



Australian Government

Productivity Commission

PRODUCTIVITY COMMISSION

INQUIRY INTO ECONOMIC REGULATION OF AIRPORT SERVICES

DR W. CRAIK, Presiding Commissioner
MR J. SUTTON, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON FRIDAY, 7 OCTOBER 2011, AT 8.59 AM

Continued from 6/10/11

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DR CRAIK: Good morning, and welcome to the public hearings for the Productivity Commission public inquiry into the economic regulation of airport services. These hearings follow the release of the draft report in early August this year. My name is Wendy Craik. I'm the presiding commissioner on this inquiry and I'm joined by my associate commissioner, John Sutton.

The purpose of this round of hearings is to facilitate public scrutiny of the commission's work and to get comment and feedback on the draft report. Following these hearings today we'll then be working towards completing a final report for government in December this year, having considered all of the evidence presented at the hearings and any submission, as well as other informal discussions. Participants in the inquiry will automatically receive a copy of the final report once released by government, which may be up to 25 parliamentary sitting days after completion.

We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken, and for this reason, comments from the floor cannot be taken. But at the end of the proceedings for the day I'll provide an opportunity for any persons wishing to do so to make a brief presentation. Participants are not required to take an oath but should be truthful in their remarks. Participants are welcome to comment on the issues raised in other submissions and a transcript will be made available to participants and will be available from the commission's web site following the hearing. Submissions are also available on the web site. We don't have any media present, do we? No? Good.

To comply with the requirement of the occupational health and safety legislation and commonsense, you're advised that in the unlikely event of a fire or an emergency requiring the evacuation of this building you should follow the green exit signs to the nearest stairwell. Lifts are not to be used. Please follow the instructions of floor wardens at all times. If you believe you will be unable to walk down the stairs, it's important you advise the wardens, who will make alternative arrangements for you. Unless otherwise advertised, the assembly point for today is at the Suncorp Plaza at 447 Collins Street, which is between William and Queen Streets. Thank you.

Now, first up this morning we have Melbourne Airport. Could I ask you to state your names and positions for the record, please, and then if you'd like to make a brief opening statement we'd be happy to hear from you.

MR WOODRUFF (MA): Thank you, commissioner. My name is Chris Woodruff and I'm the CEO of Melbourne Airport. On my left I have Michael Pirota. Title?

MR PIROTTA (MA): Manager, Commercial Aeronautical.

MR WOODRUFF (MA): And on my right I have Matt Francis, general manager of corporate and public affairs. Just a few brief opening comments, if I may. I welcome the opportunity to provide some further comments on our response to the draft recommendations and the commission's requests for further information. Fundamentally we think the draft report has got it pretty much right, in terms of what the light-handed regulatory regime has achieved to date and what it can deliver for the future.

I'd like to add some further insight from the perspective of an airport operator, who each and every day is working with our airline customers to the level of standards of services they and their passengers expect, competing for business with other airports to ensure Melbourne passengers have access to the domestic and international services they require and planning for the future, as we continue to grow.

Let's take a look back to the privatisation of Melbourne Airport in 97 to see just how far we've come under the current regime. It's a story of strong growth and investment supported by the appropriate policy settings and regulatory intervention. Australia Pacific Airports Corporation acquired the lease for Melbourne Airport in July 1997. In our first year the airport served just over 14 million passengers, including 2.6 million international passengers. The company invested \$40 million in infrastructure projects. Just over a decade later more than 28 million passengers used Melbourne Airport last financial year, including 6.2 million international passengers. We're budgeting to spend around \$250 million in the current financial year on infrastructure. We're planning to spend over \$1 billion over the next five years on our infrastructure.

At a time when government is increasingly looking to the private sector to fund important infrastructure, private airport operators have led the way in the provision of infrastructure that keeps cities such as Melbourne connected and competitive in the global economy. Continuing with the light-handed regulatory regime is the best way to support the future investment and growth of our airports, including Melbourne.

In our response to the draft report we've made comments on the recommendation to empower the ACCC to issue a show cause notice as to why an airport's conduct should not be the subject of further scrutiny through a price inquiry. We don't think there's a demonstrated need for this provision and that the current arrangements already provide sufficient powers for the ACCC or the minister to request information and recommend a price inquiry. This recommendation will potentially increase the regulatory burden and cost of compliance for airport operators, without leading to a different outcome to what is currently achievable.

The big thing, of course, it's going to delay infrastructure investment and delay the public's enjoyment of that amenity.

If the commission decides to proceed with the recommendations, we've made some suggestions as to the best approach to be followed. Whilst acknowledging the commission's desire to introduce a credible threat to the light-handed regime, it's important that this doesn't lead to re-regulation by stealth, so it's essential to get the mechanisms right. For example, there needs to be a separation between the power to issue a show cause notice and the conduct of the price inquiry itself. For those of you that read the newspapers over the weekend you'll have observed some of the ACCC comments. That just, I think, adds more credence to the statement I have just made.

There's a couple of points I'd like to make in addition to those covered in our submission. The breadth and intensity of the commercial negotiation which occurs between airports, airlines and other airport users is a daily reality for me and every member of my team. Now, whether we're looking to attract new airline services to Melbourne or planning for future investments in infrastructure, we are engaged in robust negotiations with our customers, and this is not always in a negative context.

For example, we're working very closely with the management at Tiger Airways as they rebuild their domestic operations following the CASA suspension of their operations in July. Since setting up its Australian base at Melbourne Airport in 2007, Tiger has been a valued customer. We did our best to support their business through their suspension and will continue to work with them as they rebuild their network. We're committed to supporting Tiger at Melbourne, which is good for our city and state as a destination, but also for air travellers around Australia by promoting competition amongst the airlines.

Attracting and retaining airline services depends on airports offering the right services at the right price at the right time. In this context we started planning the development of our southern precinct to cater for future growth in our passenger numbers. This includes a new terminal, along with other airside and landside infrastructure. We've already started discussions with prospective users on this facility to help inform its development.

The draft report notes that large airports such as Melbourne still have a degree of market power. We acknowledge that, but we should not understate the intensity of the competition between airports to attract airlines and services and the ability of airlines themselves to get the best deal for their business and switch their services from one airport to another.

Here in Victoria we also have what you could describe as a credible threat,

that's to borrow a phrase from the draft report, of a second international airport at Avalon. The Victorian government's clearly stated policy is to support the development of Avalon as an international airport, and it's also a real choice anyway for domestic airlines. The state support for Avalon includes public funding for the development of a rail link to the airport, which currently has 128th of the number of passengers that go through Melbourne Airport. We are clearly lobbying government hard to switch that priority to Melbourne Airport to build a rail link there. We support a rail link to Melbourne, and it's included in our master plan. We're working with the state government on what, at this stage, is only a feasibility study.

In our submission we've provided some comments on the issue of land transport access and integration and the suggestion of development contributions for on-airport non-aeronautical development. We currently pay Hume City Council a significant amount each year, which is the equivalent of rates for our non-aeronautical business. However, we are responsible for the development and maintenance of our road network, utilities and other infrastructure. We don't receive any services from local government.

On-airport developments, both aeronautical and non-aeronautical, are subject to the requirements of the Commonwealth Airports Act for the approval of major development plans. We are required to consult with local and state government agencies through this process, as well as undertake public consultation. This is in addition to our regular contact with local and state government bodies, including formal processes such as the planning coordination forum and the Melbourne Airport Transport Committee, both of which meet every quarter. While the development plans of each airport will be different and should all be considered on their merits, I'd like to highlight one of our projects as an example of a non-aeronautical development that will provide positive benefit and amenity for the local community.

The Essendon Football Club is proposing to build a state-of-the-art training/sporting facility on Melbourne Airport land. As well as helping the Bombers to their next premiership it will be used by the Australian Paralympic Committee as well as provide the local community with a new recreational facility. Local residents have been consulted about the project and they have had the opportunity to raise their concerns about the proposal which have been reflected in the final plan. We're now submitting this project to the federal minister in Canberra for his approval.

More broadly, Melbourne Airport generates significant economic benefit and employment opportunities. These benefits should be kept in mind when contemplating issues such as the perceived costs of development on the airport. We also need to focus on how developments off-airport can impact on aeronautical operations. In this context I'd like to highlight the Victorian government's current

review of the urban growth boundary for Melbourne known as logical inclusions. From my end of the telescope they're illogical inclusions.

Areas of land under or close to our flight paths that were previously not available for development are now being considered for residential or industrial development. Developments around the airport under our flight paths pose a real threat for our future operations and growth. Melbourne Airport curfew-free status is a strategic asset for the state of Victoria which needs to be protected. Just as airports need to be mindful of the impact that on-airport development will have on their local communities, local and state governments also need to think about the impact their decisions about planning and infrastructure can have on airport operations. I'd be pleased to take any questions - but not too many - you may have on these or other issues. Thank you.

DR CRAIK: Thanks, Chris. Do either of your colleagues want to say anything?

MR FRANCIS (MA): Nothing to add.

MR PIROTTA (MA): No, thanks.

DR CRAIK: Chris, perhaps we could start with the show cause recommendation. I understand that Melbourne Airport, like all the other airports, is not in favour of it but you have a few suggestions if we do actually proceed with it. One of those suggestions is a better defined threshold for the show cause notice and guidelines to the ACCC on the extent of the show cause power. Could you elaborate on that for us a bit.

MR WOODRUFF (MA): Can I just start by saying why? Why do we need these things? Where is any evidence that indeed our conduct hasn't been great in the last few years? Regulation has worked and we provide the ACCC every year, as we're required to do, with all of our accounts and they can see quite clearly that we're not earning excessive returns, so why?

DR CRAIK: Our view is that there needs to be a credible threat in the regulatory regime that surrounds airports. There are a number of measures, as you know, like VIIA and IIIA and section 46 and section 155 and a whole range of things that are possible for the ACCC to do. As you will know the ACCC collects the information, puts out a report and then some suggestions are made by the ACCC about potential abuses of market power, possible abuses of market power and then nothing happens. Our view is that the regulatory regime needs to provide a credible threat to abuses in market power and we don't believe, given the lack of action on the basis of those statements that there has been any - there has been no action so we're not convinced that the threat right now is credible.

So what we're suggesting is an intervening process which means that the ACCC has to back its judgment. If they're going to make statements about abuses and market power, then back its judgment with a show cause. But also provides, before you get to any of those major provisions and the CC Act that there is a step for airports to respond to the ACCC's views. So what we're saying is that we're proposing a show cause as a credible sanction in relation to the regime. We understand you and the other airports don't agree but we're interested in your views if we do proceed with this and, of course, we're taking your views into account, the investment firms management have spoken here today or in the last couple of days and put in submissions as well with their views on the potential to risks to investment of the show cause. So we do understand and there are significant concerns. I'd have to say even the airlines don't give it overwhelming support, in fact I don't think they give it support. But we are still exploring some of the potential details for it.

MR WOODRUFF (MA): So here we have two sides of a commercial negotiation not supporting said process. Here we have a body that might be responsible for issuing a show cause notice showing to the public its bias in these discussions and I have to call this bias because if you read the comments at the weekend, it just demonstrates bias to me. So is this an organisation you would want to have issuing a show cause and then actually running a process. From our end of the telescope you've got to say no, no way.

So negotiations work and they work quite well now. There are obviously some big risks out there. If show cause were to be introduced, there's a risk for investment. You have probably heard that already. There is a risk on timing of investment because these processes take a while and in the meantime we can't invest. For the benefit of the public we just cannot do that. So there are a number of credible risks to this, commissioner. But if you were so minded to follow this route - - -

DR CRAIK: We would make the recommendation. Whether the government introduces it is another matter.

MR WOODRUFF (MA): If you were so minded, then I think there's got to be some very strict guidelines. So how is conduct then - if conduct is within certain boundaries, ie, if your returns are within certain boundaries, then you can't issue show cause. If you're trading beyond those boundaries for a prolonged period of time because obviously the way that commercial deals are structured with airlines, they look at investments/costs over a period, not just a single year, and so you could get a return profile that starts high and ends low or starts low and ends high and that's the outcome of your negotiations with your airlines. But over a period it's balanced to achieve a certain outcome. So I think we have to be mindful of that.

Obviously there are other requirements to be met within our commercial negotiations with our customers, not least of which are service level agreements and that might require us to either accelerate or decelerate investment to hit those service standards because that's one of the primary obligations under your commercial agreements. So we'll need to take that into account as well. So if you were so minded, we want some very clear guidelines and it cannot be, I don't think, based upon one individual customer's grievances because clearly we have 30-odd customers that we negotiate with as a group. So those are the sorts of things that I would be counselling you on.

DR CRAIK: You have suggested that it should be confidential. Our intention in the draft report was a public show cause notice so that it - because it's a public interest issue, so the ACCC backs its judgment so it's a transparent process. West Australian Airport has suggested there should be a draft show cause that's confidential. I'm not sure if they think the final one should be too. I'd be interested in your views about the public or confidential nature of this, given we're trying to get the ACCC to back its judgment on these things, it's potentially a public interest issue, but mindful of the issues about the airport's investment.

MR WOODRUFF (MA): We would be obligated as a company, if we were issued a show cause, to declare that anyway under the stock exchange rules.

DR CRAIK: So it would become public anyway.

