Review of the National Access Regime

Comments on Position Paper

Australia Pacific Airports Corporation

May 2001

Introduction

Australia Pacific Airports Corporation (APAC) is a company that holds a 100% interest in the company that leases Melbourne Airport and a 90% interest in the company that leases Launceston Airport from the Commonwealth Government under the provisions of the *Airports Act 1996* (the Airports Act). As part of its long-term strategy of becoming one of the world's leading airport companies, APAC maintains an active interest in acquiring further interests in airports both in Australia and the region where it can leverage its airport management expertise.

Whilst the Airports Act contains a number of provisions (especially Section 192 and Parts 7 and 8) that could generally be seen to relate to economic regulation, and major airports such at Melbourne and Sydney have been subject to declaration under Part IIIA of the *Trade Practices Act 1974* (the TP Act), the main legislative instrument for economic regulation of airports has been the *Prices Surveillance Act 1983* (PS Act).

APAC has responded to the Commission's Draft Report on the PS Act, a copy of which is attached to this submission. We note that the Commission is generally heading towards an integration of price surveillance functions within the National Access Regime. This is a move that APAC strongly supports.

As the Commission is aware, APAC and its airports are also actively involved in the Commission's reviews of the National Access Regime and Price Regulation of Airport Services. This submission seeks to confine itself to issues related to the use and our experience of the application of National Access policy in the airport industry. APAC is participating with a range of other infrastructure businesses in a submission that deals with more generic issues.

More general airport industry considerations are addressed at some length in Melbourne Airport's submission to the Review of Price Regulation for Airport Services. If prices surveillance were to be integrated into the National Access Regime (with the potential for industry specific regimes to exist), many of the concerns we raised in our initial submission in relation to non-integrated facilities would be addressed. That said, Melbourne Airport has argued that given the economics of airport businesses, denial of access is unlikely to occur simply because it is not a profitable strategy.

APAC supports the thrust of the Commission's approach in this review and in particular agrees with each of the Commission's findings. We find ourselves in general agreement with most of the proposals although we do have some reservations and concerns although these are of a generic natural, largely relating to pricing arrangements. These will be addressed in the joint submission with other firms mentioned above.

Set out below are a number of issues arising from industry experience that may assist the Commission in its considerations.

Declaration under Section 192 of the Airports Act

As the Position Paper notes on page 25, the declaration criteria under section 192 of the Airports Act are weaker than those under Part IIIA. Under those criteria, a service is an airport service, and therefore declared, if it is

(a) necessary for the purposes of operating and/or maintaining civil aviation services at the airports; and
(b) provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated.

In the absence of an access undertaking, of which there are none, the ACCC is empowered to determine whether a particular service is or is not an airport service. There is no direct appeal mechanism against such a determination although determinations are disallowable instruments for the purposes of section46A of the *Acts Interpretation Act 1901.*

To date, the ACCC has been asked on two occasions to determine whether certain services are airport services. Both have been in relation to Melbourne Airport.

Delta Car Rentals

A dispute arose about the location to be used by Delta Car Rentals to drop off and pick-up its car rental customers at Melbourne Airport. Essentially, Delta wanted to use the terminal kerb but Melbourne Airport wanted Delta to use an area on the ground floor of the multi-story car park.

The ACCC held that it was not restrained by the service definition of the applicant and proceeded to declare the airport road system as a whole. Delta have continued to use the terminal kerb, an agreement is in place with Delta and no arbitration has been sought. Delta subsequently has subsequently acquired National Car Rentals. In our view, declaration has had no impact on either Delta's business or the provision of car rental services at Melbourne Airport, despite Avis' claims to the contrary

It seems to us that if declaration had of been sought under Part IIIA, the application would have struggled under the competition test and the national significance test. It is also likely that the NCC may have found itself bound to use the service definition of the applicant raising further problems with both these tests.

