



BARA supplementary submission

31 May 2019

Sydney Airport's supplementary submission

The Board of Airline Representatives of Australia (BARA) comments on, and responds to, Sydney Airport's submission (dated 17 May 2019) in regard to commercial accountability and performance data, and contract clauses to silence airline complaints.

Commercial accountability and performance data

One of BARA's core themes to this inquiry is that the operators of the major international airports accept somewhere between trivial and no commercial accountability over service delivery in their airport services agreements with international airlines. BARA does not consider the evidence provided by any of the participants to this inquiry refutes that fact.

BARA used on time performance and baggage data for international flights to show the efficiency gains possible through improved airport services agreements that satisfy market norms. It also identified the initiatives within the control of the airport operators that could deliver improved outcomes for both international passengers and airlines.¹ BARA is aware of the operating restrictions that apply to Australian airports, especially at Sydney Airport,² and tailored its estimated improvement in operating performance accordingly.

BARA does note the positive comments made by Dr Harry Bush CB, as commissioned by the Australian Airports Association to offer his thoughts on the Draft Report, who stated in the public hearings:

I thought there was some stuff in the BARA submission which I thought was quite interesting in that area, and were trying to move things towards that and where there would be a lot of discussion about, "Is the service right?" This is what's happened at Gatwick – "Is the service right?", "Is the on time performance right?", "What can be done to improve it?"³

And by HRL Morrison and Co, a specialist infrastructure manager:

...BARA has been incredibly constructive in pushing airports to, you know, get – get more definitive, more measured, more measurability into the quality and service indicators, as – as a way of, you know, of demonstrating value for money.⁴

¹ BARA submission 7 March 2019.

² For example, see BARA's proposed reforms for Sydney Airport's operating environment in its policy documents *Safe and Efficient Air Navigation Services* (2016) and *Environmentally Sustainable Growth* (2018).

³ Public hearings transcripts, p.167.

⁴ Public hearings transcripts, p.348.



Sydney Airport, however, seems to view BARA's commercial framework and evidence to drive improved performance in airport services to the benefit of international passengers and airlines as misleading and based on inaccurate assertions. It is difficult to see useful commercial negotiations occurring with Sydney Airport if it has rejected the reasonable commercial expectations of international airlines, especially when it has the market power to back up that position in negotiations.

On data sources, especially baggage outcomes for international passengers, BARA notes its data correlates with the performance ratings given by international airlines in the Australian Competition and Consumer Commission's annual quality of service monitoring. Sydney Airport's international baggage system has consistently rated poorly over many years and the measured rate of mishandled international bags through the airport is also the highest of the four monitored airports.⁵ It seems the parties are only arguing about the level of poor performance at the airport based on potential measurement issues in the data.

Most data made available by the airport operators is generally basic and can have limited useful commercial application. Importantly, the airport operator needs to develop most of the performance indicators on the services it provides that could be usefully included in an airport services agreement (eg its baggage system's ability to support good baggage outcomes). Under the light-handed economic regulatory arrangements, however, it is cheaper and easier for an airport operator to criticise the data developed and used by international airlines in seeking to understand and improve industry performance rather than invest in measuring the quality and performance of the airport services it provides.

The failure here, therefore, is not due to the strengths or weakness of any data source but because the airport services agreements are not negotiated with a requirement for clear service delivery accountabilities combined with commercial consequences. So, unfortunately, an economic regulatory regime designed to encourage the 'commercial' provision of airport services is in fact characterised by its lack of useful commercial content over service delivery.

Contract clauses to silence airline complaints

BARA forms a view as to an airport operator's intentions based on the 'face value' of the agreement terms member airlines are expected to sign and adhere to. Sydney Airport's 'Standards of Behaviour' (Behaviour Clauses) requirements impose draconian conditions on tenants at the airport, including member airlines. BARA remains concerned that an airport operator would seek to impose such terms and has drawn its conclusions over its motivations accordingly.⁶

The attached legal advice from Lander and Rogers details the problems with Sydney Airport's Behaviour Clauses and its claims about them. It is clear the Behaviour Clauses have the effect of silencing any criticism or comment by airlines about the standard of services or outcomes at Sydney Airport. While Sydney Airport has claimed such clauses are common in lease agreements, the legal advice is: 'clauses of the nature and scope of the Behaviour Clauses are rare in commercial or retail leases other than where SACL [Sydney Airport] is the landlord.'

⁵ See BARA submissions dated 3 September 2018 and 7 March 2019.

⁶ BARA submission 7 March 2019.



Based on its submission to the Commission, Sydney Airport seems intent on continuing to impose its draconian Behaviour Clauses on member airlines and other tenants at the airport. BARA, therefore, reiterates the need for the Commission to recommend the Aeronautical Pricing Principles be expanded to explicitly ban attempts by the airport operators to suppress airlines from publicly raising service and performance issues about Australian airports beyond the normal requirements to keep commercially sensitive information confidential. Without this or some other form of appropriate protection, it would signal that even the poorest commercial terms imposed by the operator of a major international airport on international airlines are considered acceptable conduct under the economic regulatory arrangements. BARA sees little prospect of negotiating an airport services agreement with Sydney Airport that fits with promoting good service outcomes under such a commercial negotiating environment.

Finally, as explained at the public hearings, BARA wastes considerable time and member resources dealing with the largely ambit claim airport services agreement terms put forward by the airport operators, such as Sydney Airport's Behaviour Clauses.⁷ Their tactic greatly reduces the time and resources available to BARA to negotiate an airport services agreement that would promote increasingly efficient, safe aircraft operations and good outcomes for international passengers in airport services.

⁷ Public hearings transcripts, p.423.