MR WOODRUFF (MA): Yes, so the issuance of a show cause would have to be made public, even if the ACCC did it confidentially. We would have to do that. If we just take one step back I think what would cause us more damage is cosy chats with The Age at the weekend saying, "We might be thinking about doing this." So I wouldn't like to see that happening. If there was genuine cause to issue one it should be issued. We'd have to make it public, therefore why wouldn't they make it public?

DR CRAIK: In the first place.

MR WOODRUFF (MA): In the first place.

DR CRAIK: Yes.

MR WOODRUFF (MA): But then the whole process then of us producing whatever information is required under this would have to be kept confidential, because this goes to the heart of our competitive advantage, our agreements with our customers is a part of our competitive advantage. So there's no way that can be in the public domain.

DR CRAIK: Sure.

MR WOODRUFF (MA): All of the agreements contain confidentiality clauses anyway.

DR CRAIK: Yes. What's your view about the possibility of a draft of the monitoring report being made public, and your responses to that monitoring report - when it's finally published the airport's responses being made public with the final report?

MR WOODRUFF (MA): I think we've referenced some of this in our initial submissions. We are given an opportunity to comment on this report. I don't recall one occasion, correct me if I'm wrong, where our comments have been taken into account. So it just appears to me they start with an intent in mind and they just carry it through regardless of factual errors, omissions. So it kind of worries me.

DR CRAIK: So would you support your responses being public with the final report?

MR WOODRUFF (MA): I think I would support stakeholders' comments being made public as appended to - and reasons why they weren't included.

DR CRAIK: Okay.

MR WOODRUFF (MA): If you think about some of the processes that we have to follow, by the way, to get our investments away. If you just think about a master plan process or a major development plan process, we have to make public to the minister, by the way, every comment that we receive. We have to then put a reason as to either why we've rejected or we've included it in that. I think that's a good process.

DR CRAIK: In relation to the ACCC doing the monitoring report, issuing the show cause and potentially doing the inquiry, I take it from your earlier comments you think there should be - I mean the minister may get someone else other than the ACCC to do a VIIA inquiry, that's possible under the legislation, but the ACCC is obviously the most qualified body.

MR WOODRUFF (MA): Do you firmly believe that statement you just made, commissioner?

DR CRAIK: I do. But I'm talking about the chain of events and the same organisation doing all three things. Do you think that's reasonable?

MR WOODRUFF (MA): I can only comment on the conduct to date, which I think demonstrates bias. So I wouldn't be a supporter of them conducting the process throughout the process. I think there needs to be someone else there.

DR CRAIK: Okay, good, thanks. John?

MR SUTTON: Just to pursue this area a bit, I mean you've given me the impression, Chris, that Melbourne Airport has sort of been hard done by in this process or the ACCC, at the very least, is doing you wrong and may do you wrong in the future et cetera. Can I suggest to you that when the airlines sat where you're sitting yesterday, guess what, they said they're hard done by in this process. In fact, just about every witness we've had has pleaded their case that they're being hard done by et cetera.

Can I put to you that I don't think Melbourne Airport over the period of the privatisation and the light-handed regulation has been hard done by. I'm not aware of any actions that have been brought by the ACCC or any other regulators. I mean I might be wrong there but let me just continue on to say your comment about the show cause, that you say that the two biggest stakeholders, the airports and the airlines, neither of them are happy with it, and that must indicate something. But the reality is that one constituency group is not happy because they say it's far too weak and the other one, the airports, say it's too strong. If we try to find the recipe that these two big stakeholders, airports and airlines, are both one hundred per cent with, both ready to sign on to, well, we'll be working very hard for a long, long time. I don't think we can find such a recipe. In fact, it may well be that if they're both complaining about it there might be some validity in it. Anyway, I'll just toss that stuff at you.

MR WOODRUFF (MA): Commissioner, you make a great point. Everyone sits here, don't they, every five years in front of you and says, "We're all hard done by," get that. I've seen it many times in my career in different jurisdictions. But what's broke? What are we trying to fix? I haven't been able to see anything yet that says it's broke. In any commercial negotiation you do - they're tense, but ultimately you reach an outcome. You never get what you want. You never. I mean both parties have to compromise in a commercial negotiation, and that's what it is. We're going through this right now, by the way, and it's a lengthy process and it is complex. You're dealing with big investments. It's huge risk for both parties, yes. So it's never easy but we ultimately get there. We do get there.

I think your statement earlier about the fact that there's been no complaints about Melbourne Airport - there's been rhetoric, by the way, and there's rhetoric every year by one particular body; every year. Not backed up with anything, by the way, never takes it further, but it's always in The Age. That hits our reputation, not

happy about that, because I think that's a misrepresentation of the facts. So I hear what you say. It is, unfortunately - it's part of regulation. This is what has to occur every period of time. But what is broke? Where have our returns on our aeronauticals investment been proven to be excessive? They haven't been.

MR SUTTON: Okay.

MR WOODRUFF (MA): They haven't.

MR SUTTON: Can I just explore that area about - I think you said you've got major negotiations on at the moment?

MR WOODRUFF (MA): Yes.

MR SUTTON: And they're tough and all the rest of it. Could you take us into that process a bit? I mean how tough? Are they protracted, are they - could you just give us some insight into that process. Has it been dragging on for long or are you about to sign off et cetera?

MR WOODRUFF (MA): So at the start of the process we try and agree time lines and staging posts with the various parties that we're negotiating with. There are typically - in our case there are three big parties and then many smaller parties that we have to negotiate with. So we try and agree the time lines and the staging posts about when we will provide certain bits of information to our counter-parties. Typically this could be an 18-month process, by the way.

What we're finding is, certainly in this round, because of the scale of our future investment the level of information that our customers require this time round is of a much more detailed nature. Only because - I think I said in our opening remarks we feel that we need to invest about a billion dollars in the next pricing cycle to keep our service levels where they should be and to keep up with growth. Well, crikey, that's a big number, and that will have an impact on price. So you can understand from our customers' end of the telescope why they would require much more detailed information, and clearly, this takes time. So everything is examined - I want to say forensically but that's probably not the right term to use - but in a lot of detail. Our traffic forecasts are really examined in a lot of detail. Our project costs and the need to undertake certain projects at certain time are examined in minutiae of detail and then we have to negotiate with various parties on all of these points. Our cost base is examined in minutiae detail. So that's one of the reasons that they're complex and time consuming.

MR SUTTON: Do you see any possibility some of those negotiations could derail or one party walk away in a huff et cetera?

MR WOODRUFF (MA): We would like to hope not. It hasn't happened to us before. We have always managed to reach agreement and I'm hoping that commonsense will prevail in these negotiations because ultimately the public, our state, need us to continue investing to continue to grow.

MR SUTTON: That might be a good point for me to ask about the information request we float in the draft report about the idea of some possible additions to the pricing principles or indeed a voluntary code of conduct et cetera without - our thinking, of course, that there may well be further principles that could make that negotiating process you're talking about that's long and tough and protracted that could make it a more efficient, timely process. What's your thinking on that?

MR WOODRUFF (MA): Please don't misinterpret my comments as me saying I think it's broke. I don't think it's broke. I think they have to take that amount of time for parties to really understand each other's positions and what it is we're trying to achieve because they are complex. So please don't misinterpret those. I think the addition of guiding principles, whilst they might be approached as coming from a worthy cause could actually be quite damaging because not all airports are the same and we're negotiating different outcomes, we have different needs, we're at different cycles in our growth phase, there's a lot of differences and ultimately we agree through the process the principles anyway with our customers and those principles are, for example, information requirements, rates of return applicable to your particular business, your passenger growth rates, your cost bases. So those things are negotiated anyway. I'm not sure if a suite could be common to all airports is what I'm trying to say.

MR SUTTON: Just out of interest, the airlines do say, well, at least one of the very big airlines says that it thinks there are some areas - it wants to suggest to us some areas where they just keep reinventing the wheel in these negotiations and it may well be if you take certain elements out of it, because 99 per cent of the time parties end up agreeing on a particular concept, it just may make it a more efficient process.

MR WOODRUFF (MA): I'm yet to be convinced.

MR SUTTON: Fair enough.

MR WOODRUFF (MA): We negotiate with our parties and we have to comply with their requests for either staging post timing, information requirements, those sorts of things otherwise we won't get a deal done.

DR CRAIK: Chris, can I change tack a bit and talk to you about land-based access. You made some comments about you were cooperating with the Victorian

government on the feasibility study for rail to the airport. Could you tell us a bit about that and perhaps some of the time frames and those things.

MR WOODRUFF (MA): That's a very good point. We have always agreed with our state government to protect a land corridor into our site for future rail use. That's what we've always done. That's clearly indicated in our master plan and very clearly supported by the state government. I suppose discussions really started ramping up - I want to say three or four years ago - about this in a previous administration because we think we're getting to that point now where we do need a rail link and if you look 10 years down the track - because if a decision was made today you wouldn't see the first train into Melbourne Airport for 10 years. In 10 years' time we'll be serving about 40 million passengers and we just don't think the current access arrangements will cope with that. We think there needs to be a step change basically. So we're keen proponents of this.

The state government, as part of its pre-election pledges, pledged to review and redo a rail study into Melbourne Airport. So that has started, we are - - -

DR CRAIK: So it has actually started?

MR WOODRUFF (MA): It has started. A planning team has been set up. I met with them only yesterday in fact again. So we are cooperating with them.

DR CRAIK: So it's a feasibility - - -

MR WOODRUFF (MA): It's a feasibility study at this stage. What we're trying to encourage them to do, of course, is to slow down or just cancel their feasibility study into an airport that only serves half a million people a year.

DR CRAIK: This is Avalon.

MR WOODRUFF (MA): Avalon Airport, and actually focus the fire power and available resources on an airport that handles 28 million today and is growing every year by more than the entire annual throughput of said airport in Geelong. So that's what we're trying to encourage the state government to do. But they went to the public with an election pledge, that's what they were voted in on. I get that. But that will not prevent us from putting our case forward. At the same time, of course, we need to examine all forms of access to our airport. If we're adding - I want to say nigh on two million passenger movements a year, we've got to make sure that people can get to and from our site efficiently.

So let's look at public buses and bus access. Let's look at road access. Let's look at that great commercial business service, the SkyBus, and can it increase

frequency. Everything has to work well, not just one bit of it.

DR CRAIK: When is this feasibility study scheduled to be completed and is there any restriction on it becoming public at the end of it?

MR WOODRUFF (MA): I suspect it will be public, by the way. I think the process is quite confidential but I think at the end they'll have to publish. They will be under some pressure to do so, I would have thought. I can't recall at the moment the time frame. We want it done quickly. I understand the state government have or are about to appoint the consultants. So I am hoping they will do their work quickly. We are certainly geared up to assist with that.

DR CRAIK: So we're looking at six months or 12 or - - -

MR WOODRUFF (MA): I don't know. I'd like to think by next Tuesday afternoon at 3.30, commissioner, frankly.

DR CRAIK: That's unlikely.

MR WOODRUFF (MA): That's unlikely, isn't it.

DR CRAIK: Thank you for that. We'd be interested in the relationship you have with the Victorian state government in respect to the Sunbury Road-Tullamarine Freeway. Can you explain that?

MR WOODRUFF (MA): We have not got a relationship with the state government on the Tullamarine Freeway.

DR CRAIK: I thought there was some deal where it was going to be handed over or somebody believed it was going to be handed over. Someone said to us during the course of this inquiry - and I can't remember who - originally the idea was it would be handed over.

MR WOODRUFF (MA): We might be talking at cross-purposes. So Tullamarine Freeway comes up to the boundary of our site, it's then called Sunbury Road as it goes through our site. So that road runs through Commonwealth land.

DR CRAIK: The Sunbury Road bit, you mean?

MR WOODRUFF (MA): The Sunbury Road bit. Now, only just recently we granted the state, in consultation and agreement with the Commonwealth government, a long-term licence over that Sunbury Road because they have rights over it anyway under Victorian transport law. We just formalised that with them

and - - -

DR CRAIK: So what does that mean, that they look after it?

MR WOODRUFF (MA): They look after it. To all intents and purposes it is theirs. We have nothing to do with it. But we have to guarantee them certain things under this access that we wouldn't restrict access, wouldn't build a little fence, for example, a little gate. So we had to agree all those things. But we've gone further than that as well and certainly I think the Commonwealth government are in support of granting the state government a full easement over that through our site and we have no issue with that.

DR CRAIK: Okay. I understand you're looking at or investigating the possibility of a kind of waiting area outside or just near the airport for people who want to pick-up and drop-off. What's the timetable on that and is there likely to be a charge for using that area or what?

MR WOODRUFF (MA): It depends where it is. We're all concerned about safety and those of you that are regular users of our airport will probably have seen cars parked outside off-road. Not ideal. Not appropriate. So, yes, we're looking at something right now. We've got a couple of sites in mind. Some on our site, some not, by the way, that people can wait conveniently, a couple of minutes drive to the terminal. It causes us issues if people recirculate, by the way, through our site. It just causes congestion, so we don't want that happening. How do we convince people to use an area? We've got to make it convenient. It's got to be nearby. It's got to be safe for them to wait in. Now, whether it's a gold coin charge, I don't know the answer to that just yet. It depends if we have to spend a lot of money doing something.