Virgin Blue

In March 2001 Virgin Blue sought to have declared "the use of the Multi-User Domestic Terminal for the Purposes of processing arriving and departing domestic airline passengers and their baggage at the Melbourne Airport". The Commission will be aware that these services have already been the subject of notification under the PS Act and detailed consideration by the ACCC in the period May-August 2000, and indeed that the pricing arrangements were agreed by both Virgin Blue and Impulse Airlines before the ACCC agreed to a revised pricing arrangement.

The ACCC has yet to issue a draft decision on this matter so it is not possible to comment on its approach however the positions of the two parties, and others, can

be found on the ACCC's website. However, in addition to being regulatory double jeopardy in action, this appears to be another example where declaration is being sought under the Airport Act that would struggle under the more general provisions of Part IIIA.

It is APAC's understanding that the arrangements contained within section 192 of the Airports Act were designed to encourage a shift towards more commercial approaches to the provision of aeronautical services in the period immediately post privatisation. This is reflected in the fact that there is no power conferred upon the Minister to renew the current declaration once it expires. As such, the problems of section 192 will pass into history once all airports have been in private ownership for five years (assuming Sydney is declared when sold for the same period).

Nevertheless, APAC believes that s192 should be repealed at the earliest opportunity. We have reviewed the submissions made by Qantas, BARA and Avis and find it difficult to ascertain why they believe retention of s192 is required in addition to Part IIIA and the PS Act. In particular, it is not possible to establish why airlines and car rental companies seeking access to airports should be afforded any different set of access rights to any other service provider seeking access to facilities.

We note that Qantas has made confidential submissions showing that access has been denied. Moreover we note that Qantas believes that despite having enjoyed real reductions in aeronautical prices since privatisation (and paying the lowest charges in the world) under a highly intrusive prices surveillance arrangement, those arrangements afford them inadequate protection and s192 is still required. What we find puzzling is that Qantas, an organisation not generally known for being unprepared to utilise its legal rights and significant resources, has not itself brought any actions under s192[1] given the access problems they claim to have encountered.

Whilst we see merit in industry specific regimes, we do support the requirement for them to be certified. Moreover, whilst such regimes may address industry specific issues, the regulator undertaking the certification should be required to determine that the criteria for declaration under the industry regime are no less stringent than under the general provisions of Part IIIA. That said, we would have concerns of impasses being created if a statutory regime (such as s192) were not certified – it would be highly undesirable for both access providers and access seekers to be caught effectively in a dispute between the Parliament and the regulator.

Price Monitoring

As noted above, a copy of our response to the Commission's Draft Report on the PS Act is attached. We see significant merit in the approach advocated by the Commission, particularly in those circumstances where pricing, rather than the denial of access is likely to be the issue. In a situation where there was a concern that previous regulatory activity had led to inefficient prices that in the long run needed

[1] It should be noted that Qantas is incorrect when it says Melbourne Airport is introducing a taxi parking charge that is unrelated to investment – that investment is currently being considered by the ACCC. In addition, whilst it is true that there is a general absence of signed agreements relating to aeronautical services, it could be argued that this is as much of a result of the use of airline countervailing power as it is the use of market power by airports. In any event, services are being provided, accounts are being paid and with one notable exception, there has been a general lack of litigation between airports and their major customers.

correction, such an arrangement could be used during a transition period to more appropriate pricing structures.

Such an approach may be a suitable way to regulate airports for the in the period after the current regulatory period if it is felt that further regulatory activity was warranted at some or all airports.

We do, however see some issues that need addressing

- What would be the relationship between a monitoring program under the new provisions and other compliance programs constructed under statute law, such as those found in Parts 7 and 8 of the Airports Act? Would it be appropriate for those arrangements to stand in the place (in a loose sense be "certified") of the new arrangements proposed for the TP Act?
- If a firm is subject to monitoring, will it remain exposed to subsequent access applications during the monitoring period for other services that have not been subject to monitoring? In other words, does the imposition of monitoring act as an effective access regime for the purposes of Part IIIA of the TP Act?
- Should the broad range of information that can be included in a monitoring regime be specified in statute? If so, should that information be restricted to financial data or should it include information on such issues as quality, asset capacity and utilisation and productivity?

