least some sort of thing that needs to be - it's fairly difficult to trigger but if need be it can be triggered.

35 **COMMISSIONER LINDWALL:** Okay, well - - -

**MR FORSYTH:** One thing that I think you need to think about is that there's not just one form and level of negotiate-arbitrate, I think that it can be tighter or less tight, as you like, and that can be worth thinking about.

40 **COMMISSIONER LINDWALL:** All right, well thank you, Peter. I think we probably should move onto our next guest. We appreciate you coming along and we'll be in touch again, thank you.

45 **MR FORSYTH:** Good, okay, then. Yes, bye bye then.

**COMMISSIONER LINDWALL:** Could I invite Edmund Carew to come forward.

5 **MR CAREW:** Commissioners, I'll just organise myself if I could. Firstly just some housekeeping. Congratulations on your forthcoming 21st birthday in April as the PC so I've got you a carrot cake and some sticks to beat people like me with.

10 **COMMISSIONER LINDWALL:** Thank you. You know that we can't accept gifts though but that's all right.

15 **MR CAREW:** Well, indeed. You'll have to declare it on the register, Commissioners. Commissioners, the draft report that you've submitted for us is correct in some areas such as that there's high modal substitutability between Canberra and Sydney is one; I don't agree with the airlines on that and that's partly due to Qantas and Virgin's inability to run on time and their many cancellations.

20 However, overall the report is deficient and I was interested to see that on Monday in the Carlton Oration, a deceased gentleman, who I had the pleasure of knowing when he was a Federal member of Parliament because that's my background having worked for Federal and State MPs for 26 years until 2017, Jim Carlton was a great friend of the Industries Assistance Commission. He was pivotal in getting tariffs and quotas abolished, a great step that the PC can, you know, or its predecessors can take a lot of credit for. But Mr Moran at this Oration said:

30 *Community sentiment has swung away from the primacy of light touch regulation of markets. Instead, there is increasing acceptance of a larger role for government,*

Not a philosophical position I might historically come from having worked for the Liberal Party although I've never been a member of it:

35 *Including involvement in service delivery, more effective regulation and bolder policy initiatives. Australians want government to be active and collaborative players*

40 And then he said:

45 *There should be acknowledgement that the untested and supposed superiority of the private sector is actually an illusion cultivated by rent seekers monetising service delivery opportunities*



Commissioners, I want to give you one example of how over many years Melbourne Airport has neglected mass transit at the airport. This morning I went out to Melbourne Airport on the 7.54 Craigieburn line train from Southern Cross and with five minutes at Broadmeadows Station, I was  
5 actually at the airport in 53 minutes.

Now, admittedly that's a 15 minute frequency on the Route 901 SmartBus which I must say your researchers didn't even seem to be aware of, probably because Melbourne Airport hides it away in bay 17 of terminal 4's lower  
10 ground floor but my point simply is that people are being royally ripped off, the community's being royally ripped off by Melbourne Airport and it's not just on price.

It's on indicators such as when I went to Melbourne Airport this morning I saw terminal 4 and I noted about the lack of travelators in my submission of course and I think one or two others did as well and that's been the subject of media comment, but there's no canopies that extend, unlike say at Hawksburn or Camberwell railway stations done in 1910 by the Edwardians, you know, wonderful architectural heritage on our rail  
15 network.  
20

But at Melbourne Airport if you walk from, as I had to this morning taking eight minutes up to the Qantas terminal, much longer with luggage, you'll find no canopies there, no weather protection when it's raining, if in fact it  
25 ever rains again in Melbourne I'm not sure. So, look it's very disappointing, Commissioners, that your report has been put together without participation from Public Transport Victoria, the RACV, Professor Graham Currie from Monash Uni, and the Public Transport Users Association and nor have Sydney's airport train, Brisbane's Airtrain, Melbourne SkyBus, Transport of  
30 New South Wales, Queensland Transport, Trans Perth, Metro Adelaide, or Adelaide Metro as they're called, and so I'm (indistinct) to make a submission.

Yet many Victorians are concerned about high car parking charges and that's not an area of expertise for me but the route 901 SmartBus is and the  
35 history of this is that in September 2010 the initial airport bus stop was in, what I term "Antarctica", opposite the freight handling area south of terminal 3, a kilometre to some terminals so I struggled with a suitcase and backpack uphill. Few passengers used it.  
40

Today actually there were ten passengers on my bus from Broady station and that's the interchange with Metro Trains Melbourne. Coming back, Commissioners, the level of public knowledge at this particular service is so low that I had two Americans ask me, "Do we interchange for the city at  
45 Frankston?" and I very quickly told them that they didn't.