DR CRAIK: What sort of timing have you got on this?

MR WOODRUFF (MA): A few months away. It's quite quick.

MR SUTTON: Carparking, it's a big source of revenue for your airport, 20 per cent or something in that order, as my memory tells me, and I've seen some angry comments in those media blogs from the public that you have inappropriate carparking charges et cetera and your practices are inappropriate. Some of the expressions are probably a bit more aggressive than that but there is criticism out there. So I would ask you to address the carparking issue and also the possibility or the idea that you have been, I don't know, harsh or discriminatory for some of the competitive modes, taxis, limos, hire cars, your private buses; you're mistreating those people with a view to directing more custom into your carparking system. So can I ask you to speak to all that.

MR WOODRUFF (MA): It's not our intention to engage in conduct like that. Because we don't have a rail link, we are more dependent on road access than a lot of other airports and our distance from the city. I think we've provided the statistics on that. We are blessed with 17 off-airport carpark competitors so we really are in a competitive market and if you add up all of the spaces that those competitors have, it's as much as we've got in our big long-term carpark. So we have to be competitive. We've got to be competitive on service that we offer and on price that we offer. So that's a big bit of this. We're very even-handed with users of our forecourt, very even-handed. We have published our charges, it's in the public domain. I don't think anyone can say that they're excessive frankly because they're not. We have to invest, by the way, in access arrangements and infrastructure for those off-airport competitors to use. So I think an appropriate charge, and it isn't big, is appropriate.

Are our carparking prices excess? Let's get to the heart of your question, shall we? \$77 for seven days. Is that excessive?

MR SUTTON: That's the long-term carpark, is it?

MR WOODRUFF (MA): \$29 for a day. Is that excessive? Parking right next to the terminal in a very modern, very high cost, multilevel carpark at \$70 for a day. Is that excessive? How many people have parked here today? Because, I tell you what, if you park here today you're going to be charged 80, 90, 100 bucks. So is that excessive? Of course it's not. I think we put all those comparisons in. This is one of the things, of course, that no-one likes paying for carparking. You don't like paying it when you go out shopping, you don't like paying it when you go to the airport. So we try to be appropriate.

Yes, we do make approximately 20 per cent of our revenues from carparking. That is a product of our access and our distances away from said city but, my goodness, don't we have to invest a lot as well? I think those of you that do you use certainly our short-term and our multilevel long-term carpark, which is very, very reasonably priced, I think you get a great standard of service. You get great facilities.

DR CRAIK: Do you do online booking of your carparking?

MR WOODRUFF (MA): Yes.

DR CRAIK: Like, booking in advance.

MR WOODRUFF (MA): I might have to come back to you with that. We certainly have online information about all the products that we offer and we do

weekend specials, we do school holiday specials, in the same way that other companies do. So all of those are advertised on our web site and all the prices and the calculator about how much it costs or if you get a taxi coming to the airport or whatever.

DR CRAIK: Yes. But you haven't moved to online actual booking yet?

MR PIROTTA (MA): I don't think so.

MR WOODRUFF (MA): But I know it's in development.

DR CRAIK: Thank you. In terms of quality of service, one of the things we're trying to do is get a more standardised survey across the airports than currently exist. Do you think a standardised survey that started with the ACI survey base would be the place to start and would that be a reasonable way?

MR WOODRUFF (MA): I'm not a supporter of the ACI survey.

DR CRAIK: Do you guys use it?

MR WOODRUFF (MA): Yes, we do. It's another indicator to us. I like to be in it anyway.

DR CRAIK: You don't want to be in it, did you say?

MR WOODRUFF (MA): No, I said I would like to be in it anyway but I don't want to use that as my primary tool. It has no relevance to the service level agreements that I have with my customers and these are quite specific and unique. So we use our own quality of service monitoring, by the way. We ask 12,000 a year for their views on how we do and that forms the basis of some of our commitments with our customers. Don't forget the ACI survey is kind of a ranking. It doesn't give you absolute scores around service which is what we need because we need to hit scores within certain bands for our customer obligations.

By the way, those obligations are very different in areas of our business. Who in the room has flown Tiger, for example? A few of you. So we agree, for example, in that terminal a level of service and it's very different, by the way, to the level of service we would agree with a five-star international airline. So we've got to be quite specific in our questioning to get the answers that we need to justify the service level agreements. ACI can never do that for you. It only ever asks, I think, a couple of hundred people every quarter so it's not even statistically valid, it's a guide to us, that's all it is. I am a supporter of trying to get a more uniform methodology monitoring going but I wouldn't advise using the ACI methodology to do that. I

think it needs to be different, more aligned to what we do with our quality of service monitoring which goes into a lot more detail and asks a lot more people.

DR CRAIK: One of the things that we've contemplated and put in the draft report is the possibility of asking airports to report on the percentage of their SLA targets that are achieved each year and if they do that, then using that for a quality of service indicator in relation to airline surveys. What's your view about that?

MR WOODRUFF (MA): What did I say in my submission? I don't want to contradict myself.

MR FRANCIS (MA): Indicated support for a high-level reporting system on the SLAs.

MR WOODRUFF (MA): I'm in favour of transparency, commissioner. I came from a business in the UK where we used to publish all of that data every month on our web sites so what percentage of the SLAs we used to achieve or not and therefore what were the financial penalties associated with that. That was extremely transparent so really I suppose I could have no issue.

MR SUTTON: Some parties have said they're commercial-in-confidence these SLAs and you really couldn't go into much detail.

MR WOODRUFF (MA): That's a fair point and I think I would have to take that on notice reflecting on what I've said previously. I might have just contradicted myself.

DR CRAIK: If you could send us something in writing and you could state your final view, that would be helpful.

MR WOODRUFF (MA): We'll do that.

DR CRAIK: Okay. John?

MR SUTTON: When non-aeronautical developments on airport have a - I guess I'm talking about major ones, when they have a consequential impact off-airport, and there's infrastructure needed off-airport, do you say that, well, you know, that's a matter for the relevant parties to talk about and ultimately it's just down to the goodwill of the particular airport as to whether it may contribute, or do you see that there may be a case for a consistent approach or a regulated or some kind of formula to deal with those situations?

MR WOODRUFF (MA): Obviously when the businesses were bought from

government way back when, they were bought with an expectation of developing both bits of your business very well, non-aeronautical and aeronautical. At that time it wasn't contemplated that there might be additional costs associated with those sort of aspects you just mentioned. I state the blindingly obvious there. We obviously pay quite a large amount of rate equivalent payments to our local authority, by the way, so we would see that as even being development contributions. We get no services back, by the way, for that.

So there's your high-level answers. But I think we have to work within the jurisdictions that each airport operates. The Victorian government is certainly reviewing at the moment its developers' contribution process. No doubt as we go forward and we have to submit major development plans that have to go through a state approval process on its way up to the federal minister, that these might be discussions. But we can't be disadvantaged. There needs to be competitive neutrality between our site and whatever happens offsite, and we don't want to be penalised for that. But I think if you were to ask that question of every airport you might get different answers back, because the jurisdictions in which they operate might be different.

MR SUTTON: Well, I think the common answer is well, our particular airport - the notional airport says, "We example goodwill. We are reasonable people. We know that the bigger the non-aero development the more impact it has offsite, the more obligation or the more sort of moral onus or something for us to contribute is in place, and we do so." But of course that's them talking their own book, as it were, or their own case. What if that particular airport exhibits no goodwill and just says, "Well, technically we're not coming to the party, shove it." I mean this is why we have to grapple: should there be some kind of consistent approach or some kind of formula or is it simply just hands-off?

MR WOODRUFF (MA): It might be difficult to get a consistent formula across all of the various jurisdictions, is what I'm saying, because I think there needs to be competitive neutrality that exists within the jurisdictions. I think many of these things have to be done on a case-by-case basis. If I was building a massive DFO, for example, not that I am contemplating that, on my site, and it caused big congestion then I would rightly be looked at to say, "And what are you going to do about it?" But we're not doing that, and our developments tend to be aeronautical related anyway, so big train shipment sheds, for example, freight forwarders. They're there because we've got an airport there, so they add to the economic benefit of the state anyway. But those in their own right don't generate the sort of traffic levels, I guess, which you're suggesting.

DR CRAIK: Can I just ask one question. Yesterday we had an appearance from a Mr McLaughlin. I forget his first name, Kevin?

MR SUTTON: Keith.

DR CRAIK: Keith McLaughlin, and I think it was his lawyer, Eric Wilson. This is a history going back some 20-odd years about access to Melbourne Airport. It obviously started long before the airport was privatised or you guys were there, but do you have any comments on that? It was really raising a general issue of - - -

MR WOODRUFF (MA): I don't possess sufficient knowledge to talk knowledgeably about that case. All I can say was it was highly complex, it involved a range of jurisdictions and authorities, but ultimately it was settled; can't comment more than that.

DR CRAIK: Okay. Well, you might want to have a look at the transcript from yesterday. You may wish to respond subsequently.

MR WOODRUFF (MA): We'll have a look when it comes out.

DR CRAIK: Okay. Have you got anything else, John?

MR SUTTON: No.

DR CRAIK: Okay, thank you.

MR WOODRUFF (MA): Thank you.

DR CRAIK: Thanks very much. Thanks for your submission, thanks for your comments today.

MR WOODRUFF (MA): Good luck.

DR CRAIK: Thanks.

DR CRAIK: Our next appearance - John, if you're ready. John, if you could state your name and position for the record and then if you'd like to make a brief opening statement.

MR FEIL (NCC): Thank you. My name is John Feil. I'm the executive director of the National Competition Council. You have our submission and also a letter we wrote in response to the draft. As you'll see, we tried to concentrate on issues that we thought the NCC had something of particular value to add, rather than wax lyrical. For the record, we don't feel hard done by. Just so there's someone on the other side of the equation for you.

DR CRAIK: I think you're the first.

MR FEIL (NCC): It's always nice. I presume you've had an opportunity to digest the submission. I think our principle area of concern was a proposal that the mechanisms in Part IIIA for a declaration of services be bypassed and there be some statutory or regulatory deeming of something, and airports to be services that should be subject to a negotiate-arbitrate regime without going through the process that the Council is responsible for. It's much more than simply patch protection.

We think that those Part IIIA processes at the beginning, the declaration process, are a valuable part of the entire national access regime. Among other things it provides an opportunity to work out what the proper boundaries of the regulation are. But probably more importantly, they enable, through the consideration of the declaration criteria, for us in the first instance and the minister making a decision to actually be confident that the regulation is properly focused as necessary, and the costs do not outweigh the benefits. Our view is that if you deem something to be meeting those requirements you can't be confident that is the case.

We see the argument that is put for deeming at least in part is, well, it takes too long and it's too uncertain. There are some prime examples of it taking too long. Nonetheless, we think that there have been mechanisms put in place to redress that difficulty. We think there's potentially room for further mechanisms to address that. Our line on that is if there is a problem about the timeliness of the declaration process under Part IIIA, it certainly isn't specific airports, and that if that is a problem then it should be addressed generically, not in respect of one particular sector. So I think that that's our strongest view. We're pleased that the Productivity Commission hasn't taken that suggestion forward, but we thought it was worth restating that just in case it popped up again.

Show cause; I want to be clear, the Council doesn't have a view on whether that's a particularly good idea or a bad idea. We certainly don't have a view on whether any show cause requirement would be met or not met by a particular airport,

we've never looked at it, just as we have no view on whether a particular airport service might be declared or not. Until you go through that process you simply shouldn't reach a view, and the Council is careful not to do that.

We did point out that there seemed to be a little bit of a jump from a number of elements of the report that you produced that we thought were well considered and reasonable conclusions, and a recommendation of enhancing the regulation. Whether that's to provide a credible threat, I guess we're not entirely convinced that the mechanisms that are there now aren't a credible threat. It's not clear to us that the reason that threat hasn't been turned into an actual inquiry recommendation isn't because the requirements for that aren't met, irrespective of rhetoric and The Age or anywhere else. It's not for us to comment on that.

We were also a little concerned that it wasn't entirely clear from reading the report just what was meant by a show cause. Now, I appreciate that you're dealing in a general principle rather than the fine nitty-gritty of legal drafting, and I certainly wouldn't want to encourage you to get into the fine nitty-gritty of legal drafting. I think if a report like yours and the government's decision following sets the general principles then the policy people in putting together the drafting should try and give authority and give law to that. But I don't think it's for the Productivity Commission at this level to get down to clause (a) should read this and clause - I think that's just unnecessary.

I think though our concern was a little bit that at one level the show cause doesn't appear to - could be little more than the ACCC writing a letter, possibly with a few fancy legal terms in it, but not much more than that, and the opportunity to reply. Now, I understand that the monitoring reports are already given in draft and there's an opportunity to reply. You've talked earlier, when I was sitting in, about enhancing that. Maybe there's something in that. But at one end show cause doesn't amount to much more than that.

I think that what was intended was something that was more than that, that was actually based on a statutory provision. That has upsides and downsides. The upside is it would provide a degree of formality. There would have to be a test that would have to be in the back of the mind of the regulator in making a show cause order and a process presumably set out. That process would have to be fair, would have to meet the requirements of natural justice, because I think it's impractical to exempt something like that from judicial review. But judicial review is a two-edged sword. One, it provides the oversight that every one of us would want in terms of administrative and regulatory process. The other problem is that it does provide for the courts to intervene, albeit on - depending on which side of the fence you're on, very broad or very narrow terms.