Pricing Principles for Part IIIA

The pricing principles that are set out in Proposal 8.1 are entirely consistent with those advocated by Melbourne Airport in its submission to the Commission's Review of Price Regulation of Airport Services[2], although we note they may not, in generally, be universally appropriate for all industries. In particular, the focus on the revenues and costs of regulated services in consistent with the dual till approach to aeronautical pricing advocated in that submission and others made by other airports. Indeed, it almost mirrors the words of Minister Hockey in Direction 22 issued to the ACCC under the PS Act in relation to pricing at Sydney Airport

> *In assessing prices for aeronautical services, the Commission should not take into account the revenue generated or the costs incurred, in the provision of services other than aeronautical services.*

We endorse the Commission's assessment of the problems associated with initial cost bases being too low. This is precisely what has happened in the airports industry. Submissions to the Commission's Review of Price Regulation of Airport Services contain many examples of adverse maintenance and investment outcomes. In such cases of regulatory underpricing, a mechanism is needed to ensure sufficient revenue is available to provide new capacity or service improvement – in the airports' case these are the so-called "necessary new investment arrangements". This has the effect of making the regulator a key, if not dominant, player in investment decisions as is evidenced from the ACCC's investment decisions. Our experience is that such a situation can only lead to adverse investment and efficiency outcomes[3].

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[2] See Chapters 3 and 5 in particular.
[3] See Chapter 4

Institutional Arrangements

APAC is generally concerned about the ability of regulators to create demand for their own services. As such, we are not comfortable with the development of a single regulator for access purposes. We see merit in a situation where the need to regulate is established on the basis of a robust economic and public policy analysis and then regulation is conducted by a separate body expert in such a quasi-judicial function.

We are also not convinced of the merits of totally removing Ministers from the process. In two recent cases, Melbourne Airport's Domestic Express Terminal and Sydney Airports Pricing Proposal, if not for the intervention of Ministers in one way or another, clearly inappropriate outcomes, both in economic and consistency with public policy terms, would have occurred. There is real danger that the sort of behaviour from Ministers that concerns the Commission could be exhibited by a regulator, particularly if appeal or other accountability mechanisms are not an effective check on regulatory conduct.

We see a need for Minister's to retain a residual power to direct regulators. In the case of airports, this need may arise from certain international treaty issues or in relation to the treatment of costs associated with security, environment or other regulation. It may also relate to more general policy issues such as the Government's policy in relation to the single till which recently led to Minister Hockey issuing Direction 22 under the PS Act.

The key here is accountability. Such directions would need to be public and contain a clear statement of reasons, possibly something along the lines of a regulatory impact statement would be appropriate. If an industry specific regime was in place, it could specify certain matters on which direction could be given. Consideration could also be given to whether such directions would be disallowable instruments.

Appendix

Review of the Prices *Surveillance Act 1983*

Comments on Draft Report

Australia Pacific Airports Corporation

May 2001

Introduction

Australia Pacific Airports Corporation (APAC) is a company that holds a 100% interest in the company that leases Melbourne Airport and a 90% interest in the company that leases Launceston Airport from the Commonwealth Government under the provisions of the *Airports Act 1996* (the Airports Act). As part of its long-term strategy of becoming one of the world's leading airport companies, APAC maintains an active interest in acquiring further interests in airports both in Australia and the region where it can leverage its airport management expertise.