5 In June 2013 after negotiations occupying PTV officials for countless hours, Melbourne Airport granted a couple of bus links for its new stop at the Qantas terminal's north end. It was a long walk to or from the Virgin check in counters or baggage carousels, that could be called the "Arctic bus stop".

10 Finally, when the T4 car park was built, airport management placed these buses at the extreme southerly end. This morning I think I got off in Bay 4 which is down near the south end and I got on the bus to go back to Broadmeadows Station at bay 17. The staff buses are closer to T4. Now you might say that's reasonable because there's more staff than there are Transdev Melbourne buses contracted to PTV. But infrequently timetabled shuttle buses are allowed to be closer to the airport such as those that run to, I think it's Bendigo or Ballarat, and there was one called "Stream Shuttle" there this morning which I'd never seen.

20 So, Commissioners, I put it to you that this an example of even the Victorian Government's bureaucrats lacking negotiating power because thank goodness, as the Minister's advisor at the time, I didn't get myself involved in the argy-bargy of negotiation and quite frankly wouldn't want to, to benefit public transport users.

25 So if they had any or much power it wasn't apparent to me when I worked for Terry Mulder, you know, the one Coalition transport minister that we've had in 19 years. The government owned, and if I recall still does, a small minority stake in SkyBus so SkyBus of course has got poll position at the airport, got three stops at the airport. The official mass transit, which is far cheaper at \$4.40 as compared to, I think, \$19.85 one way for SkyBus, doesn't.

35 Commissioners, so that's an example of Melbourne Airport egregiously using its huge market power to even bash down the government. So I've got absolutely no confidence under the current government that can't even provide an interchange of two new underground platforms at Osborne Street, South Yarra, our busiest station outside the five city loop ones, I've got no confidence that the Melbourne Airport mass transit arrangements will be any better.

40 And I say to the gentleman from Melbourne Airport, Lyell Strambi and Ms Lorie Argus, "If you've admitted as you did yesterday that there was a problem with the T4 walkway being too long and not having travelators, it's great that you've admitted that you got it wrong but why after several years haven't you fixed that particular problem?"

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5 And, Commissioners, I just wanted to give you another example of egregious behaviour but in this one I don't quite know whether to blame the airlines or the airports. Melbourne Airport's submission states on pages 25 and 26, "Scheduled demand exceeds runway capacity by a typical 20 per cent in the morning peak".

10 So when I went out to Melbourne Airport this morning, QF413 was late, QF471 was late. The delays varied on a pretty benign sort of weather wise morning between 10 and 30 minutes but it's like if you schedule more movements than you can actually have, something that the other only mode with tracks, as in a railway, would never do because, you know, the signals can only handle so many trains, the headways have to be maintained et cetera et cetera.

15 But Melbourne Airport doing this, because I assume it's Melbourne Airport, it's never made public prior to travel by Qantas, Virgin Australia, Jetstar, Tigerair or REX or the airport, the scheduling lacking slots implies to passengers, "You're in Sydney. You've got a CBD meeting in Melbourne at 10 o'clock. You've decided to book on the 7.30 in the morning from Sydney Qantas or Virgin or whatever, due in at 09:05 but most times the aircraft will hold at the waypoint above Mount Buller and its arrival time would be 9.15, 9.20 or later so you should really have your first meeting at 10.30 but we won't ever tell you that". False advertising, Commissioners.

25 Look, Commissioners, I also just wanted to raise publicly, and I know this is a matter that you may not be particularly interested in in the report, but you talk, Commissioners, about investment and one way or another I guess it's probably fair comment that passengers pay in the end. For instance, Singapore Airport because of its redevelopment it's got a per passenger charge I think it's Singapore \$6.50, Hong Kong has got a similar one et cetera, that may or may not turn out to be the case in Melbourne.

35 Even if it isn't, we pay indirectly through higher fares which is another reason why I'm amazed that some people in the business community haven't made submissions to this sort of inquiry because I would have thought high airfares, higher than necessary airfares, affect adversely small business, big business, you name it, we all pay. Even the public service pays more for its travel.

40 But I'd like to know because as a community member interested in transport, and I've never actually heard from Qantas or Virgin Australia whether they agree with Melbourne Airport selecting an east-west orientation to complement the existing east-west runway 09/27 and as you probably know, Commissioners, you refer in the report briefly and rather favourably to Airservices Australia. Well, given that Airservices Australia

says that the 48 month and 24 month delay trends for Australia's major airports are on a downhill trajectory and, you know, and you quote some figures from 2017 which is great but, you know, I can give you, as I will shortly, in the last bit, the 2018 figures and they're pretty bad but my point simply is: with very little public discussion, Melbourne Airport has said, "Well, because we don't want cross movements across the existing north runway" which I think from memory is oriented 16/34 not 09/27 like the other runway is.