I think our experience is those terms are probably reasonable and appropriate, but it does potentially put another step in there. If the regulator goes too far without having solid grounds for doing so or adopts unfair process, they can expect to be put back in their box. Regrettably, sometimes that takes time, even if the case doesn't have much merit. But I think that - where I perceive the commission is at is something that would involve a statutory amount and some statutory power, and the exercise of that would be reviewable no matter what was done. I don't think anything more than judicial review is required. I don't think you need some special merits review. As we've said in our draft we're becoming a little bit less of a fan of merits review as opposed to general judicial review anyway.

You've specifically asked about whether the ACCC should be involved all the way through. I think in our submission we said, well, in theory there might be a better option. In practice it's pretty unlikely. We obviously gave some thought as to whether the NCC could have a role there, and frankly the first one would be slow, because it would take us a long time to gear up to do it. It's not in our normal set of - the level of detail involved in a price review or a show cause review is not in our normal range of operations. I think it's worth keeping the flexibility there that there is now, but I think the presumption should be that the ACCC is the best body to do it.

Towards the end of the submission we pointed out that in our earlier submission we had talked a little bit about the declaration criteria. One of those is now being tossed in the air. It's landed on the butter down side on the carpet, in our view. Respectfully, we disagree with where the Full Court's arrived. We, among other parties, have sought special leave to appeal that decision to the High Court. This will continue the perfect example of how things shouldn't proceed with declaration under Part IIIA. But I think more and more the Pilbara rail is becoming the exception rather than the rule.

The only other matter I should highlight is since we wrote this, or at the end of when we wrote this, we have now received a declaration application. It's not for an airport service that is provided by an airport. It's for an airport service provided by others. We have applications for the fuel supply services to Sydney Airport. We're only at the very beginning of that process, so there's nothing more to say than we have it. The application's a public document, it's on our web site. More than happy to assist in any other way I can.

DR CRAIK: Okay. Thanks very much, John, and thanks for the NCC submission. It's actually really useful to get the submissions that actually focus on some of the detail of what we proposed and give us cause to make these things more rigorous or to look at them more rigorously. Could I just address the issue of the show cause one at the moment. You won't be surprised about this but a lot of the airports have suggested that show cause ought to be confidential because of the potential risk to

investment. Do you have a view about it? You did raise the issue that we've been contemplating, I suppose, perhaps more since we put the draft out about whether the show cause should be statutory instrument or more like a draft report and a letter seeking more information. Would you have views about those?

MR FEIL (NCC): I would have thought practicalities of trying to make the fact of the show cause confidential - you'd be better to talk to the ombudsman and others but I would have thought under the provisions that apply to state agencies, without a specific statutory bar on publication - you know, the secrecy provisions like the Tax Office has in respect of individual taxpayers - the chance of us being able to withhold successfully any - or resist a FOI request for what you've sent out by way of that would be pretty low.

DR CRAIK: Yes.

MR FEIL (NCC): I don't think there's any difficulty about specific confidential information where you can use the commercial in confidence provision. But the fact that you've issued one - at the very least you're going to have to publish the number of them. If you do that you're going to get a request the following day for a list of them.

DR CRAIK: Well, the other issue is that a lot of these are - well, some of these are listed companies, and so they respond to the market anyway.

MR FEIL (NCC): There does seem to be a certain rubber band as to what has to be disclosed, and when. Speaking personally, I would have thought that from a public policy point of view that this is the sort of thing that should be done in public, not behind closed doors. I think it's all very well for a private process around the draft of a report going to a party for comment and then incorporating those comments. But at that point the final version is going to have to be published, and probably if someone wanted to dig into the draft they could have a bit of a run at that as well.

I guess the Council's approach to its role has always been to do as much as is possible in the public domain and be pretty testing of parties that want to maintain confidentiality beyond what is, I think, reasonably agreed to; everybody, a commercial number. As you well know, we have people that try various other measures, but from our point of view a declaration application being dealt with without being public would just be beyond contemplation. I think the other risk, of course, is that what people don't know they're not above filling in the gaps themselves. I think you get speculation. The speculation might well force someone to respond. I just think it's - with respect to the airports I understand their rationale but I think it's impractical.

DR CRAIK: The other thing we've been thinking about is whether there's merit in, well, two things. Firstly, recommending that the ACCC publish a draft of the monitoring report and also when they publish the final, publish the airports' actual responses to the draft.

MR FEIL (NCC): To the extent I have a view, I would have thought that if an airport was really wanting its response in the public domain it could put it there itself. Having them all in one place might be helpful, but I know in our case we make a practice, in a slightly different context, of - you know, our draft reports are public. Most, if not all, responses to those are public. Our final report, we don't - and I don't want to have to go through and respond specifically to every comment tabled in every report, but people can see the flow of information. I think we all exist in a network world now that the Internet is there; if there is real value in it someone will put it together for you. The media will do the proper job and put it together. Whether you consolidate in one web site of the ACCC or somewhere else I wouldn't have thought is a major worry.

DR CRAIK: On the issue of deemed declaration or declaration, we did ask Virgin yesterday because they said that declaration of airside services at Sydney had actually been very successful in avoiding any further disputes, once it was declared then things were resolved quickly and we said, "Why haven't you applied for an extension?" and they said, "Even with the amendments to the act it was still expensive and potentially too long, given the sorts of hurdles that can arise," and that does seem to be a view of all the airports who generally support or appear to support the notion of deemed declaration.

MR FEIL (NCC): I guess they could have tested it by putting an application in at any time in the years up to its expiry. We are, under the statute, required to deal with these matters in six months. That can be extended on one or two occasions if there is specific reason. Six months is a commercially realistic time frame for dealing with these matters in my view. It would be less onerous on a party seeking a renewal or an extension or a matter that has already been dealt with, most of the information is there, most of the arguments are there. The courts' new view of criterion B is an issue.

DR CRAIK: Do you think that really raises the bar significantly?

MR FEIL (NCC): Everywhere perhaps except airports but I don't want to go too far there because we have a live matter. Generally we think it raises the bar extremely because on a private profitability test, particularly one that doesn't have a problem with profits from one part of the business being used to cross-subsidise and build more railway lines, we think that that's a test that makes it very - and we have said publicly we think it will be extremely difficult to declare anything in the

resources sector which is probably where a good proportion of the things that might need to be declared lie. Airports is a slightly different situation, there's not the vertical integration unless you count carparking. I don't know that there's a big source of cross-subsidy for building terminals and airside services from carparks. So I think it does but that's a difficulty everyone faces and we hope that we will get an opportunity to deal with it in the High Court.

It's a worthy application for declaration, it requires significant effort on behalf of the applicant and, in my view, that's entirely appropriate because the day it's lodged you're obliging the asset owner to respond with a significant and costly effort. Regulation is not free, including this part of the regulation but neither is a show cause arrangement because if you are of the view that the first thing or the second thing that someone who receives one of those does is to ring his lawyer, you're probably correct in your view.

But I understand the concern and the Council has consistently expressed a concern that some of the timing under Part IIIA declaration which we're responsible for has been outrageous. But if you face a situation, as we do with Pilbara where it's been to the Full Federal Court three times, there's been at least three or four judicial challenges to jurisdiction, there was an outstanding court decision that gave us no jurisdiction, we had to go to the Full Court and the High Court to get reversed, it was going to take some time. The next one should not take that period of time. Six months and whatever the cost of the legal representation that people choose to employ I don't think is unreasonable and presumably the new applicant in respect of the fuel service doesn't think it's unreasonable either.

MR SUTTON: Most of the parties seem to subscribe to the notion that there should be a credible threat in relation to this marketplace we're dealing with here, Australian airports, and we, of course, are left grappling with the issue as to whether indeed there does presently exist a credible threat and we're grappling with that and we think obviously that this supplementary aspect, ie, the show cause can add to the credible threat. At one level the argument goes that the remedies under the Competition Act have been very little used over the last 12 years or whatever it is, is that an indication that they're not user-friendly, when all is said and done they don't represent a credible threat or is it an indication of basically everything is hunky-dory in the industry?

I do have you saying here at one point in your presentation that you do potentially see room for further improvements to mechanisms or words to that effect. Are you concerned that the remedies do need substantial further improvement or tweaking or how would you answer that?

MR FEIL (NCC): Let me answer it in two parts and one is slightly facetious and the other one may be of help to you. It's certainly the case in respect of airports that

it's either credible or it's not. It's definitely somewhere between those two. Good luck sorting it out. We haven't looked at airports since the time of the SACL declaration. As far as the generality of the threat that is available under Part IIIA, we think it is credible. Where the criteria are met, then there is a capability to declare the service and we think that the mechanisms that subsequently follow that in terms of negotiate-arbitrate have excellent potential to work. We think that there are still some risks that the declaration process can be taken off on appeal, review, appeal, review through a process of churning. That is unhelpful and doesn't add to the result but adds to the cost and delay.

To that end we have come to a view that the mechanisms for reviewing the minister's decision based on our recommendation probably go too far. At the moment there is a full merits rehearing of a decision on the application. So essentially the minister makes a decision based on our recommendation whether or not to declare a service, the Competition Tribunal, albeit now on the same information or largely the same information that we had, makes the same decision. You get two rolls of the dice and these issues are very rarely so clear-cut that well-meaning people can't come to a different view. Now, we think there should be a single route. We think that route is appropriately one where the decision is taken by a political entity which is the minister on our advice. So the minister has an independent flow of advice with transparent recommendations, he makes a decision.

We think that should be the end of it, subject to judicial review. We think judicial review is a robust mechanism for ensuring that administrative and regulatory decisions are properly taken. We don't think that there is a need for a second roll of the dice where different people wearing gowns - probably not wearing gowns but certainly wielding Queen's Counsel appear at a table and before a bench to do essentially the same job as has already been done. We don't think that is helpful and we think that it does impose additional costs because while that is not by any means a cheap mechanism, most of the work we deal with - you're talking about assets and values measured in tens or hundreds of millions, if not billions of dollars. I'm sorry, but in that environment going to a lawyer isn't an expensive exercise compared to the value.

So we think that two rolls of the dice is unnecessary. We think that judicial review - and we have suggested to the government they should consider whether that should be the appropriate mechanism rather than a merits review. In respect of airports, that potentially takes one step out of it and we think that would make it, for airports and for any other sector, a less daunting prospect than having to go through two rounds to get one answer. But I don't think there is anything specific about airports that make the threat of Part IIIA less or more credible in that sector than in any other sector that it is governed by.

MR SUTTON: On our show cause proposal we're getting different reactions from different parts of the industry. One of the more interesting reactions yesterday was from a consultant who had worked at the ACCC. She came and gave evidence and her take on our show cause was that in fact it doesn't strengthen the credible threat. It doesn't add to the remedies that are in the Competition Act, it weakens it because it puts in a step of delay and indeed, if it's subject to - I'm not a lawyer so whether it's subject to judicial reviews or merits reviews but the spectre of further delay in order to move along the path to a Part VIIA price inquiry, if her take on it is right then it just delays things further, that's a matter of concern.

She also adds, by the way, that even one day, if you get to the Part VIIA price inquiry, what's likely to happen at the end of that, there's no appetite anywhere for any kind of price setting or price capping or anything to that effect. Anyway, that's her general summation of it all, contrary to the airports who say it's far too aggressive and they would have it that it's excessive regulation and almost heavy-handed in some people's views. But her take on it that it actually detracts and delays the whole process, what have you got to say about that?

MR FEIL (NCC): I think with anything like this you need to be very careful to consider all the elements that result from a change such as putting a show cause in. On one view of the world, if you were only looking at the length of the process and the number of steps, adding a step has got to make it - adds a step and makes it more lengthy. But just as when we consider a declaration, we're looking at the quality of a declaration decision, we're interested in its timeliness but we also want to get it right. So I would suggest that, yes, it might potentially add time but if it improves the regulatory outcome, then you've got to balance a potential increase in time with the improvement.

MR SUTTON: Is one of the main attributes that it focuses the mind of the party?

MR FEIL (NCC): It could well draw things out of the negotiation back into the regulatory environment, pick it up, put it down and help solve some of these problems so you don't have six months worth of skirmishing between the parties before they actively engage in negotiation. Now, don't take me wrong, I don't think that happens. I think from what I've read - and it's no more than what I've read in the media - about how the airlines and airports engage, it seems to me that the most recent round was a substantial improvement on the round before that and the one before that and that one was an improvement on the one before that. In some ways one of the things that makes me a little nervous about putting the show cause element in is if the parties are gaining experience and are developing a maturing in how they deal with each other in the current environment, I would caution that you need to be a little careful about changing out of an environment that sends them back to primary school rather than secondary school where they are now and perhaps going onto

tertiary education in terms of that maturity.

I don't know that show cause is of that ilk. I am a little concerned that the show cause from some parties seems to be more a means of dealing with the ACCC's media statements than it is about the quality of the regulation. I wouldn't have thought that is a necessary mechanism. I don't have a view on whether the ACCC is right or wrong to make any statement but a regulatory response for them to be on the paper I would have thought is overkill.