Whilst the Airports Act contains a number of provisions (especially Section 192 and Parts 7 and 8) that could generally be seen to relate to economic regulation, and major airports such at Melbourne and Sydney have been subject to declaration under Part IIIA of the *Trade Practices Act 1974* (the TP Act), the main legislative instrument for economic regulation of airports has been the *Prices Surveillance Act 1983* (PS Act). Therefore, APAC is pleased to have the opportunity to comment on the Commission's Draft Report on the Review of the *Prices Surveillance Act 1983* (the Draft Report).

As the Commission is aware, APAC and its airports are also actively involved in the Commission's reviews of the National Access Regime and Price Regulation of Airport Services. This submission seeks to confine itself to issues related to the use of the PS Act as a regulatory instrument rather than broader issues of National Access policy or more general airport industry considerations (which are addressed at some length in Melbourne Airport's submission to the Review of Price Regulation for Airport Services).

APAC supports the thrust of the Commission's approach in this review and in particular, agrees with each of the Commission's findings. In general, APAC also supports the proposal put forward for reforming prices oversight (particularly abolishing notification and repealing the current Act with consolidation into the TP Act) but has some concerns as to the precise details.

As this submission is essentially a commentary on the Draft Report and brings forward relatively little new material, it is structured using the chapter structure in the Draft Report.

Prices oversight in Australia

Operation of the PS Act

APAC concurs with the Commission's description and analysis of the historic role and development of the PS Act. In particular, we agree with Finding 2.1 that price surveillance now has its primary focus on competition policy. As such, it is appropriate to have a statutory instrument that represents best practice for that purpose rather than one designed 18 years ago to deal with issues in prices and incomes policy.

The operation of the PS Act is now limited to a small range of services which, other than postal services and airport car parks, are intermediate products. Of the 22 firms

providing declared services, two are government owned legislated monopolies (Airservices Australia and Australia Post) with the remainder being either airports or towage operators. Further, the only services subject to monitoring not provided by firms already subject to notification are provided by recipients of stevedoring levy payments.

If appropriate arrangements were put in place under specific industry legislation, such as the Airports Act or the *Stevedoring Levy Act 1998*, there would be virtually nothing left to be regulated under the PS Act. In particular, Parts 7 and 8 of the Airports Act enable the Minister to make regulations for the collection and publication of financial and quality of service information by airports subject to that Act. The information specified in the regulations is to be provided to the ACCC within 92 days of the end of each financial year. The ACCC is empowered to publish this information.

There appears to be no reason why the information that the ACCC currently collects under the PS Act could not be collected under the existing provisions of the Airports Act with appropriate minor amendments to the existing regulations. Indeed, APAC's airports (and we believe other airport companies) provide the information required under both statutes in a single report and frankly, even the most informed observer would struggle to ascertain which information is being provided under each Act.

Potential costs of price control

Following on from the work of NECG submitted to the Commission's inquiry into the National Access Regime[4], Melbourne Airport has further developed this thinking in its submission to the Commission's inquiry into Price Regulation of Airport Services[5]. This work shows that the long run welfare losses associated with regulatory under pricing are greater than those associated with over pricing by the same magnitude as a result of some form of abuse of market power, especially if demand is relatively inelastic. Melbourne Airport's work also suggests that a profit maximising firm with some degree of market power is likely to arrive at a set of long run prices closer to the efficiency maximising prices than a regulator.

APAC would therefore agree with the Commission's assessment in the Draft Report "that price control should only be implemented where there is strong evidence of sustained monopolistic pricing".

Price control as a remedy of last report

Australian trade practices law has as an underlying principle that intervention is only required when a firm with a degree of market power uses it in a way that is anticompetitive, or at least discourages competition in a market. This principle not only underpins Part IV of the TP Act but can be seen to flow through Part IIIA as well.