We don't want cross movements so even though eventually in 2043 or whenever we're going to have the fourth runway, we'll plonk our third runway so that people in Gladstone Park, Westmeadows, Broadmeadows et cetera, actually get however many decibels, whether it's 67 or 70 or whatever, they're in the ANEF noise contours for perhaps the first time and there's been very little public discussion.

In fact I've never seen anything as to whether Qantas, Virgin Australia, BARA et cetera, favour this east-west orientation. As you probably know from May this year, I think Airservices Australia is instituting a change such that there will be many more arrivals coming in in the east-west runway.

Correct me if I'm wrong but, you know, obviously it varies enormously due to seasonal weather patterns but the north-south runway, to my way of thinking and looking at the statistics, appears to be used more at present than the east-west and, you know, whilst I don't take a lot of notice of chatter on the Internet because people generally don't want to identify themselves, there is some "minor" chatter that possibly Melbourne Airport is going to make this major investment and it will be suboptimal and I guess the test is whether or not passengers like your good selves, Commissioners, when you're going up to Sydney or more importantly you want to get back to your family and friends punctually and given that, you know, safety is a given.

I mean, we know that safety is paramount in the airlines experience and that it's a very safe mode of transport, whether it's as safe as rail is a debate for another day, but it's a very safe - far safer than me crossing Punt Road or something like that in the morning as I often do, but my point is the test is, will it improve punctuality, reduce holding, which of course environmentally wastes millions and millions of kilograms of fuel each year and so forth. And given Airservices' record, I'm not really confident that it will but they're the experts at that so if they fall down, well obviously there'll be political consequences.

But this orientation, Commissioners, runs the risk that within 15 years I believe Melbourne Airport may be facing a curfew. That was never

envisaged by Victoria's forward thinking Liberal Premier, Sir Henry Bolte, back when Tullamarine Airport opened in 1970, yet it's a real possibility. So I merely ask, is it appropriate for the airport to forge ahead with this huge investment for which the business community will pay, leisure passengers like me will pay, you'll pay in one way or another? I don't know the answer to that but there you go.

And the last thing, Commissioners, I note that high speed rail between Melbourne, Sydney, Canberra and Newcastle is very much favoured by Anthony Albanese who I humbly submit to you is highly likely to be the next Transport Minister in Australia because quite frankly I can't, having worked for the Coalition for 26 years, I can't see that the Coalition is going to win the next Federal election. I mean, I just could not see that happening because no one will listen to Mr Abbott and he's the only person who could win the election for the Coalition in my humble view, but Anthony Albanese, who I must say was quite dismissive and some might say very rude about your particular report.

I think he dismissed it in about seven words and made some comment that I perhaps won't repeat but all I'm trying to say is: high speed rail between these locations may significantly reduce demand for air travel as it has between Barcelona and Madrid or many other city pairs, yet there's little or no analysis by anyone and there seems to be this assumption that Western Sydney Airport is going to be some saviour and in Melbourne we're going to struggle along with two runways and then get a third and, as I've said, I've got some reservations about that.

But look, the last thing I would like to say, Commissioners, your report gives a tick to airline punctuality. I find that sort difficult to sustain in arguments for - - -

**COMMISSIONER LINDWALL:** I'm not sure that I actually said that, but anyway.

**MR CAREW:** Well, I think you actually said that it's declining but - - -

**COMMISSIONER KING:** Yes, on-time performance is declining and most airports I think (indistinct).

**COMMISSIONER LINDWALL:** Is what we said, yes.

**MR CAREW:** No, you said here, "On-time performance has declined but remains average to high". Well, Commissioners, I don't call 27 per cent plus of Melbourne-Sydney flights in at least one direction in 2018 as found by schedule analyser OAG to be a satisfactory performance. As you know,

5 you know, airports and airlines have got many constraints. We can't blame  
one of them for everyday but the punctuality standard, as you know, is  
within 15 minutes of - and I'm talking arrivals because a departure time,  
Commissioners, to me doesn't really matter, it's the arrival time and we can  
10 argue as to whether or not the airlines pad their schedules. The pilots say  
no, other people say yes et cetera, et cetera and of course the allowance  
between Sydney and Melbourne used to be 75 minutes northbound and now  
it's 85 minutes and typically 95 minutes southbound now and it used to be  
85 minutes but the airlines say that's because of problems in Sydney  
15 Airport.