DR CRAIK: I think that does us, John. Thanks very much for coming along. Thanks for your submission and your comments. That has all been really helpful. We will now break for morning tea for 15, 20 minutes and resume at quarter to 11 with Westralia Airports Corporation.

DR CRAIK: Thank you very much for coming. If I could ask you to state your name and position for the record please and then if you'd like to make a brief opening statement, we'd be happy to hear from you.

MR GEATCHES (WAC): Brad Geatches, chief executive officer, Westralia Airports Corporation.

MR KRAUSE (WAC): Brian Krause, general manager of aviation business development for Westralia Airports Corporation.

MR GEATCHES (WAC): In terms of our brief opening comments, they're as follows: in making these comments we're trying to avoid repeating the content of our various submissions made to date and we wish to discuss or focus on some key issues that we think it would be productive to explore further this morning. The key issues we wish to address are firstly where Perth Airport is at in relation to its redevelopment, its refinancing and the aeronautical price negotiations that we're undertaking. Secondly, to make some comments about the proposed modifications to the regulatory regime, being particularly the show cause modification. Thirdly, to discuss the issue of the financing of off-airport infrastructure.

The first two points relating to the airport redevelopment and aero pricing can be addressed together. We've now executed comprehensive agreements with airlines representing around 83 per cent of passengers, annual passenger movements and the one major airline that we are yet to reach agreement with has contacted us this week and advised that it wishes to undertake a period of more intensive negotiations next week with a stated objective of, by the end of next week, concluding an agreement with us. If this transpires, we will have reached seven-year agreements with airlines representing over 95 per cent of our passenger movements.

The airline in question has spent the past three months forming a further view on what infrastructure it wishes Perth Airport to construct for it to best suit its business plans in Western Australia and we fully appreciate that this process is a complex one and requires careful consideration. It's quite difficult to unbuild airport terminals, so they have to get that right. With the certainty provided by those airline agreements that we've reached to date, we've now very recently awarded contracts for the construction of the first of our new terminals, which is a \$120 million construction process and it's part of a \$750 million investment over the next three years.

We have been reporting to the commission a number of around just over 500 million to date. That has been focused on the aeronautical infrastructure and the major projects. When we look at the associated capital investment, including related infrastructure, the actual investment is closer to 750 million. We expect on the

strength of those pricing agreements also to award contracts for a further \$300 million worth of works over the next six to 12 months as part of that redevelopment. We're also in the process of progressing a substantial refinancing of the business and confidentiality considerations constrain me from describing the extent of that refinance. But I can indicate that it is very significant. It's about refinancing existing debt and raising both debt and equity funds for the redevelopment that we're undertaking.

What the last three years has proven to us is that credit markets are volatile and financing risk is a very significant one for our business and that risk continues in the global context. It is also to note that given the status of our business involving these very significant investments in our refinancing that we continue to enjoy the close attention of the various credit ratings agencies that rate us who have a very significant interest in these processes, including the status of the aeronautical pricing agreements.

So in summary it's fair to say that these agreements represent an important pillar upon which the certainty, the timing and the cost of our major redevelopment and it is the existing regime applying to the airport pricing that is the backdrop to reaching those agreements that we have in the recent years. So we think the questions that you are really testing are, firstly, the outcomes at Perth Airport, which by any measure have been very successful based on the evidence before you; have they happened because of, regardless of or in spite of the regulatory regime that currently exists. The second question is, if changes were made to those regulatory arrangements, would you end up with better outcomes at Perth Airport?

Our answer to the first question is that the outcomes at Perth Airport have occurred clearly because of the current regime and we've stated in our submission the particular features of that regime that have caused the outcomes. But the two most important are that there is a risk of regulatory intervention and is currently sufficiently motivational for our company to stay fully and effectively engaged at the negotiating table. There are currently no easier outs for either our company or airlines and there is a relatively high price to pay if an extreme position is taken by ourselves or the airlines. Finally, there is little scope for gaming the process in the hope or expectation of a better outcome being delivered by some external party. Those together have been the key considerations that have led to the favourable outcomes at Perth.

There is much evidence to confirm that we have very comprehensive agreements in place and that's included in some of our confidential submissions. The answer to the second question about whether there are changes that could be made that would improve the outcome for Perth, our position is now clearly on the record that we don't think there is. The only change that we have advocated is that in fact

there is a relaxing of the conditions at Perth or the regulation at Perth but we note that with the benefit of the very considerable information that has been placed before the commission your draft report has formed a different view and reflecting our respect for the process, we accept that view.

In relation to one of the material proposed modifications that you were making and that has been called the show cause process, we would want to make some further observations. We have been, as the people responsible for managing the airport and delivering the outcomes of the business, including the capital, the planning, the design, the capital expenditure, the commercial agreements, we as the management watch with a level of interest and a level of trepidation when economists and regulators - no disrespect intended - form views about complex commercial negotiations and we would say that these processes being undertaken by the commission are absolutely vital because what they are is an important process of discovery through which we who are, if you like, at the frontline of these complex commercial negotiations can give that practical overlay. No doubt the public views of the ACCC will get a run this morning, we expect they will and we're in a position to make some comments about that. But one of the comments we'd make is that it appears that observations around how our industry should be regulated and what is the best path towards successful commercial outcomes seem to be being made without that process of discovery or the facts before the ACCC and that concerns us deeply.

In relation to your show cause proposal, if it is to proceed we think there are some critical points. We think the first of those is that the final process needs to be very clearly codified and we believe that it should be legislated or regulated. We have outlined in our submission what the key issues are that we think should be codified. We think the commission's final report and recommendations need to be very specific as to the process that you're recommending and particularly the issues that are and are not relevant to testing whether further intervention via this proposed show cause process is warranted.

Our view is, based on reading the draft report, that there is a real risk that the views of the commission could be lost in translation from the commission to the government and then from the government to whatever agency will have a role to play in this show cause process. We think that the remit generally of government agencies such as the ACCC should, in all circumstances be clearly and unambiguously defined. We think this is particularly important in relation to the test initiating a show cause process to ensure that it does not allow for an agency to trigger the process if, for instance, that agency forms a view that an airport's earnings in a particular period of assessment are higher than what that agency thinks they ought to be or what that agency thinks it might have determined had it been involved in the process, including in arbitration.

I turn now to the second important consideration in our proposed show cause process. We think that the interaction between the agency concerned and the airport in question should, in the first instance, be a bilateral one, noting that with the benefit of some further information the agency's reservations or questions may in fact get addressed. This is in the context that the agency is likely to have very little detail before it. This is why we have suggested in our submission that the process should provide for the agency to issue a draft notice to the airport and if after an initial interaction with the airport the agency remains of the view that a final show cause is appropriate, at least the nature of that notice will have been informed by the airport's initial response, allowing any misunderstandings to be eliminated and importantly any misinformation to the public to be minimised.

While we would prefer the final show cause process to also be on a bilateral basis, we suspect that we will be fighting an uphill battle on that, so we won't pursue it. But we think that there should be an initial step to clear up any misunderstandings. Finally on the show cause process, and I know I'm going on, we hopefully will be provided an opportunity to discuss with the commissioners how the application of this proposed show cause process might practically apply using Perth Airport's current and potential future circumstances as a case study.

One thing we can offer, as I've said, in this process is practical first-hand experience on these commercial negotiations and we're in fact presumptuous enough to have a couple of questions for the commission on this. One such question is, and importantly, does the commission's proposed show cause process contemplate or provide the potential for Perth Airport to be required to show cause in circumstances where it can demonstrate that the prices being charged and other commercial terms are consistent with comprehensive agreements signed by the airlines representing a substantial majority of the activity at the airport? If the answer to this question is yes, notwithstanding the existence of these agreements we could be subject to a show cause process, we would be keenly interested to explore the commission's view as to where this could potentially lead and could it ultimately lead to circumstances where the government is advised by one of its other agencies to use legislative powers to set aside or override our agreements?

Finally, on infrastructure financing, we're vitally interested in the question of funding of off-airport infrastructure. Our property business has been a successful one both for our company and for the economic development of the state of Western Australia. We have made it clear in our submission that debates that frame on-airport development is a trade-off with aeronautical development. They're just not grounded in fact or reality. It is not a question of trade-off. The federal airport planning regime ensures that it's not a trade-off and there is much evidence to demonstrate that. The success of our property business has not been borne or

contributed to by any preferred or easy regulation of what we do in relation to planning, development, tax or paying our way. There is no evidence to suggest that developments on federally leased airport land is in any way favourably treated. So we would welcome an opportunity to explore that question with you this morning and those are opening comments.

DR CRAIK: Thank you very much, Brad. Thanks for those comments and thanks for your submission. I just note your comments about the prices and services agreements with airlines that you've negotiated which cover a large percentage of your passenger movements. You might be interested, yesterday we had the airlines here speaking and we asked them about their relationship with airports and their support for the notion of deemed declaration and they stated the view it was difficult dealing with airports or their relationship with airports wasn't that great and we were trying to distinguish were there some airports that were better than others or not.

I think I'm not going beyond what they said when they said that both tier 1 and tier 2 airports were difficult and maybe even beyond, and in fact Qantas, I think, on the record, said they get to a point where they have been forced to sign agreements. So despite the fact that they are not small little companies they have a view that they are being forced into positions and there wasn't a single airport for which they indicated a degree of good relationship in negotiations. I just present that for your information and feel free to respond.

MR GEATCHES (WAC): I will be happy to comment on it. Those comments are to some extent quite disappointing and disheartening for us. In relation to Qantas, it is fair to say on the record that Qantas has been nothing other than complimentary of Perth Airport throughout these negotiations and Perth Airport has been nothing other than complimentary to the Qantas group. The process of negotiation has been a long one. It's dealing with very complex agreement, dealing with hundreds of millions of dollars in investment. It's dealing with infrastructure that goes to just about every aspect of the airlines operations in Perth and it's natural that those discussions would be long and comprehensive. The commission has before it extracts of the nature of the agreements that have been reached. I'll leave it for the commission to form a view as to whether Qantas has been forced or felt compelled to sign an agreement at Perth Airport. For the record we think that's a nonsense.

In relation to the process of negotiation with the airlines, and this goes to the point of regulatory risk, it goes to the point of our company's respect for the government's pricing principles. We would say that the information before the commission in our submissions demonstrates that our company has tried to live by the spirit and the word of those principles and we say the outcomes being sophisticated, long-term agreements are the fruit that's borne by the current regulatory regime and I can well understand that if parties are presented with a free

kick, and that is, "Perhaps someone might change the game and perhaps someone might present, in changing the game, an opportunity for us to leverage more out, we have nothing to lose," and that's how I would frame much of the airlines submissions.

DR CRAIK: Thanks. In relation to your question to us, our view in putting the show cause up was that the ACCC would look at the - we would set those three criteria and they were the criteria against which things would be addressed in relation to the show cause issue proposal. We note your comments on that and we will obviously consider them further but those were the three criteria at this stage that we were proposing for the show cause proposal.

You have raised a couple of other issues about the show cause in your proposal for a bilateral exchange, I suppose, that is less formal than a public show cause, a confidential show cause. One of the things that we have contemplated and we're asking people for their views on is the monitoring report when it comes out actually has the airports' responses - the ACCC sends a version of the report and then you guys respond and whether that final publication of the ACCC includes the responses from the airports and we're wondering whether that would be a sensible thing to do so it was transparent what the airports have actually said in response to the ACCC's report. So I would be interested in your views on that.

I understand you don't think show cause is necessary, and I accept that point of view, but if it were and the proposal that you suggest was followed, are you suggesting something like during the process of preparing the monitoring report that the report goes back to airports and for individual airports where the ACCC has questions, they ask them and that's all addressed in a final letter back which would then be published. Would you see all that going together? Would you see more information about a show cause being a separate, confidential thing or would you see it as part of a monitoring report?

MR GEATCHES (WAC): I must say I could have misread the draft report.

DR CRAIK: No, you didn't, I don't think.

MR GEATCHES (WAC): I had read them as quite distinct processes, that the ACCC would continue to prepare its annual report and it would go through processes largely the same as it is currently undertaking, and I just digress slightly to say that the current approach of sending us a draft of what they intend to put in has actually been, in some respects, quite a successful process because it's led to quick dealing of errors, inaccuracies and misconceptions and the ACCC has said, "Thanks. Good, we've sorted that out and that meant that the final report is a better quality report." There is no need for transparency in that respect because to suggest that there is a need to suggest that we are pulling the wool over the ACCC's eyes, it's not the

purpose of the process. Our only reservation about that exercise is that we get sent one slice of the report being some of the information about our airport and that's all.

We say that a similar process is not unreasonable or is reasonable in relation to a show cause process where the commission says, "We've formed these views, we're forming them somewhat in a vacuum or have we made any errors. We'll take some comments on our draft show cause."

DR CRAIK: Just thinking about the comment you put about would show cause apply if there were comprehensive agreements in place. If you had a show cause that didn't apply if there were comprehensive agreements in place, isn't that incentive for potential gaming by airlines not to reach comprehensive agreements so that they can get a show cause? Doesn't that provide an incentive for airlines to play the system a bit?