Prices surveillance, monitoring and control do, however, have another purpose. Indeed, that purpose can be seen in the original intent of the PS Act and it is to address the problem of firms with market power increasing prices in a way that may transfer wealth from end consumers to themselves and leads to welfare losses through a reduction in output. Familiar examples can be found in the regulation of

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[4] NECG (2001)
[5] Melbourne Airport (2001). See especially Chapter 5.

the provision of utility services to households and petroleum. It is also possible for wealth to be extracted from end consumers and transmitted back up the value chain to an upstream firm that exercises market power in an intermediate product market. Such uses of market power cannot effectively be constrained by the use of the TP Act as currently structured.

The first best solution is to pursue structural policies that reduce the potential for such market power abuse to arise in the first place. The cross-ownership rules in the Airports Act and the establishment of multiple electricity distribution businesses followed by retail contestability in Victoria are examples of such policies. Beyond that, careful analysis of the conditions of supply, including the countervailing power of immediate consumers (often arising from the availability of substitutes or some degree of monopsony) and the commercial incentive to use market power in an efficiency damaging way (through reducing output), must be a pre-requisite to the introduction, or sustaining, of any price control. It is the consideration of such matters that has led Melbourne Airport to submit to the Commission that price regulation of airport services need not continue beyond 30 June 2002.

APAC emphatically believes that price controls must be a last resort after market mechanisms and monitoring have led to the view, based on actual evidence and experience, that a firm's pricing capacity must be restricted. This is consistent with the idea that in relation to essential facilities, there must actually be an access dispute to resolve and more generally in trade practices law that an offence must be committed. By analogy it is the commission of the crime of murder that constitutes an offence, not the ownership of a kitchen knife.

Whilst the threat of re-regulation will always discipline the firms currently subject to the PS Act, it does seem that from a general public policy perspective, rather than a narrower competition policy perspective, that it may be desirable for there to remain a residual device to restrain "rogue" pricing increases arising from the abuse of market power similar to that found in section 24 of the PS Act. This matter is discussed further below.

Prices oversight as part of competition policy and law

Putting government business enterprises to one side, the firms currently subject to both declaration and monitoring under the PS Act operate in markets characterised by conditions of imperfect competition, not pure monopoly. As the Commission and others correctly note regulation in such circumstances is fraught with problems. These problems are complicated in the case of airports by the fact that common facilities provide a range of services in a range of markets with varying levels of contestability. Indeed, the degree of contestability for a service may depend directly on the definition of the market in question[6] even though the service being provided is the same.

The imposition of price controls in such circumstances have the potential to inhibit the development of the sorts of competitive conduct that will ameliorate the potential

[6] For example, the market for runway services within 30 kilometres on the Melbourne CBD for jet aircraft over 50 tonnes is much less contestable than the market for runway services for international aircraft coming in Australia. However, a 747-400 aircraft operating between Singapore and Melbourne can be seen as consuming services in both markets even though the service consumed in each is identical. Similar arguments can be made for stevedoring and towage services.

for the pricing policies that price controls are seeking to prevent. Moreover, in the industries currently subject to price control, competition in downstream markets may be obstructed if the supply of services from regulated firms is restricted in any way, and in particular by reduced infrastructure investment resulting from inappropriate regulatory price setting.

As such, APAC find itself in total agreement with Finding 3.1.

Public Inquiries

APAC is generally concerned about the ability of regulators to create demand for their own services. For this reason, it has been a strong advocate of the review of Price Regulation of Airport Services being conducted by a body other than the ACCC.

Such an approach ensures not only that there is no apprehension of bias in the result of the inquiry but brings to what are serious public policy, as well as regulatory, issues a fresh perspective not jaundiced by the experience of the day to day issues faced by an industry and its regulator. Further, the skills required of an efficient, competent regulator are not necessarily those required to conduct and facilitate wider ranging public policy discussions.

That said, it is important that the views of regulators are made clear in such debates and are given due weight along side those of (potentially) regulated firms, consumers of the services in question and other interested parties. APAC also believes that it is vital that governments should make clear up front what their wider public policy objectives are so that these can be given proper consideration.