But the delay trend is continuing to worsen and yet this is the second busiest  
domestic air route in the world so I would say to you that humbly that - and  
this might be outside your parameters, that the community needs high-speed  
15 rail as has occurred in so many other jurisdictions.

**COMMISSIONER LINDWALL:** Thank you. Probably you need you to  
wrap up shortly.

20 **MR CAREW:** Thank you.

**COMMISSIONER KING:** We're running out of time.

25 **COMMISSIONER LINDWALL:** Yes, running out of time.

**MR CAREW:** Commissioners, my last quick point if I may: at Melbourne  
Airport, for instance, between Sydney and Melbourne in January 2019,  
holiday season, 29.7 per cent of Jetstar flights arrived at least 15 minutes  
late; Qantas had 18.2 per cent; Virgin had 19.2 per cent; and Tigerair was  
30 at the back of the field with 31.5 per cent of flights 15 minutes or more later.

Not satisfactory from my perspective, not satisfactory from a traveller's  
perspective, so I don't see how the PC can conclude that it's average to high  
and last thing, Commissioners, I would implore you, as many others have,  
35 to look again at your draft report and, with respect, I think read the tea  
leaves, read the attitude of Anthony Albanese, although you may say, you  
know, he's a fair bit forward and all that sort of thing, but we need a single  
till approach at Melbourne Airport.

40 I need, as a mass transit user, to see the airport not just saying it believes in  
mass transit, but not shoving me down to the back of the airport because  
I don't want to pay their favoured Skybus bus fares which aren't even  
available on a weekly basis unless you're an airport staff member and so the  
proof of the pudding, Commissioners, is in the eating but I would just hope  
45 that, as Margaret said far more eloquently than I can, that you would revise

5 your report, recognise that times have changed, and that it would be egregious to continue on with the PC's historic approach, which I must say I support in many other sectors but this is a sector specific thing and maybe the airlines need to have the EU261-type compensation scheme imposed on them. I don't know, we have very little consumer protection in Australia, the domestic airlines don't even guarantee to convey us on the day of travel.

**COMMISSIONER LINDWALL:** You'll have to finish up there.

10 **MR CAREW:** And that's it. Thank you, Commissioners.

**COMMISSIONER LINDWALL:** I mean, this is an airport inquiry not an airlines inquiry nor is it a train inquiry but we'll go and check out route 901, Edmund, and I think that we will - I mean, you make a point there that  
15 it's worth looking at and some other things.

**MR CAREW:** Thank you.

**COMMISSIONER LINDWALL:** And you're right about on-time performance. I mean, if we say that it's good and you don't think it's so good, it's something we should look at as but as for this very fast train, well that's outside our (indistinct).  
20

**MR CAREW:** Indeed, I understand.

25 **COMMISSIONER LINDWALL:** Thank you very much for appearing.

**MR CAREW:** Thank you so much, okay.

30 **COMMISSIONER LINDWALL:** And thanks for the cake.

**MR CAREW:** Okay, very good. Just throw it in the bin now. Thank you so much.

35 **COMMISSIONER LINDWALL:** Thank you. Does anyone - because that was our last official participant. Does anyone else want to say something, this is your opportunity? All right, well thank you all for coming, for those that have lasted.

40 **COMMISSIONER KING:** Hang on, I do think - is there anyone other than Emma has been to all of these?

**COMMISSIONER LINDWALL:** No, I think Emma - - -

**COMMISSIONER KING:** I think, Emma, you have been here from the start.

5 **COMMISSIONER LINDWALL:** Well, and you and me.

**COMMISSIONER KING:** Well, yes we've got to but I think you have been her from the start to the finish.

10 **COMMISSIONER LINDWALL:** Congratulations.

**COMMISSIONER KING:** Which I think you deserve a cake.

15 **COMMISSIONER LINDWALL:** So, thank you. I'd like to also thank the Productivity Commission staff led by the very able boss over there, Anna, for making sure we keep on time and we asked reasonably good questions hopefully.

20 **COMMISSIONER KING:** Although she hasn't thrown anything at us which is a change from usual.

**COMMISSIONER LINDWALL:** And that's it for the hearings. That's the end of them and we'll continue talking to participants and look forward to our final report being tabled eventually.

25 **COMMISSIONER KING:** Thank you. And thank you to our transcribers.

**COMMISSIONER LINDWALL:** And thanks to our transcribers.

30 **ADJOURNED**

**[1.15 pm]**