MR GEATCHES (WAC): I had the benefit of listening to part of the NCC's observations and I think that very question highlights that when contemplating to introduce another step into the process, it needs to be done very carefully. There will be outcomes and impacts of the show cause process if it proceeds and it's difficult to accurately predict what they will be. What will happen is it will be drafted and the airports and the airlines will get delivered out and there are a whole range of scenarios that could unfold.

There is risk of gaming the process and the question is, "What will that process be?" and then you test how it might be gamed. So, in answer to your question, a poorly framed show cause process or a loosely framed show cause process that the relevant government agency considers gives it quite a lot of discretion will be gamed. A process where if there is an agreement in place you can't register a show cause process, I don't think there is a lot of risk of gaming because it's in the context that the agreement was freely entered into. Stripped of its excess, our concern in this regard is that in some respects if it is the view that the ACCC or some other agency can blow the whistle, as it were, in the context of these comprehensive agreements being played out and lived, then our concern is if we've bargained well and if we're operating in strong market conditions and we're significantly profitable, the airline is enjoying the business in Western Australia, yet some third party forms a view that, "Well, actually airports are doing too well out of this, we're going to intervene," what's the purpose of doing the commercial negotiation?

So if you're not protected on the upside and certainly if you go through a tough period, I don't see the risk of the third party coming in and throwing a life ring to the airport. So my response is the airlines would then go into the agreements knowing for the period that they go into the agreement they live through the agreement. That is not a bad thing. Incidentally, that's how they've gone into it now. They've gone

into a seven-year agreement with no show cause process.

DR CRAIK: Do you have a view on the recent comments of the ACCC chairman.

MR GEATCHES (WAC): Many.

DR CRAIK: Any you wish to share?

MR GEATCHES (WAC): I think it's important on that question that we get some accurate definition around what we're talking about. The first thing that I'd like to do is just say when addressing this the things that we're aware of are, firstly, there is specific media dated 23 September that remains available on the Sydney Morning Herald's web site. There is an article there that has allegedly direct quotations or quoted statements. It appears that media arose from a speech that the chairman made and we went searching and found apparently that speech on the ACCC's web site. Both the speech and the media comments are cause for significant concern for our company and those concerns go to (1) process and (2) content. What we have to say about those things and who we say them to are very sensitive issues for our company, particularly where we're at in our negotiations. I would seek some clarification from the commission.

It's clear from those statements that the ACCC has some very strident views on these matters. As late as this morning I went to your web site to seek a copy of the ACCC's further submission in response to your draft report and I was hopeful to attend these hearings when the ACCC presents. What we have to say will be informed by what the ACCC puts before the commission or partly informed. So if we could give some - - -

DR CRAIK: We're advised it will be arriving shortly and obviously when it does it will go up on our web site.

MR GEATCHES (WAC): So without the benefit of that we will be somewhat guarded.

DR CRAIK: Okay.

MR GEATCHES (WAC): Can I say in relation to the significant process concerns that we have, we don't think it's appropriate to air them in these proceedings because they're not relevant, but we would make the note that there are going to be very few people in government that don't understand our concerns.

DR CRAIK: Right.

MR GEATCHES (WAC): In relation to content we're not going to get into a forensic review of all of the statements that appear in those. We caveat our comments by saying that in relation to the media observations, we have too often been misquoted, quoted out of context or incompletely quoted. It could well be that not only has the chairman of the ACCC expressed some broad views about how commercial negotiations unfold at airports, he could well have also said, "Oh, and by the way, I don't have enough information before me to form a considered view on all airports," or he might have said, even better still, "I've taken the opportunity to read the submissions of Perth Airport in relation to negotiations at Perth Airport and based on those submissions and on the reports of the ACCC I find Perth Airport's conduct to be exemplary." He could well have said that. So we can't really comment about the media stuff.

DR CRAIK: Okay.

MR GEATCHES (WAC): Just on the content, the ACCC seems to have itself firmly locked into what I would describe as a negotiate-arbitrate model and we've got some very firm views on that as well. We would only put them before you if you indicated to us that you're of a mind to shift towards that proposal, which would be away from your draft report. We note that the ACCC has indicated that notwithstanding what you might or might not finally conclude it intends to what amounts to lobby government on its views and again, we will be treading very closely in their footsteps.

DR CRAIK: Thanks.

MR SUTTON: Brad, I would just observe that the five major airports, the monitored airports who have appeared, all do as you've done and they put their case very persuasively and they're by and large pretty content with the current state of affairs and things are travelling very well generally from their perspective. On the other hand, we did have two of the major airlines here yesterday giving evidence, Qantas and Virgin, and I just want to relay some of their concerns as they relayed them to us. Qantas didn't quite have the same gravity as Virgin but if I just stop at Qantas and say that in essence they say that because of the imbalance of power with the five major airports, they end up signing off on agreements that are, in their view, suboptimal. They're not necessarily in the best interests of passengers or their airline or whatever, they ultimately, because of the time involved, the resources involved et cetera et cetera and they have so many other priorities in life - this is my paraphrasing - that they just don't want to battle on for evermore and they end up being cornered and signing off on documents.

They particularly complained yesterday about sometimes the headline charges where they spend most of their time fighting about - maybe that isn't in the top

category of complaint. They were definitely complaining saying there are other charges, ancillary charges for other services around the airport where they think they get very much taken down and had a lend of et cetera. They say that they would like processes such as additions to the pricing principles that could make the negotiating process shorter, more efficient, more timely, don't keep reinventing the wheel et cetera. That is my very short take on Qantas.

MR GEATCHES (WAC): Yes.

MR SUTTON: I want to come to Virgin but maybe I'll just stop and let you comment on what I have just said about Qantas.

MR GEATCHES (WAC): Yes. I'll tread very carefully because we've got confidentiality deals with them.

MR SUTTON: Sure.

MR GEATCHES (WAC): We've placed information before the commission, both in our public and confidential submissions, that give you first-hand texture as to the full extent of the agreements that we've reached and in some cases the agreements exceed 130 pages. They deal with a whole range of pricing and non-pricing terms and in relation to those agreements, it is actually difficult to identify a subject matter in the relationship between ourselves and airlines, including Qantas, that is not covered by those agreements.

I will be highly complimentary of Qantas during the 18 months that we've negotiated. At no point in the process have we felt that Qantas has acted in any way disingenuously. At no stage have we been in doubt as to where we're at in the negotiations or what the next steps are or what the remaining issues are. At no stage. The approval processes of Qantas to reach agreements are very extensive processes.

MR SUTTON: You mean delays on their part?

MR GEATCHES (WAC): One of the most extensive processes has been their internal due diligence process. But I'm on the record, our public position is that the process has been a very rigorous one, an entirely appropriate one and it's led to a great agreement. Now, within our agreements generally, again seeking to pick up the spirit of the pricing principles, our agreements are heavy on continuing consultation with the airlines, continuing sharing of information and early preparation for the next round of discussions in seven years' time. So we would have liked and we expected the negotiation to be a shorter one but one of the reasons or two of the reasons I would say that the negotiation process was as long as it was was firstly the airlines and the airline in question continued to add agenda items that it felt were relevant

and we had to negotiate those issues out to reach agreement. We would not have got a signature had we not negotiated them out.

One of the issues that we have with this exercise is it gets discussed at the general level on a one-size-fits-all basis, and the things that we hear and read bear absolutely no relevance to what we've experienced. I digress slightly because the second point that I wanted to make is that we've genuinely sought to apply the principles that the government has outlined during those discussion. So as we indicated in our submission, we've been incredibly expansive in relation to the information that we've provided the airlines and I cannot recollect a request for further information that was not favourably responded to by our company.

MR SUTTON: Is this your second or third round of negotiations with Perth?

MR GEATCHES (WAC): As we've said in our submission, this latest round of negotiations shows a significant maturation. So we came out of the regulated environment and we entered into what was called a prices and services accord. The agreements were never executed. There were some concerns at the time about stamp duty implications and the parties didn't execute them.

When that five-year accord was approaching the end of life, we approached the airlines and said, "Is it sensible to agree a conditional hold-over of these arrangements?" and we agreed broadly the conditions of a hold-over and that hold-over applied for around three years post the five years. So I think the answer to the question is we probably had three: the accord, the agreed hold-over and now these new agreements.

MR SUTTON: Okay.

MR GEATCHES (WAC): The other point I'd make about the agreements that we've now dealt with, and you've referred to two of the large airlines, it's interesting to note that we've put very similar agreements to and discussed them with other airlines, including significant low-cost carriers and we've executed agreements with them. They haven't taken any of the opportunities in this commission process to express any disquiet about our conduct.

Can I just air very briefly the concerns of Virgin, which are probably at a higher level, a greater degree of gravity than Qantas. They, in short, say that the negotiating imbalance with the major airports has meant that aero charges are only going one way, they're trending up, and they say the current process is definitely broken, it doesn't work, there is no credible threat and that's the sort of tenor of where Virgin is coming from. They have come up with a suggestion that they might try and publish on the ticket the component of the aero charges, that was one idea they're

floating, that they say they're working on. But they say, in essence, charges are only going one way and that's up because of the lack of real competition and the deficiencies in this regulatory system.

Again, it's simply not plausible to relate that description to the circumstances that we've experienced at Perth Airport. Firstly, Virgin is currently in the last year of a 10-year agreement at Perth Airport to occupy terminal 3 that was left vacant by Ansett. Without disclosing the actual charges in that agreement, it's hardly any wonder that the charges are going up, particularly in the context of the very significant investments that are being made on Virgin's behalf at Perth Airport.

The reason that the charges are going up at Perth Airport is that we're investing over \$500 million in new infrastructure and a big chunk of that is going directly to service the expansion of Virgin Australia and specifically the change in their business model, introducing wide-bodied aircraft and a premium product. So what are our obligations to Virgin and have we met them? Our obligation is to consult with them extensively in relation to our planning and design and we've done that, and I mean extensively.

Secondly, we should negotiate, consistent with the government's principles, particularly with good faith, and we define that as providing all the detail that's necessary for an informed discussion, participating in that discussion and being prepared to modify our position on the basis of reasonable propositions. We can demonstrate that we've met that obligation absolutely. I'd simply say our experience with Virgin and other airlines is that you get out of these processes what you put into them. If they are as critical as some airlines suggest they are, then they would put more effort into them.

DR CRAIK: Brad, just changing tack slightly, one of the things we proposed in our draft was the possibility of no longer conducting airline surveys if the success rate of meeting the KPIs in SLAs was published. Do you have a view about that?

MR GEATCHES (WAC): We had a superficial or initial attraction to that proposition but when we started to think it through, the problem that we have is that in these bilateral negotiations, what we've found is what a service-level agreement or a service level is, what a service-level undertaking is and how you might define it and measure it is a subject that airlines have very different views on. Again our job in these negotiations is not to hold the airlines' hands and tell them what they think they should ask of us.

In summary, we end up with quite a diverse suite of propositions in these agreements and what we struggled with was how you could in a practical sense say, "Yes, the terms in this agreement are service-level agreements of a sufficient scale

and definition to meet a criteria." Our other observation was that in the draft report, the word "all" was used. Again, in 20-something bilateral discussions, there are a range of airlines that simply don't think it's important enough to ask for, so we can't ever meet the "all - - -"

DR CRAIK: Yes, a couple of other airports also raised the issue that some airlines only might fly once a week or once a month. Are you setting up a new park-and-wait carpark?

MR GEATCHES (WAC): We open it next week.

DR CRAIK: Are you charging for that?

MR GEATCHES (WAC): Yes. The background to that is that we've got a very substantial number of people who pick up and drop off at the front of the terminal.

DR CRAIK: That's free, isn't it? The actual pick-up and drop-off is free.

MR GEATCHES (WAC): It's free, yes, going to the front of the terminal, and I would count that - and I'm guessing here, I could get the information for you - it would be in the many tens of thousands of transactions at the front of the terminals a week.

DR CRAIK: I think we have that data.

MR GEATCHES (WAC): It would be tens of thousands. We've got a very small proportion, and I'm suspecting 1 or 2 per cent of people who think that they have to park illegally on Brearley Avenue to give effect to that pick-up and drop-off.

DR CRAIK: Is this a street just outside, is it?

MR GEATCHES (WAC): 98 per cent of people don't see the need to break the law in the way they conduct themselves; either they leave on time or they find a safe place to park. But parking illegally on Brearley Avenue is unsafe. People park in the bike lane. Our people, our airport community, can't cycle to work, can't cycle from work. They are opening doors, people are getting out into the traffic going to the airport. We have no obligation as an airport to deal with the illegal behaviour of those parties. But recognising that there continues to be this perception that that behaviour is because of the airport, we thought we'll get rid of that excuse once and for all and we will insist that the relevant agencies then strictly police it. That's our only motivation.

So next week we're opening a park-and-wait area of 50 bays. We are charging

for it but we're charging a gold coin entry, one or two dollars. The profits from those 50 spaces used in that way will be donated to our children's charities. Again, that reflects our motivation for doing it, purely to deal with this errant behaviour because we're putting the people that are doing it in a moral dilemma. They're choosing to break the law when they've been given an opportunity to avoid that by making a gold coin donation to charity.

DR CRAIK: Okay, thanks.