APAC supports the retention of an inquiry mechanism within the competition policy framework and its proposed reform, especially if it is part of a wider process designed to deliver good policy outcomes. However, APAC does suggest the Commission should explore further the consequences of the loss of the mechanism whereby prices are constrained during the course of an inquiry.

Monitoring

As indicated above, airports are subject to a range of monitoring arrangements under different statutes and it is APAC's view that all the information currently collected could be done so under the Airports Act. Whilst APAC is generally comfortable with the information it is required to provide, the provision of that information is not costless. Of the conservative estimate of $500,000 per annum that APAC spends on regulatory compliance (including quality of service monitoring) we would estimate that at least half of that would be associated with reporting[7]. The remainder is attributable to dealing with notification issues (predominantly relating to necessary new investment but also the price cap) and other access issues (such as section 192 of the Airports Act).

Obviously, these costs are much more burdensome for smaller airports than larger ones (and certainly those that are not part of a larger group) as is reflected by the fact that quality surveys are not required for smaller airports. Notwithstanding, the fact that each transaction undertaken by airports must be coded as aeronautical or

[7] Melbourne Airport (2001, p42)

non-aeronautical (or a combination of both) and that regulatory reports must be audited leads to significant costs. Less costly approaches that do not reduce information quality may well be possible.

Price Notification

In APAC's view, the notification provisions contained in section 22 amount to very little more than regulation by shaming. Indeed, that appears to be their intent. Whilst having some logic in the context of the Prices and Incomes Accord, they do not represent best practice regulation within the context of National Competition Policy. Indeed, they approach worst practice regulation. Decisions in relation to notification rest on even less well defined statutory principles and objects than those underpinning the National Access Regime. The Act leaves it open to the regulators to make arbitrary decisions that are not subject to independent review. Paradoxically, the decisions made by the ACCC in relation to notices are ultimately unenforceable.

Melbourne Airport's recent experience has also shown that even after a company has complied with the processes constructed by the ACCC under the PS Act, it can be subject to further action under other regulatory structures. The Commission is aware of the controversy surrounding the prices to be charged for use of the Domestic Express Terminal (DET) at Melbourne Airport. Having completed the facility and provided services in accordance with the ACCC's decision under the PS Act, Melbourne Airport has found itself having now to deal with an application to have the DET declared under Section 192 of the Airports Act, paving the way for arbitration under Part IIIA of the TP Act.

This is regulatory double jeopardy in action. Certainly, the development of the National Access Regime has rendered the notification provisions of the PS Act redundant wherever the regime applies. In the small set of cases where pricing may be of concern and the National Access Regime does not apply, it would seem that appropriate structural policies, coupled with the general provisions of the TP Act and perhaps with a revamped monitoring and inquiry regime would also be preferable to notification.

APAC supports the Commission's finding that price notification under the PS Act is not longer appropriate.

Evaluation of the Prices Surveillance Act

Objectives

Whatever the objectives of the PS Act were at the time of its enactment, these seem to be only passingly relevant to the purposes the PS Act is put to today. APAC supports the incorporation of revised monitoring and inquiry provisions into the National Access Regime contained in the TP Act. Clearly the objectives of what would be incorporated in to the TP Act would be aligned with those of the National Access Regime in general. Whilst not wishing to dwell on that issue, it is clear to APAC that the overwhelming objectives of the National Access Regime must be economic efficiency as set out in Proposal 5.1 of the Commission's Position Paper on the Review of the National Access Regime.

Separating policy and regulatory roles

As indicated above, APAC is generally concerned about the ability of regulators to create work for themselves. For this reason, APAC endorses the suggestion made by the Commission to separate the inquiry function from day to day regulation.

It is not clear whether the ACCC is the appropriate body to undertake monitoring activities. Indeed, one might argue that some other body undertaking monitoring as well as inquiries best deals with the concerns indicated above. It seems that the skills required to collect, collate and publish data on industries is not a skill peculiar to the ACCC. Indeed, there is a long tradition in transport policy for such work to be undertaken by the Bureau of Transport Economics (in relation to waterfront productivity) or the Department itself (in relation to its AVSTATS program). If the intention of monitoring were to gather information for wider policy purposes, as opposed to the exercise of some form or quasi-judicial function, such an approach would be more appropriate.

The PS Act as currently structured places ultimate power in most matters in the hands of the Minister. Whilst acknowledging that this creates potential for political intervention, recent experience in the airports' industry has shown that occasionally it is necessary for government to act to ensure that regulators have proper regard to wider government policy. If something akin to the notification provisions is to remain, the processes by which regulators are required to have due attention to government policy needs to be revised. If only monitoring and inquiries are retained, this need is less great. However, a similar issue will arise more generally in relation to the National Access Regime.

Transparency

In a footnote at the bottom of page 62 of the Draft Report, the Commission makes a comment about transparency concerns in the airports' industry arising mainly from the poor specification of regulatory instruments rather than ACCC processes per se. Whilst the specification of instruments has certainly been an issue in airport regulation, the ACCC's approach has been an equal contributing factor. Below are just two examples:

- The ACCC has generally been prepared to accept material from airlines on a commercial-in-confidence basis, thus denying airports the opportunity to comment on what has been said about their investment proposals and conduct. Whilst accepting that airlines may not want some information to be available to competitors, it is difficult argue that transparent processes arise from a situation where entire submissions are made in confidence or that such basic information as a new entrants expected traffic volumes is denied to regulated firms.
- Melbourne Airport has asked the ACCC on a number of occasions to provide full details of its analysis of airport asset betas that are a core issue in regulatory decision making. The ACCC has yet to do so, despite both airlines and airports having made their analyses generally available. Most recently, the ACCC has advised the information is not in a form that could be provided. If this is the case, one must question whether it is in a form to enable robust decision making.

Does the PS Act restrict competition?

APAC believes that any set of arrangements that obstruct prudent investment in airport infrastructure obstruct the ability of airports to provide new capacity and services. This is precisely what the current regime constructed under the PS Act does[8]. Such a situation necessarily reduces the capacity of airlines to expand their services and in particular, obstructs the entry of new carriers on certain routes or the market as a whole. In such situations, the regulatory system entrenches the position of incumbents and necessarily reduces competition in downstream markets as well as the primary market subject to regulation.

Implementing light-handed prices oversight

APAC supports Proposal 5.1 as an alternative to the Price Surveillance Act in most respects. In particular, the integration of the price monitoring functions into the more general provisions of the National Access Regime would go a long way to eliminate regulatory double jeopardy.

Below are listed (in no particular order) some issues that may warrant further consideration by the Commission:

- What would be the relationship between a monitoring program under the new provisions and other compliance programs constructed under statute law, such as those found in the Airports Act? Would it be appropriate for those arrangements to stand in the place (in a loose sense be "certified") of the new arrangements proposed for the TP Act?
- Should there be some provision similar to section 24 of the PS Act that can be used to restrain prices during the course of an inquiry? Would it be appropriate to restrict it to those cases where the Minister orders an inquiry?
- How would CPI-X style regimes be implemented as consequence of the monitoring and inquiry processes as mentioned in the "Key Messages"? Would this by way of some form of certified or authorised regime and if so in what way?
- If a firm is subject to monitoring, will it remain exposed to subsequent access applications during the monitoring period for the monitored services and/or other services that have not been subject to monitoring? In other words, does the imposition of monitoring act as an effective access regime for the purposes of Part IIIA of the TP Act?
- Should the broad range of information that can be included in a monitoring regime be specified in statute? If so, should that information be restricted to financial data or should it include information on such issues as quality, asset capacity and utilisation and productivity?

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[8] See Melbourne Airport (2001), especially Chapter 4.