MR SUTTON: A couple of things: just a somewhat curious question to you about your debt funding or you say that at the moment you're having to put in place substantial debt funding for the major development program and we all know the situation with credit markets at the moment and the difficulty there. In the background behind your airport substantially are superannuation funds. There's probably a listed entity. There's a substantial listed entity as well.

MR GEATCHES (WAC): Yes.

MR SUTTON: But certainly there would be substantial unlisted - - -

MR GEATCHES (WAC): There are.

MR SUTTON: That's probably where the super funds come in.

MR GEATCHES (WAC): Also the listed entity, if you look at the shareholdings of the listed entity, there are very substantial superannuation funds in the listed entity as well. This varies of course but we've estimated around 75 to 80 per cent of the airport is held to the ultimate interest of superannuants.

MR SUTTON: That goes to my question: does that give your airport, and I guess many of the others too, any kind of advantage in debt funding? I mean, that's a real possibility in terms of debt funding. Have you explored that avenue?

MR GEATCHES (WAC): Yes, the characterisation of how those shareholders participate in the capitalisation of the airport is actually through equity contribution, so those shareholders, whether it's indirectly through capital raising through the listed company or if leaving cash flows in the business, but the equity side of the business has to make a substantial contribution to the development. The balance of the funding is debt but it is actually debt raised in our case, in the current circumstances, by lending from banks and some bonds that we have in place.

The fact that our shareholders are superannuation companies does not appear to sway the banks' views on what the lending terms should be. So our interest rates, the

terms of our lending, the good old banks would not be influenced by the fact that we've got superannuation. Could we be raising more of our funds from the superannuation funds because they have got an inflow? We could issue domestic bonds. The challenge that we have right now is that that market is not proving itself to be liquid or available on favourable terms and the bank debts are probably delivering better outcomes at this stage.

MR SUTTON: I've just had experience elsewhere where people were looking at the US private placement market and then, hello, they looked in their own backyard and - - -

MR GEATCHES (WAC): Yes, it's fair to say that in the period preceding the GFC, the domestic bond market was considered to be viable and for a period after it, there were some issuance into the domestic bond market.

MR SUTTON: Changing the pace, could I ask you what your view is of whether non-aero revenues constrain aero charges?

MR GEATCHES (WAC): We've touched on it in our submissions and I guess in some respects I'd be restating the views, but it's fair to say that our capacity to generate non-aeronautical revenues through the airport activity creates a significant incentive for us to grow the scale of the business and grow the scale of throughput through the business. So it incentivises us to expand the airport. To expand the airport, we need to reach agreement with the airlines.

Holding out for aggressive or unrealistic aeronautical prices has a downside impact for our business; that's point 1. Point 2, the fact that we are earning non-aeronautical revenues from some of the infrastructure works to the benefit of the aeronautical assets and the pricing of the aeronautical assets because when we negotiate out aeronautical prices, the airlines understandably want to ensure that any shared infrastructure - so pipes, toilets, cables et cetera - are apportioned appropriately between aeronautical and non-aeronautical buckets. In that respect, some of the cost of that infrastructure is avoided by the aeronautical aspect of our business, or put another way, if we didn't have the incentive to maximise those non-aeronautical parts of our business, we'd still need the pipes, the toilets and the cables.

MR SUTTON: Lastly from me, the question of airport infrastructure, which you do deal with in your submission but just in short, do you take the view that when a non-aero development does have off-airport impacts that the matter should simply come down to - and I know you look through the eyes of Perth Airport, but as a general rule, if you could look over them all in a general principle way, it should just simply come down to the goodwill of the particular airport, given that technically

they have got no legal obligation, or do you think there ought to be some principles or requirements or consistency that is brought into play here?

MR GEATCHES (WAC): I think that question and those considerations need to be clearly in the context of the matters that are relevant. Again, dealing with this as a generality, there are some risks attached to it because if we talk about the implications of either a single or a series of non-aeronautical developments on an airport, what the implications are beyond the airport, they essentially can be boiled down to the need for power supply, water supply, gas supply and road infrastructure.

In relation to the utilities, power, water, gas, they're currently effectively prescribed, in that you have to reach agreement contracts with the supply authorities and those contracts specifically deal with infrastructure recovery. So in relation to Perth Airport, right now Perth Airport is funding the construction of a major substation off airport, because that substation is being generated by our needs. Western Power and Synergy, quite frankly, would not provide us the power unless we did. So you could apply the same to power, water and gas. Effectively you've got utilities that have got a tried and true model for dealing with these matters. That model applies to us and it applies to every other user of their facilities.

That leaves, to the best of my understanding, roads. The roads I think are most sensibly considered by definition of the nature of the roads, the first being what I would describe are the local roads and generally they're the roads that, off airport, the various local government councils are responsible for. Then there are the arterial or network roads that the state government is responsible for and which are funded by the state and the Commonwealth typically.

In relation to local roads there is not an issue because we are responsible for the local roads that are on the airport. We have built them, we maintain them, and our clients pay for that. Why the playing field is somewhat uneven in relation to the local roads is that we also pay rates equivalent which we on-charge to our tenants, and the local council does not provide or maintain the local roads on the airport. The fact is we pay local rates equivalent and we don't get a lot for it and nor do our tenants.

You then go to what's left, which is the state roads, and the issues there are the state roads themselves and connecting to them. We think that your articulation of some principles that apply to that - and our expansion of them in our submission - addresses those. But what we would say is that we think it just boils down to the state government and the relevant airport owner sitting down, discussing and resolving these matters. The state governments are big enough to look after themselves in that relationship, has been our experience, and the dialogue that we have with the Western Australian government has been an entirely satisfactory one to

date. It has resulted in us making some contributions and has resulted in the state building roads around the airport.

This thing really in Perth has some real currency and immediacy because the state is about to invest anywhere between \$750 million and \$1 billion on roads around the airport, and we are having those discussions now with the state. It is interesting, we are in a similar position to the state in that we develop infrastructure for peak operations and we think it's important to have a look at in the peak periods in the off-airport roads, what's causing the demand. During those morning metropolitan peaks and those evening metropolitan peaks, which are the only problem times for the airport, the traffic studies show that the non-aeronautical airport traffic is an insignificant element. I hope that gives the texture.

MR SUTTON: That's fine.

MR GEATCHES (WAC): Could I just make one further comment about it.

MR SUTTON: Sure.

MR GEATCHES (WAC): Some of the complexities that we think, by necessity, demand that this be left to the state government and the airport includes this: there is no magic process that constrains people to use our on-airport roads for airport purposes. The airport roads are currently used quite substantially as what is called a rat run. One of the best ways to get around the congestion on the state's road is to use the airport roads to bypass it. Traffic studies show that there is very substantial use of our roads by the public for purposes that are unrelated to the airport.

DR CRAIK: Provide a road and someone will drive on it.

MR GEATCHES (WAC): That was a short answer for saying that we don't think there are any general principles that could productively be applied.

DR CRAIK: Okay. Thanks very much, Brad. That has been really helpful. Thanks for your submission and thanks for coming from Berlin, dropping in from Berlin.

MR GEATCHES (WAC): Thank you.

DR CRAIK: The final person to appear is Norman Geschke. Welcome. If you could state your name and position for the record and then if you would like to make a few brief opening statements we would be happy to hear from you.

MR GESCHKE: My name is Norman Geschke. I'm a concerned individual. I do not represent any group but feel for a number of reasons that all is not fair to some air travellers, and as a former ombudsman and director of Consumer Affairs, there is no doubt that the experiences there have influenced my views in this submission.

I first want to make two disclosures of interest. My wife is a shareholder in MAp Airports, which controls Sydney Airport, and I am a holder of shares in the Australian Infrastructure Fund, which controls CityLink, but I don't believe what I say will cause any conflict.

DR CRAIK: Thank you.

MR GESCHKE: I want to mention the reasons for making these submissions. On Friday, 13 August in The Age last year there appeared an article outlining Mr McLaughlin's problems and his efforts to use his farmland for a parking area adjacent to Melbourne Airport. You heard from Eric Wilson and Keith McLaughlin on that and I don't want to say any more. Having discussed it with them and read the material I'm certain they have been duded by APM and the co-conspirators. As much as I wanted to become further involved in that, I didn't have the resources to do so and the same with making a submission here. I no longer have administrative assistance. At quarter past 11 last night my computer froze and I didn't know how in the hell I could deal with it, and I wasn't game enough to wake my son to ask him, so this is going to be a bit of a scratchy sort of thing.

DR CRAIK: I'm sure it will be fine, thank you.

MR GESCHKE: Secondly, through friends and acquaintances who use the facilities, there is not one I've found who believed that the charges were not excessive and were only sustainable because of the monopoly that Melbourne Airport has. This is my experience too. I just want to give some little examples. I had to go to Canberra to give a submission to the Senate on the airforce defence welfare position. I left Melbourne at 10 o'clock and I got back at 2.00 and the charge was \$38 for parking. Now, I think that is pretty excessive; however, others may not.

Secondly, a few weeks ago, I usually drop my wife - if she's going away - at the terminal, but I had to go into the parking area and carry her bags and things because she had just broken her arm in Bali. I did this quickly, came back, paid my \$6 which was a required thing, which I didn't think was too bad at all, and went to get my car, which was right across the other side of the parking area, on the way

helped a woman to put her pram into the car, got back to the gate and found I couldn't get out because I owed another \$6. When I queried this I found that if I'm 12 minutes longer after paying it, I'm up for the next fee. I think that doesn't recognise how far it is you have to walk and find your car and do things.

The third thing was I picked up my son some months ago. His aircraft was due in on time and we had allowed an hour and a half going through customs, but the aircraft was late, despite being on time, and it was just on two hours after we'd agreed I would meet that I could come and pick him up. Now, fortunately we had mobiles and it didn't cost me anything, but if I didn't have a mobile I would have had to go into that parking area, keep coming down to the terminal to find out when the aircraft was going and what the delay was. Now, the question that arises is what would be a fair charge in that case? People say, "You're using the carparking area," that's for sure. On the other hand it does mean that MAp or APM gain a benefit by having aircraft running late, and delays going through customs and quarantine and things like that. I'm not sure how fair that is.

I read in The Age comments by ACCC and their monitoring report expressed serious concerns about the self-interest actions they thought of APM to enhance their profits by using their market powers. Finally, I was concerned by the way that the airport areas had been managed. When I first started coming here there were plenty of areas away from the terminal where you could park on the side road and wait there. However, "no parking" signs were erected all around to stop you doing this. People went to McDonald's until they couldn't keep everyone in their carpark and, finally, a lot went to the side, off the edges of the feeder road from the freeway.

However, with that I believe the airport authorities used undue influence on VicRoads to close off a considerable proportion of that verge abounding the freeway and, finally, that was given as a safety reason but I don't believe it, and that has cut out areas. So wherever people were trying to park to save money there was a move by the airport to stop them doing it. Of course, this is what applied to McLaughlin's land.

The ACCC said their "monitoring role does not extend to setting airport carparking charges. A comprehensive evaluation of airports is beyond the scope of the monitoring role. An exercise would be required to make more definitive findings or whether or not the airport is using their market powers to charge excessive prices for carparking." Again this was repeated under Marketing Power, and numerous references were made in that report to suggest that ACCC had some doubts about matters but didn't have the powers or probably the legislative authority to investigate them properly.

Now, I want to go to the McLaughlins' case for a moment because I think that

demonstrates how wealthy, large organisations, particularly those with a monopoly, can abuse their market powers and using highly paid legal advocates to get what they want. When the McLaughlins travelled through the courts, I have little doubt that the reports of the decision are not always of justice, and this decision arises because of how much you can pay your legal counsel to paint the picture that he wants to, and you as an individual don't have the funds to do it. So some of the processes are a bit unfair when they are left in the public arena.

I struck this situation many times when I was ombudsman of Victoria. One legal request from the department was, "The ombudsman has got us over a barrel, how do we get out of this?" That's what it was, and up came a solicitor's or counsel's view saying various things which really were not to the point and didn't get anywhere. Another was from a solicitor saying to the department, "Look, you should remove these folios before the ombudsman calls for the file." We fortunately picked up the file before they had a chance to remove the folios. But what I'm saying is, departments and others put up reasons why things can't be done, and this can be exactly the same as an airport. Well, I'm not saying this one does but I've often listened to argument in various cases in the courts and found that they're really arguments of the moment, and unless they can be opposed by somebody else who can afford to do it, they're accepted as being reasonable, and with a monopoly or market power you can get away with quite a lot.

Now, a lot has been mentioned about a "light touch". In my submission I refer to - either the first or the second one - that a light touch is pretty useless. I think if one is going to investigate matters, one has got to have the powers to do it. They have got to have the powers to call for documents, to interview people, to probe it in depth like a forensic accountant, and not just accept what is put to them. Unless you can do this you're not going to get to the bottom of some matters which may be vital to you reaching some conclusion.

To me, light touch again involves a low-level involvement and acceptance of the way things are going, rather than ensuring that the way things are going are the way they should be going. Now, that might sound a bit Irish but that's what it is. As I say again, you have to probe, question, demand documents before you can reach a balanced and reasonable decision. If one is accepting the views of a lawyer it's not necessarily correct. I have had many of my investigations, as I mentioned, temporarily thwarted by legal opinion, the department was acting on legal advice and insisted that such advice was incontrovertible.

Now, quite by chance when I was producing this last night I came across a thing in my final report. If I can take up a few minutes' time it will cover my views.

DR CRAIK: Sure.

MR GESCHKE: I said, "I've never ceased to be amazed at the semantic aerobatics used by solicitors or counsel to meet the request of an agency head seeking justification for some indefensible situation. Balances of probability, fantasy, oddball dictionary meanings and reference to legal judgments handed down by courts with annexures - obvious of the emperor's new clothes. I don't believe a barrister's opinion can be relied on when in the case of an ombudsman's jurisdiction there were three opinions that the ombudsman had no jurisdiction, and two that he did. When the next opinion was obtained, it showed he had."

I'm raising that because anyone who has a regulatory role - and I'm suggesting there has to be - has got to be aware that these things will go on all the time and no matter how much you probe a question, unless you have the powers to do it, the staff to do it, with a capability of doing it, you will not get the correct answers. I know time is running late so I assume that the submission I put in yesterday will be read.

DR CRAIK: Yes, we've just got it.

MR GESCHKE: Yes, and it has a couple of corrections which I'll give to Alan Shepherd later. I can finish up with three suggestions in that, and that is that a detailed forensic accountant investigation be carried out to determine exactly what is the expense of providing carparks and the revenue collected. In this I'm talking only of carparks. I don't have involvement in any other area. In the Sydney Airport, I was going to mention, that when I was there last, there was no sign indicating where the Sydney shuttle bus was. We found it by asking numerous people and there were others up there who just wandered along too. Talking to the bus owners, their view was that this was done to stop the project or work becoming profitable or reasonable, and it was better for Sydney Airport not to let people go onto a shuttle bus, but to get taxis and other things where they got some profit.

I mention that because it's not only action that people are taking, but it's also non-action in stopping people putting up signs as to where shuttle buses or other facilities are. I've said that an area should be set aside for cars and drivers waiting to pick up passengers, and perhaps a nominal fee. I notice that Perth Airport are doing that. I don't think that's unreasonable to have a nominal fee, a dollar coin or a \$2 coin. I thought that was quite a reasonable approach to it. Do I have to convince anybody that picking up passengers are quite different to dropping them off because you can drop off at a terminal, you know the time a plane is going and you kick them out of the car and they find their way to where they're going, whereas when you're calling for them you don't know where they are. You've got no way of finding them if you haven't got a mobile and you've got to park, go into the terminal and hunt around everywhere and finally found they have been pushed up to the other end. I don't need to go into that.

DR CRAIK: Yes, I think we've experienced that.

MR GESCHKE: Yes - an area set aside for cars. An enforceable regulatory role be given to the ACCC to investigate and improve any measures which affect passengers arriving or departing Melbourne by private cars, buses, including commercial, chartered and shuttle buses used by off-airfield parking. The other thing is, in looking at what research I could do in this, there is going to be an enormous increase in air passengers at most airports, including Melbourne. Quite frankly, the present facilities won't cope with it. While I believe the airport's management would be looking at this, it is something that the ACCC should be aware of before troubles arise or before injustices arise or things like that, rather than after in situ, because once a thing is in situ, once a thing is done, it is pretty hard to correct it.

If I want to talk about facilities, I'm rather amazed that the last time I went international to Bali, having gone through customs and quarantine I come to sign which said "250 metres to the nearest gate". That is a quarter of a kilometre. For some people it's all right, the young ones running with their cases, but for old people like me it is difficult to suddenly head off with another 250 metres. I believe it was done simply to circulate you through boutiques and other things like that.

MR SUTTON: No, they wouldn't do that.

MR GESCHKE: No, leave it. The other comment is, one of the differences I find with this airport and others, that where there are distances involved often there's travelators used, whereas I think Melbourne has one and Sydney quite a few. But in the main my submission is that I do feel that the carparking prices are excessive. Could you just look at my last page of the submission of October where I've tabled some of the parking charges and I've taken - it's called Ballarat Care Park. It's a carpark but they use care. You will see that for five or six hours it's \$5. For Geelong, four to five hours is \$12. One in Westfield, Market Square \$9. In Melbourne, I quoted three, the Ace Airport Parking and the others which are \$15 and \$10 for all day.

Now, I think while the CBD parking rates are not comparable in determining them to, say, an airport as they are meeting quite a demand, but there's also a lot of competition within the CBD area that a monopoly doesn't apply, whereas here there is not that competition and I suggest that perhaps this is the reason for it. Now, I also mentioned in the submission - and I hope I don't offend some of the off-parking companies - that the high prices charged by Melbourne allow them to be in business and fix the prices they're going to use to make them competitive but still high. I think if I wrap it up there.

DR CRAIK: Thanks very much for your submission and we'll obviously read it and focus on it. Just a couple of things, we understand from - and Melbourne Airport appeared here this morning, and they said they were proposing to set aside an area for cars and drivers waiting to pick up passengers to Melbourne Airport.

MR GESCHKE: Yes, that's in your report too. I think it's your report or the ACCC that that is a suggestion. I would fully agree with that. It could be anywhere within a reasonable boundary. In fact probably they could use the McLaughlin field, which is no longer the McLaughlins', which is 250 yards from the terminal. I think that's an excellent idea. In fact I think it's essential because people were parking all over the place in Mickleham Road. You'd enter the freeway of Mickleham Road, you're not allowed to stop anywhere along the freeway, and I think a few people have been caught doing that, quite unintentionally and being unaware of the rules.

I think it's a bit similar with Perth saying that people were parking in the areas which were day cycle tracks and things which they shouldn't be doing, and that's what led Perth to establish that area. I think if Melbourne does it, it would be an excellent idea, and a nominal charge would, I don't think, be unreasonable.

DR CRAIK: Yes. Can I say in our report we looked at the carparking charges, and although they might be perceived to be high, given that the airports have to manage the demand of people coming in - and someone coming in with five minutes to spare wants to be able to park in a parking spot that's close to the airport in a multistorey carpark, rather than way out in the boonies where they would have to walk for miles if they're running late, then managing demand and managing congestion on top of the costs of building and maintenance and what else they could do with the demand, is the reason for the price.

MR GESCHKE: What you're saying I think often comes from counsel's advice and solicitor's advice. First of all, there's a limit to how many people can park on the kerbside. If you're trying to park there it's a nightmare.

DR CRAIK: Correct.

MR GESCHKE: By having parking slightly offside they're benefiting their ability to handle people kerbside, so it's not all a one-way thing. Secondly, this term of congestion - the congestion they're referring to again is kerbside congestion. The parking area is removing that. But is it reasonable, in doing a thing like that, to spend \$20 million on expenses and make \$96 million for doing it. I think that is a little bit questionable. I think there is a limit to what a reasonable profit margin should be, and one has got to take into account a number of things. But one has got to be very careful that you're not caught by buzzwords of a particular type, such as "demand management". I'm not quite sure what they mean by demand management.

DR CRAIK: It's too many people wanting to park in the one spot outside the airport.

MR GESCHKE: But planes go off at times, they peak and you get there and you've got limited kerb space.

DR CRAIK: Yes, but you want to be sure you can park somewhere.

MR GESCHKE: I agree with that, and I think there's a reasonable fee you should charge for that. Do you - - -

DR CRAIK: Yes, we do. We certainly thought it was reasonable.

MR GESCHKE: I was just a bit concerned with one of your economist's views, "That's really not too bad, you've got to look at the cost of land," and all these other things. As Eric Wilson pointed out, Melbourne Airport is surrounded by acres and acres of grassland and it's not anywhere near in the same situation as Mascot is, which is surrounded by acres and acres of buildings and industry. I think the land charges are a little bit of a red herring, and the depreciation and infrastructure charges were surely built into what they termed as the \$20 million expenses. If they haven't, I'm surprised.

DR CRAIK: I'm sure they would be.

MR GESCHKE: As an accountant I would think if you put a heading Expenses, it covers all expenses.

DR CRAIK: Yes, I take your point. The other thing is, I'm not sure there's much we can do about the semantic aerobatics.

MR GESCHKE: I know there's not. This is what happens when you get reports from organisations with legal staff and they can come up with all these things and they look at dictionaries and have meetings. I questioned P and O for discrimination in a certain area and the answer came back, "No, it's not discrimination because discrimination has to be against aged, it has to be against gender," et cetera, and they forget there is a whole world outside the legal area where discrimination is used to protect somebody. So I think one has got to be careful and any regulator needs to watch it.

DR CRAIK: Yes. I mean, our analysis of the carparking and the alternatives at the airports generally show - we couldn't actually see a real problem, but the ACCC monitoring does allow for monitoring that carparking and the charges, and if the

ACCC thinks there is a problem they do have the ability to take it further.

MR GESCHKE: That's what they have done, haven't they?

DR CRAIK: Well, they - - -

MR GESCHKE: In three or four parts of their report - - -

DR CRAIK: They have raised a potential issue but they haven't taken it further to do some forensic tests.

MR GESCHKE: Only because they don't have authority to, do they?

DR CRAIK: No, they do.

MR GESCHKE: Do they?

DR CRAIK: They can recommend a pricing inquiry or they could look at abuse of market power. Yes, they do have some authority to take it further.

MR GESCHKE: To recommend but not to do it themselves.

DR CRAIK: No, but they have never even recommended an inquiry but they could do it under section 46 or they could get more information under section 155, I think. They do have some powers that I believe they could exercise, without getting further permission to do it.

MR GESCHKE: Yet their report and the quotes they made are very suggestive of needing further powers - - -

DR CRAIK: That's correct.

MR GESCHKE: - - - and not having a light touch in order to get to the bottom of some of the things they're querying.

DR CRAIK: Correct.

MR GESCHKE: The other thing, it's a little bit difficult too by having an inquiry or setting up somebody to do something, but this is a case which happens often with auditors of companies, and how many times a company has been misled into believing things are going right when the auditors have failed to check the petty cash and do things with it. When there was a move to get rid of the auditor-general in Victoria I argued about it and said that if my hands as an ombudsman was tied, you

might as well give up any investigation because you can't get at the facts you need to get at to make a reasonable decision.

DR CRAIK: Yes, thanks for that.

MR SUTTON: I've got a unity ticket with you, Norm, on lawyers and accountants but it's probably a bit premature to ban them at this stage. So moving right along, these charges you've got here for Melbourne city CBD parking all day for \$10 or \$15, they surprise me, those charges. Are they current?

MR GESCHKE: Well, I believe so. Eric Wilson - he and I discussed this a lot and he obtained those charges. The data here - he didn't realise I'd used them and I had put them in, and I certainly didn't check but I'm sure they were correct. There were two in South Yarra and one - I asked him about the AC Airport because I thought it was a bit low for that. I couldn't work out where it was. He said it was just off the airport boundary.

MR SUTTON: Can I also say - you might have been here when Melbourne said this morning - that in the vicinity of the airport there is, in fact, I think they said, 17,000 off-airport carparking spots. That rings true from our research. They do face a level of competition in respect to airport carparking. That's a clear demonstration of it. Whether it's sufficient competition, certainly that's a fact that has to be weighed in all of this.

MR GESCHKE: Yes, I agree with that. I think the figure was 17,000. I think it's quoted in the ACCC - - -

DR CRAIK: Yes, it probably is.

MR GESCHKE: - - - monitoring report. That's really quite a lot of carparks. I think, talking to Andrews, they were not dissatisfied with the fee they paid for the shuttle bus, picking up and dropping off people, and some of the others were the same. I didn't see an adverse comment about that.

DR CRAIK: They work out roughly the same, I think about two or three dollars a passenger is my recollection.

MR GESCHKE: For dropping off, did they?

DR CRAIK: Depending - out of all transport modes, yes.

MR SUTTON: I guess the other unity ticket we might all have is the need for a railway, and it's not on the immediate horizon but given the growth in passengers

that are inevitably going to occur, that has surely got to be a key part of the public policy solution.

MR GESCHKE: Well, I'm not sure it is. I think the cost of a railway is going to be billions of dollars to get one through the built-up areas, and in Sydney the complaints I hear - and I think somebody yesterday mentioned going through stations, an enormous fee they had to pay to get to Mascot.

DR CRAIK: Yes, \$11 added onto the normal cost of a ticket.

MR GESCHKE: Whereas rail in Hong Kong and most places are most useful and they are fairly cheap to get. The other problem is that the rail would have to emanate from central Melbourne somewhere, and for a lot of people living in the north-west and south-west and north-east it would be quite inconvenient. So I'm not sure that the railway would give the benefits that is claimed. Anyhow that's my view but - - -

DR CRAIK: I guess the feasibility study they're doing will show how it all turns out.

MR GESCHKE: They've got to be careful too with studies of numbers because if you looked at that River City Tunnel that went in, in Queensland, the estimate in building it was I think 280,000 cars a day would go through. It turned out there were 40,000. The company is in liquidation because of it, so some of these prospective guesses can't always be relied upon.

DR CRAIK: A bit like the Cross City Tunnel in Sydney. Thank you very much, Norman, for coming. Thanks for your submission and your comments and we will take that on board.

MR GESCHKE: Okay, thank you.

DR CRAIK: That concludes today's proceedings. Does anybody in the audience want to make a brief presentation? If not, I conclude the hearings for the inquiry. Thank you very much.

AT 12.20 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY