



## **Australian Airports Association**

# **Response to the Productivity Commission Inquiry into the Economic Regulation of Airport Services**

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### **AAA National Secretariat**

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## EXECUTIVE SUMMARY

The clearly enunciated objectives of the current airport-specific economic regulation were:

- facilitating commercially negotiated outcomes in airport operations;
- promoting the economically efficient and timely operation, use of and investment in airports and related industries; and
- minimising unnecessary compliance costs.

The first two of these objectives should now be accepted as having been met. Starting from a zero base at the time of privatisation, there is now a network of mature, flexible and mutually beneficial commercial arrangements that have been negotiated between Australia's major airports and their airline customers. Unprecedented major infrastructure investment has been undertaken under the auspices of these agreements (and since the removal of the price capping and Necessary New Aeronautical Investment regime overseen by the ACCC in the first 5 years following airport privatisation) and still further investment is scheduled for the coming years as agreements are renewed and refined. Compliance costs issues continue however, and are exacerbated by the inadequate manner in which the ACCC goes about its financial reporting, price monitoring and quality of service monitoring tasks.

These developments, and the underlying legal environment under which airports must operate, call into question the need for any airport-specific economic regulation:

- The Commonwealth's head leases guarantee airlines continued access to and use of all relevant airports and effectively only allow an airport to refuse access where an airline has refused to pay, within an extended period from the due date, charges that the airport can demonstrate are legally owing by that airline.
- Sitting behind these very powerful constraints on airport behaviour are the statutory regimes generally applicable in other major infrastructure areas of the economy - Parts IIIA and VIIA of the *Competition and Consumer Act 2010*. The very real risk that resort can be had to regulation through these means, or enforcement action under Part IV of that Act, also provides a powerful restraining influence on airport behaviour.

And, of course, the ordinary commercial motivation of airports drives them to provide an environment in which airlines are encouraged to develop and expand routes and frequencies, which they will not do if airports inappropriately increase prices or reduce the quality of their services.

The original case for the airport-specific economic regulation that has evolved in stages from the first days of privatisation no longer provides any justification for its continuance. As the objectives of the present airport-specific regime have been achieved, economic regulation of Australia's airports should now revert to that applicable in the Australian economy more generally. There is no longer good reason for any Australian airport to be singled out for special treatment by continuation of the current financial reporting and price monitoring - not only should the present regulatory regime not be extended to any additional airport, but the regime should no longer apply to those presently regulated by it.

However, if there is to remain a regime of airport-specific economic regulation, then experience with the present regime highlights the need for a variety of changes:

- No two airports are the same and thus attempts to provide 'league table' rankings of airports is not only ineffectual but also misleading;

- Financial reporting and price monitoring, if it remains at all, should no longer apply to at least Adelaide and Perth Airports because not only is there is no evidence that they have abused whatever market power they may have but also because they do not have sufficient incentive to do so and thus they do not warrant such regulatory intrusion.

And, for those airports that remain subject to financial reporting and price monitoring, the authorising legislation and ACCC analytical and publishing practices should be amended in an endeavour to curb the potential for the unwarranted and unsubstantiated inferences of abuse of market power that have wrongly been drawn in the past;

- The need for any future monitoring of on-airport car-parking, as distinct from aeronautical and aeronautical related services, needs to be thoroughly revisited.

Such services need to be assessed not in isolation but within the proper context of airport ground access more generally and by then applying, on a case-by-case basis, a rigorous analytical model such as that proposed in this submission to determine whether there is actually any evidence of abuse of market power by any airport in its provision of on-airport car-parking services.

The AAA believes it is likely that proper analysis will show that there is no evidence that airports have, or are likely to be in a position to be able to, abuse market power in their provision of car parking services.

In that event, the AAA suggests that it would be preferable for the Minister to ask, and airports to agree, that they maintain on their websites up to date information on their on-airport parking charges and details of alternative modes of airport access, including links to the sites of other access mode providers. In this way consumers would be facilitated in taking, throughout the year, properly informed judgements on how they might best exercise their choice amongst the many available forms of airport access.

- Quality of service monitoring is no longer required for the protection of airlines and was never required for the protection of border agencies operating at airports. As such monitoring is only applied to terminals owned and operated by airports; there is a substantial proportion of total passenger movements throughout the country that are not included, resulting in the reported results being only a partial reflection of airport service quality.

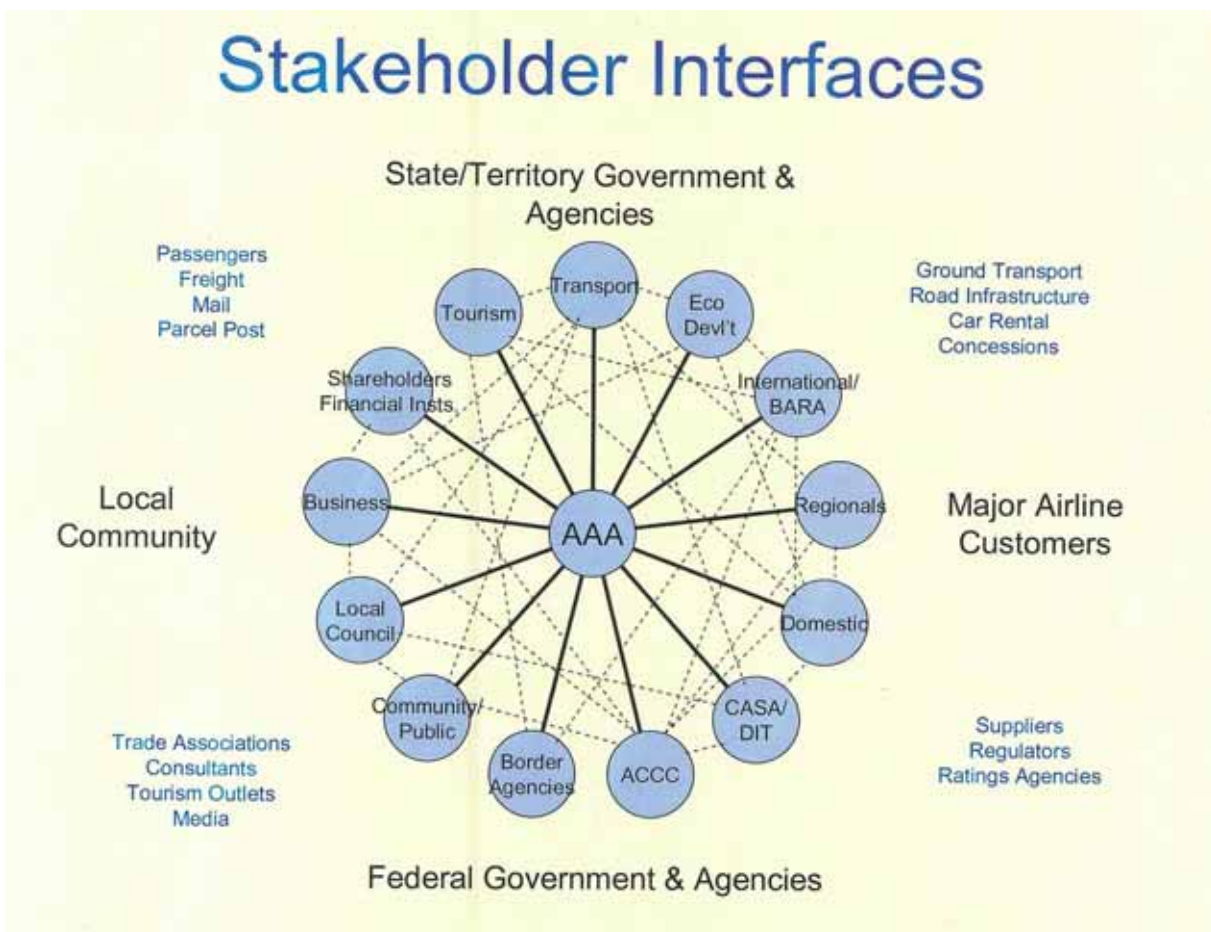
If it is to remain, it should be refocused with a view to enhancing the travel experience of Australian air passengers and their associated airport visitors. Recast in this way there is no need for it to be undertaken by the competition regulator.

Instead, and consistent with the Government's most recent decision concerning monitoring at Canberra, Darwin, Gold Coast and Hobart Airports, it should be a self-administered regime. Sampling and reporting methodologies should appropriately match the operating environment of the individual airport and should be required to be implemented by all relevant service providers at involved airports, not just airport operators.

Only by doing this can the views of air passengers be assessed in a way that allows ready identification of the cause of any perceived problem and proper attribution of responsibility for its resolution.

**1 INTRODUCTION**

- 1.1 The Australian Airports Association (AAA) is a non-profit organisation founded in 1982 which represents the interests of over 185 airports Australia-wide, from local country community landing strips to major international gateway airports. There are a further 85 Corporate members representing aviation stakeholder companies and organisations providing goods and services to airports.
- 1.2 The Charter of the AAA is to facilitate co-operation among all member airports and their many and varied partners in Australian aviation, whilst maintaining an air transport system that is safe, secure, environmentally responsible and efficient for the benefit of all Australians.
- 1.3 Australian airports and the AAA operate in a complex web of stakeholder inter-relationships, graphically depicted as follows:



- 1.4 The AAA welcomes the opportunity to participate in, and comment on, this important and significant inquiry being undertaken by the Productivity Commission in relation to the economic regulation of airport services.
- 1.5 All airports who fall within the scope of the Commission’s terms of reference are members of the AAA. To a considerable degree, this submission reflects a consensus view of those airports.

- 1.6 No two airports are the same, and no two negotiations between airport operator and airline are the same. Accordingly, the AAA understands that affected airports will also lodge their own individual submissions. At the very least those submissions will complement this submission by elaborating on the operating environment of the particular airport. However, it may also be that some individual member airports could have a different view on some matters canvassed in this submission. Should that be the case, we would expect that particular airport to raise those issues in their own individual submission, and we ask that those submissions be given full consideration in their own right.
- 1.7 The submission commences with a short commentary on the dynamic nature and value of Australia's major airports in the present economic climate. It is against this background that we suggest the Productivity Commission should approach its task. It is essential that economic regulation of airports not place at risk the vital place and economic contribution of airports in the wider Australian economy.
- 1.8 The submission provides an assessment of whether or not the objectives that were identified for the present regime for airport economic regulation have been met, and concludes that this is demonstrably the case.
- 1.9 We then focus on three particular areas that we believe require careful attention and reform - financial reporting and monitoring, quality of service monitoring, and ground access to airports.
- 1.10 Drawing upon that material we then set out detailed recommendations for ways in which the present regime can be enhanced to the benefit of airports, airlines, the travelling public and the public more generally.
- 1.11 Finally, we include as Attachment 3 cross references of our submission to the questions raised by the Commission in its January 2011 Issues Paper.
- 1.12 The AAA would be pleased not only to appear before the Commission to expand on this submission or answer questions in relation to it, but also to facilitate the gathering of any additional information that the Commission may seek.

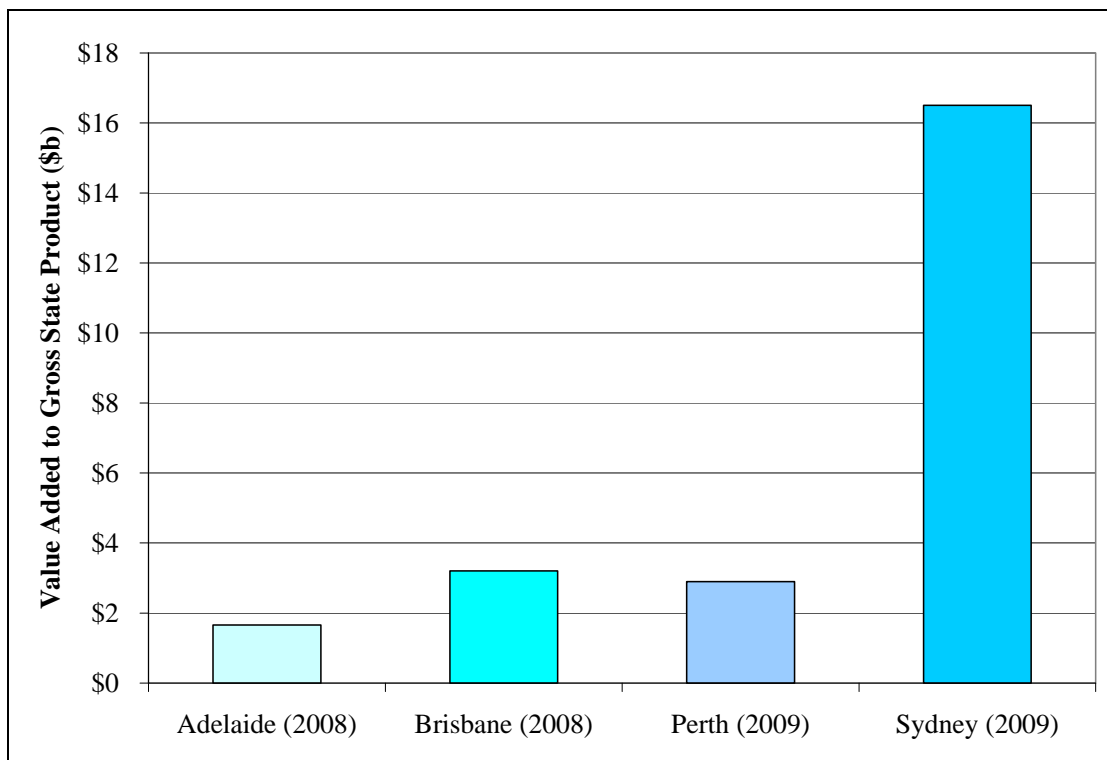
## 2 AUSTRALIA'S MAJOR AIRPORTS - an economic perspective

*Aviation is an industry of national strategic importance to Australia. Perhaps more than any other country, Australia depends on air transport to link our people with each other and the rest of the world. More than this, aviation is a critical enabling industry for the broader economy. A safe, secure and efficient aviation industry underpins a range of business, trade and tourism activities that contribute significantly to our economic prosperity.*

- 2.1 The above quotation from page 2 of the Aviation White Paper reflects the Government's acceptance of the vital role played by aviation in the Australian economy. Airports and airlines are mutually interdependent. Neither can survive without the other. But, working together as a cooperative "team" they facilitate major economic activity.
- 2.2 This activity includes:
- (a) direct operational employment by airports and airlines;
  - (b) employment in operational suppliers to airports and airlines; and
  - (c) capital investment by airports and airlines.
- 2.3 These activities alone constitute an economically significant industry sector. But they are only the tip of the value chain. Aviation also facilitates:
- (a) both aeronautical and non-aeronautical businesses operating on-airport;
  - (b) transactions by airline passengers after arrival at their destination airports, whether for business or leisure; and
  - (c) the business of those supplied with air-freighted goods.
- 2.4 And, of course, airports facilitate vital aspects of local community well-being such as:
- (a) family reunions;
  - (b) emergency medical care and organ deliveries;
  - (c) emergency search and rescue operations; and
  - (d) other 'just in time' delivery needs,
- (and, more generally, reflect their corporate social responsibility through activities such as sponsorship grants and donations to community development in diverse areas such as the arts, sport and the environment)..
- 2.5 So far as the AAA is aware, there is no comprehensive, contemporaneous study that enables one to put a figure on the true worth of airports, or aviation, to the Australian economy. The AAA recognised the need for such a study some time ago, and plans to commission the necessary research in the near future.

2.6 While no exact figures are available, an order of magnitude can however be gained from airport Master Plans that are required to be submitted to and approved by the Minister for Infrastructure and Transport. Although the metrics set out in various Master Plans may not be directly comparable (in the sense that they are likely to use different methodologies), they nonetheless provide an indication of the direct and indirect contribution of various Australian airports to their local State/Territory economies<sup>1</sup> which are reflected in the following illustrative charts:

**Chart 1**  
**Economic Contribution of Tier 1 Airports (Value Added \$b)**

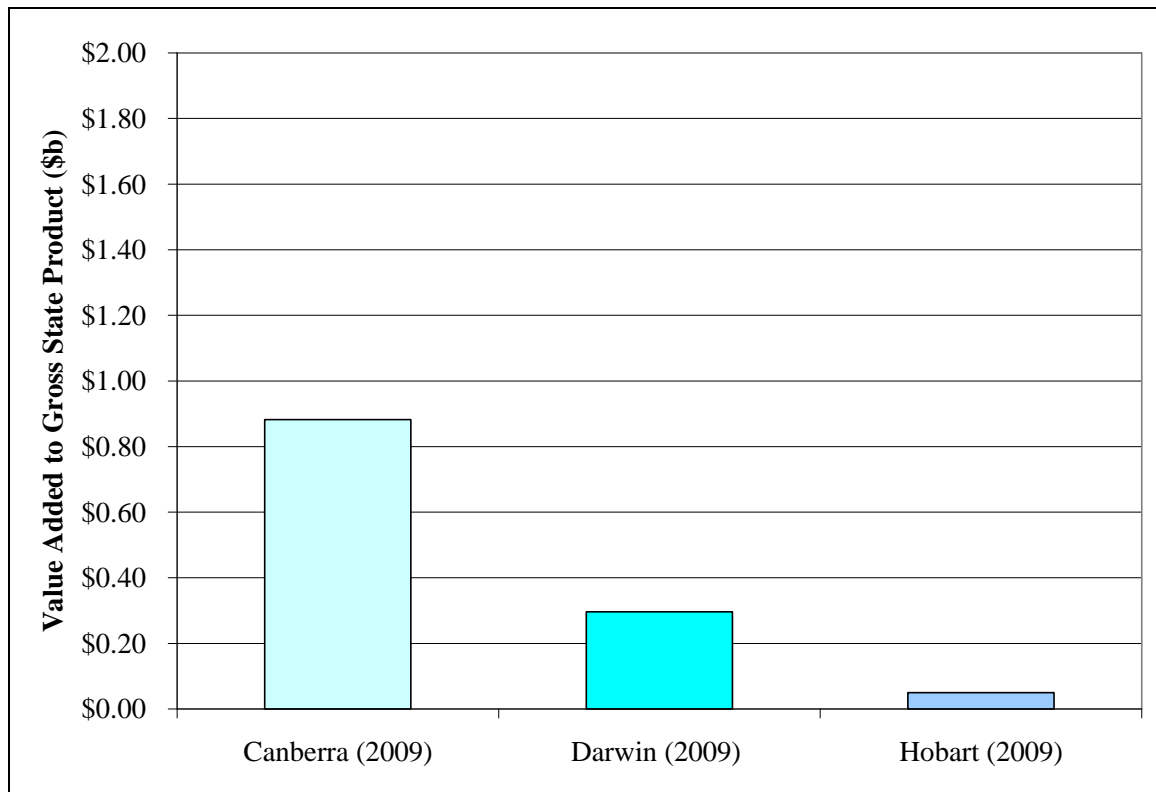


Source: Airport Limited, *Master Plan Adelaide Airport Volume 1: Airport Master Plan, December 2009, p.14*; Brisbane Airport Corporation Pty Ltd, *Brisbane Airport 2009 Master Plan, p.49*; Westralia Airports Corporation, *Perth Airport Master Plan 2009, p.22*; and Sydney Airport Corporation Ltd, *Sydney Airport Master Plan 2009, p.37*. Note that comparable information was not available for Melbourne Airport.

<sup>1</sup> Note that the Master Plans of Melbourne and Gold Coast Airports did not include metrics that would allow identification of figures for those airports on a comparable basis. Various data on the substantial economic contribution of Melbourne Airport are however contained in: Sinclair Knights Merz, *Economic Impact of Melbourne Airport*, April 2008.



**Chart 2**  
**Economic Contribution of Tier 2 Airports (Value Added \$b)**



Source: Canberra Airport Pty Limited, *Canberra Airport 2009 Master Plan*, p.21; Darwin International Airport Pty Ltd, *Darwin International Airport Master Plan Final 2010*, p.32; Hobart International Airport Pty Ltd, *2009 Hobart Airport Master Plan*, p.10. Note that comparable information was not available for Gold Coast Airport as such was not included in the 2006 Master Plan.

- 2.7 Further summary details drawn from airport Master Plans are contained in Attachment 1.
- 2.8 The history of Australia’s major airports post-privatisation has been marked by major infrastructure investment. Since 2001-02, airports have invested more than \$3.5 billion in aeronautical services alone.<sup>2</sup> In addition, many investments have been of an ‘airport changing’ nature and have improved markedly the quality of service offered to customers.
- 2.9 This investment has occurred over a period that has been marked by:
- (a) regulatory change from the original heavy-handed price regulation to the current so called light handed regime;
  - (b) considerable periods of regulatory uncertainty; and
  - (c) very difficult economic circumstances arising from events such as the collapse of Ansett, 9/11 and the Bali bombings and the resulting increases in security, SARS and the GFC.

<sup>2</sup> Further detail of the extent and nature of investment undertaken since 2001-02 is provided in Chapter 3.

- 2.10 Airports can never be insulated from external economic impacts - these are an unfortunate fact of life which affects not only short-term patronage but also financial risk profiles to which airport operators must adapt.
- 2.11 But regulatory settings and regulatory uncertainty are within the capacity of Governments to control, and it is important that they should be controlled.
- 2.12 The billions of dollars that airports have invested under the auspices of the lighter-handed monitoring arrangements have already been mentioned.
- 2.13 There is no reason to doubt that, if heavy-handed airport regulation were reintroduced, these impressive outcomes would be placed at serious risk to the considerable disadvantage not only of Australian travellers but also all those within the wider community who benefit from a vibrant and efficient airport industry.
- 2.14 And, quite separately from the actual level of economic regulation from time to time, uncertainty flowing from any suggestion that regulation is subject to review and therefore may increase has the potential to materially affect the capacity of airport operators to attract capital on reasonable terms to allow infrastructure investment to proceed. As capital costs increase, they necessarily impact user charges to the disadvantage of passengers and other aviation users.
- 2.15 Australian and foreign banks and other funding providers in recent years have increasingly imposed heightened demands before they will lend. Increasingly banks seek greater certainty about the underlying business and any suggestion of regulatory uncertainty, previously not welcomed but tolerated, can potentially impact the availability or terms of funding. And ratings agencies now cite regulatory uncertainty as a factor impinging on the credit quality of rated airports. So marked is this change that some airports found that even the Government's Green Paper's discussions of a 'show cause' mechanism and a Major Development Plan 'call-in' power and the announcement that this Commission review would be brought forward but on then-unannounced terms of reference were a distinct negative in funding discussions.
- 2.16 Given their fundamental significance in Federal/ State/Territory and local economies (as recognised by the Minister for Infrastructure and Transport and the Commonwealth Government), it is essential that the economic regulation of airports is no more intrusive than it needs to be, and that it is allowed to operate on a settled basis without the potential for fundamental change hanging over its head.
- 2.17 In this regard the AAA notes and welcomes the Government's recognition - at page 176 of the Aviation White Paper - that 'regulatory stability is important for airports as they make long-term investment decisions'. The view of the AAA is that such stability and certainty can be achieved by giving effect to the recommendations set out in chapter 7 of this submission.

### **3 THE PRESENT REGULATORY REGIME - has it worked?**

- 3.1 The Commission has been asked to report on the effectiveness of the price and quality of service monitoring regime in achieving the following three objectives:
- (a) facilitating commercially negotiated outcomes in airport operations;
  - (b) promoting the economically efficient and timely operation, use of and investment in airports and related industries; and
  - (c) minimising unnecessary compliance costs.
- 3.2 These objectives are consistent with those articulated by the Commission in its 2006 and 2002 inquiry reports. They are consistent also with the 'Review Principles' to which the PC was required to have regard in preparing its 2006 report, with the 'Aeronautical Pricing Principles' contained in the government's response to that report and with the National Aviation Policy White Paper.
- 3.3 Drawing upon these materials and some of the matters raised in the Issues Paper released by the Commission in January 2011 for the purposes of the present inquiry, some more specific aims can be identified in relation to the above three overarching objectives.
- 3.4 First, in relation to the facilitation of commercially negotiated outcomes:
- (a) airlines and airports should operate primarily under commercial agreements and in a commercial manner, with airport operators and users negotiating the terms and conditions of access to airport services;
  - (b) airports and airlines should negotiate in good faith, including to agree upon processes for resolving disputes in a commercial manner during the term of agreements;
  - (c) arrangements should allow for a reasonable sharing of risks and returns between airports and their customers, including those relating to productivity improvements and changes in passenger traffic;
  - (d) airport charges – including those contained in commercial agreements – should not be set at a level higher than would be justified on the basis of costs, new investment requirements and/or other enhancements to service quality;
  - (e) non-price terms and conditions are an important component of the agreements between airports and airlines, e.g. the allocation of gates and parking bays, dispute resolution mechanisms and the right of the airport to vary such terms and conditions;
  - (f) in order to allow commercial arrangements to develop, price monitoring arrangements must provide for a degree of latitude and flexibility in regard to charges, rates of return and other outcomes; and
  - (g) consultation mechanisms should be established between airports and stakeholders to facilitate the two way provision of information on airport operations and requirements, including users' reasonable expectations.

3.5 Second, in relation to the promotion of the efficient use of and investment in airport infrastructure and in related industries:

- (a) the maintenance of a safe, secure industry remains the overriding priority of the Government for aviation in Australia – this priority will underpin its future sustainable growth;
- (b) competition should be promoted in the provision of services within airports, protecting against unjustified discrimination in relation to small users and new entrants;
- (c) aviation businesses should be able to innovate and develop new and improved products and services for the market;
- (d) price discrimination and multi-part pricing that promotes efficient use of the airport is permitted;
- (e) where significant capacity constraints exist, efficient peak/off-peak prices may generate revenues that exceed the production costs incurred by the airport -
  - (i) such demand management pricing practices should be directed toward efficient use of airport infrastructure; and
  - (ii) when not broadly revenue neutral, any additional funding that is generated should be applied to the creation of additional capacity or undertaking necessary infrastructure improvements.
- (f) where significant capacity constraints do not exist, prices should -
  - (i) generate expected revenue that is not significantly above the long-run costs of efficiently providing aeronautical services (on a 'dual-till' basis); and
  - (ii) allow a return on (appropriately defined and valued) assets (including land) commensurate with the regulatory and commercial risks involved.
- (g) planning at airports should facilitate effective integration and coordination with off-airport planning and continued investment in airport infrastructure and land transport links;
- (h) the Australian aviation industry needs to play an effective role in the reduction of aviation's contribution to climate change; and
- (i) employment in the aviation industry should grow with more Australians training for and taking up jobs in the industry.

3.6 Finally, in relation to the minimisation of unnecessary compliance costs:

- (a) the regulatory arrangements should minimise compliance costs on airport operators and the Government; and
- (b) there should be protection and fairness for aviation consumers and the broader community without imposing unnecessary cost or impeding innovation in the aviation industry.

3.7 In this chapter we demonstrate that the overarching objectives have been met. Later in this submission, in Chapter 7, we consider whether there remains any need for an airport specific regime of economic regulation and, if it is to continue, how the present regime should be enhanced.

### Commercially negotiated outcomes

- 3.8 The most important objective of the price and quality of service monitoring regime identified by the Productivity Commission in its previous reports was to facilitate commercially negotiated outcomes.<sup>3</sup>
- 3.9 This goal has been demonstrably achieved. Nowadays the majority of aircraft/runway<sup>4</sup> and terminal<sup>5</sup> services and facilities at such airports are provided pursuant to commercial agreements.
- 3.10 It is estimated that by 30 June 2010:<sup>6</sup>
- (a) 89 per cent of the airports' passengers flew on airlines<sup>7</sup> that had a commercial agreement pertaining to aircraft/runway related services and facilities ('aircraft/runway related agreements'); and
  - (b) 69 per cent of airports' passengers flew on airlines that had a commercial agreement pertaining to terminal related services and facilities ('terminal services agreements').
- 3.11 In other words, since the current arrangements were introduced in June 2002,<sup>8</sup> there has been a dramatic increase in the coverage of commercial agreements, as Chart 3 illustrates. Such agreements are now the primary determinant of the terms and conditions upon which airport services are supplied, which is precisely what was intended.

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<sup>3</sup> Bill Shorten, *Productivity Commission Inquiry – Economic Regulation of Airport Services, Terms of Reference*, p.1 (hereafter: 'PC Terms of Reference').

<sup>4</sup> As defined by the ACCC in its monitoring reports, see: ACCC, *Airport monitoring report 2009-10, Price, financial performance and quality of service monitoring*, p.7.

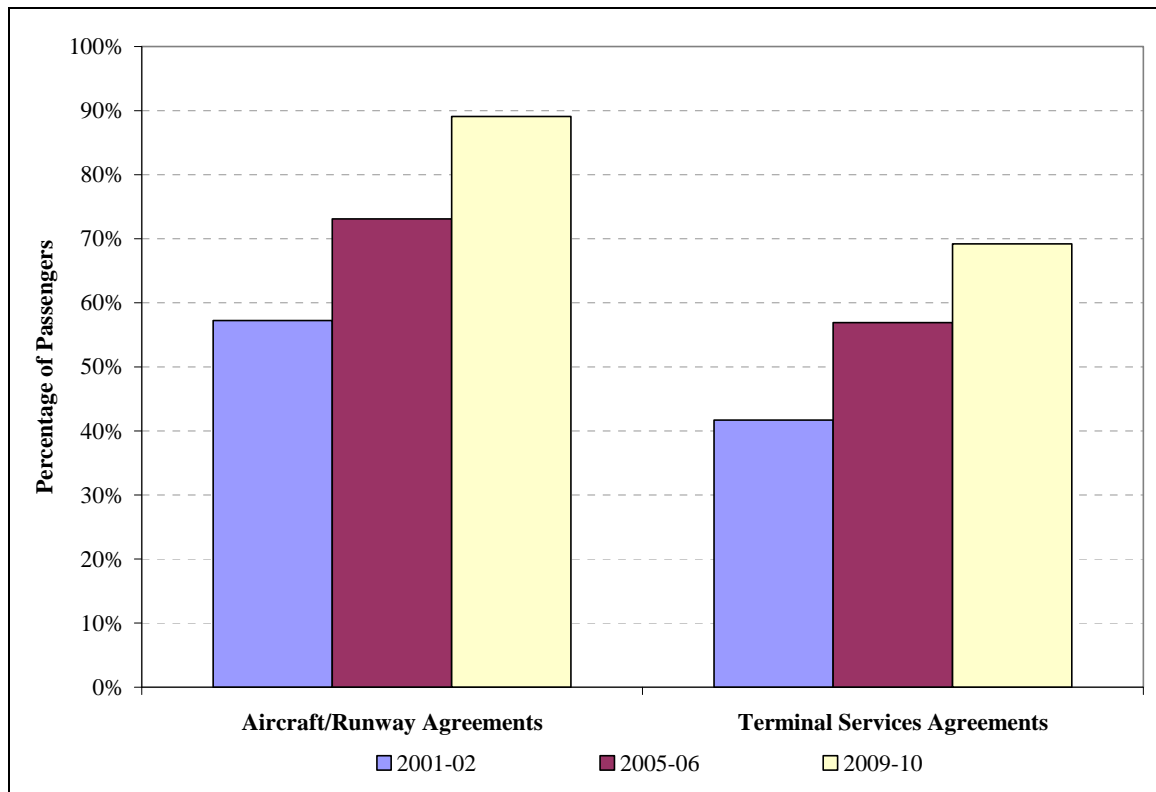
<sup>5</sup> *Ibid.* Note that this would exclude terminals subject to domestic terminal leases.

<sup>6</sup> These estimates are based on data provided from all tier 1 airports and two out of four tier 2 airports.

<sup>7</sup> Scheduled regular passenger transport (RPT).

<sup>8</sup> See: Direction 27 made pursuant to section 95ZF of the *Trade Practices Act 1974*, 26 June 2002.

**Chart 3**  
**Coverage of Commercial Agreements**



Source: Based on data provided by all tier 1 airports and two out of four tier 2 airports.

3.12 Not only has the coverage of commercial agreements increased over the last nine years, but there has remained a consistently high percentage of agreements that:

- (a) involve obligations as to the particular levels of service to be provided to airlines pertaining to one or more aeronautical service;
- (b) offer discounts, rebates or other enticements *vis-à-vis* standard conditions of use if specified traffic or growth targets are met; and/or
- (c) specify processes for resolving disputes in a commercial manner, or are supported by dispute resolution processes that are articulated elsewhere.

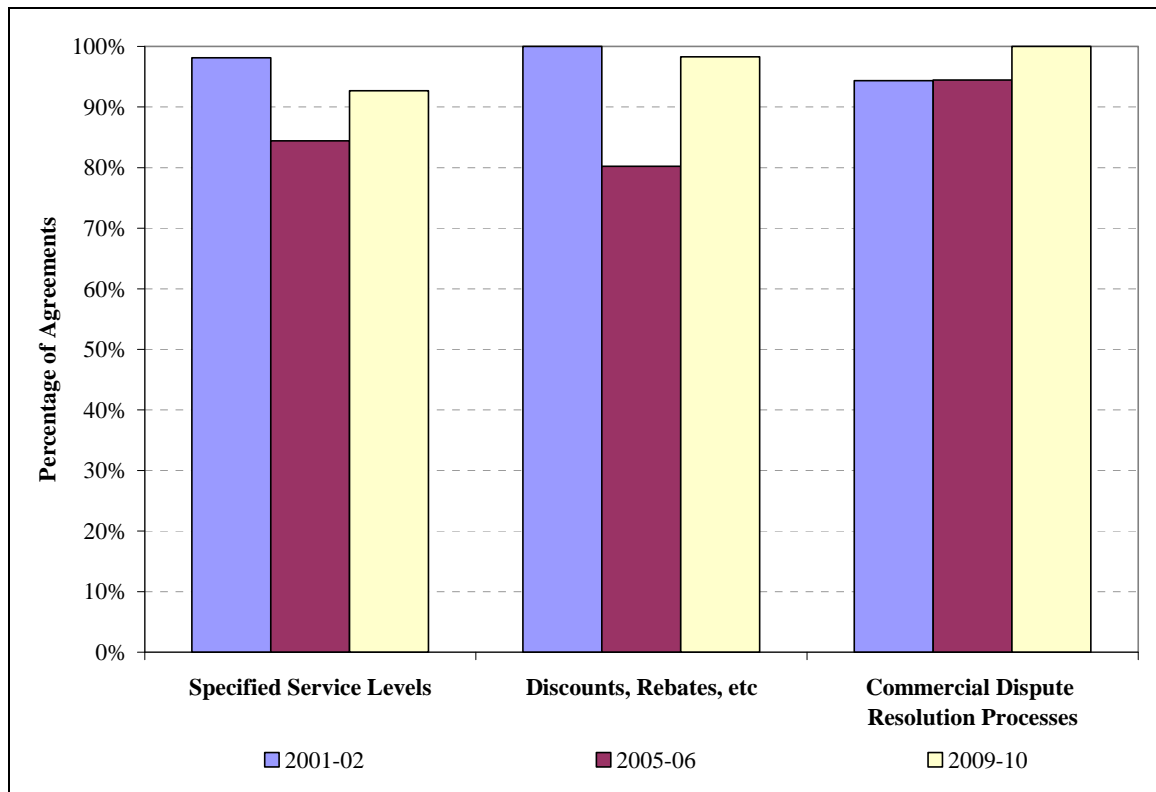
3.13 Of course, some commercial agreements are more encompassing in these respects than others, for example:

- (a) some specify service level outcomes for only a small number of aeronautical services, whereas others cover a wider range of parameters in relation to a number of aeronautical services; and
- (b) some dispute resolution processes are straightforward and others involve multiple steps (notably, airlines have *not* been prepared to specify *commercial arbitration* as a process for resolving disputes<sup>9</sup>).

<sup>9</sup> We explore the significance of this reticence in chapter 7.

3.14 Against this background, Chart 4 illustrates that, on 30 June 2010, it is estimated that 93 per cent of commercial agreements<sup>10</sup> specified service levels for at least one service, 98 per cent offered discounts, rebates or other enticements and 100 per cent specified processes for resolving disputes in a commercial manner, or were complemented by processes that were specified elsewhere, e.g. in standard conditions of use.

**Chart 4**  
**Content of Commercial Agreements**



Source: Data on specified service levels and commercial dispute resolution processes were provided by all tier 1 airports and two out of four tier 2 airports. Data on agreements offering discounts, rebates or other enticements were supplied by four out of five tier 1 airports and two out of four tier 2 airports.

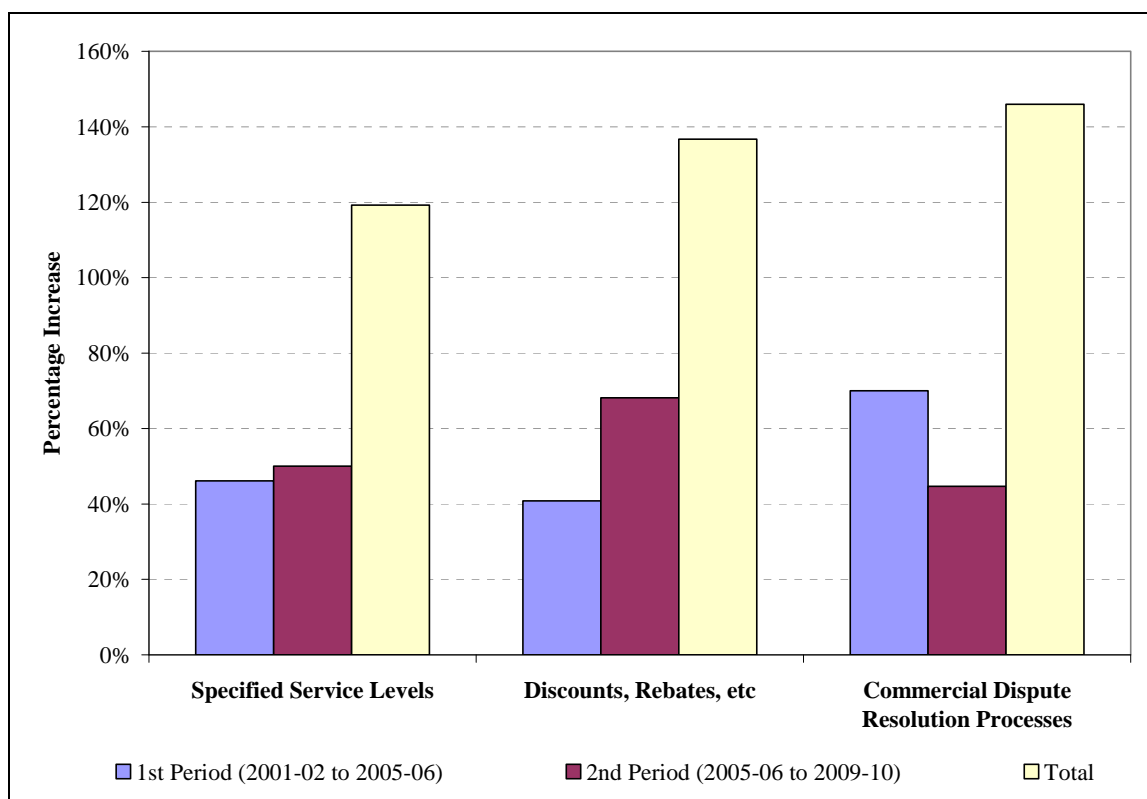
3.15 Clearly, a consistently high percentage of agreements contain the attributes listed above. Although there has been a slight reduction in the *percentage* of agreements that specify service levels and offer discounts this reflects the fact that there are *many more agreements now* than in 2001/02,<sup>11</sup> some of which are with airlines that are not interested in multi-faceted agreements. It is perhaps more instructive to consider the increase in the *total number* of agreements that include such attributes over the period.

3.16 Specifically, Chart 5 illustrates that, between 30 June 2002 and 30 June 2010, there was an estimated 119 per cent increase in the number of agreements that specified service levels for at least one component of aeronautical services, a 137 per cent in the number that offered discounts, rebates or other enticements and a 146 per cent increase in agreements that specify processes for resolving disputes in a commercial manner. Obviously this is a substantial uplift in relation to each attribute.

<sup>10</sup> Including aircraft/runway and terminal services agreements.

<sup>11</sup> The total number of agreements has not been disclosed to preserve commercial confidentiality.

**Chart 5**  
**Change in Content over Time**



*Source: Data on specified service levels and commercial dispute resolution processes were provided by all tier 1 airports and two out of four tier 2 airports. Data on agreements offering discounts, rebates or other enticements were supplied by four out of five tier 1 airports and two out of four tier 2 airports.*

3.17 These facets of commercial agreements are also becoming more sophisticated and encompassing over time. For example, Sydney Airport has recently entered into additional commercial agreements with a number of airlines – predominantly the larger airlines – that extend beyond its standard commercial agreement. The scope and range of terms covered by these agreements are extensive and tailored to the particular airline’s needs. The terms and conditions include:

- (a) customised multi-part pricing; and
- (b) joint service level targets to help the airport and the airlines to identify service priorities and improve their joint service levels.

3.18 In short, the major airport sector has matured significantly under the interim monitoring arrangements. There is now in place an extensive network of commercially negotiated agreements between airports and airlines – agreements that are becoming increasingly refined over time. This outcome is what one would expect to see in any industry characterised by well-informed sellers and equally knowledgeable buyers.<sup>12</sup> The monitoring arrangements have therefore facilitated commercially negotiated outcomes in the manner intended.

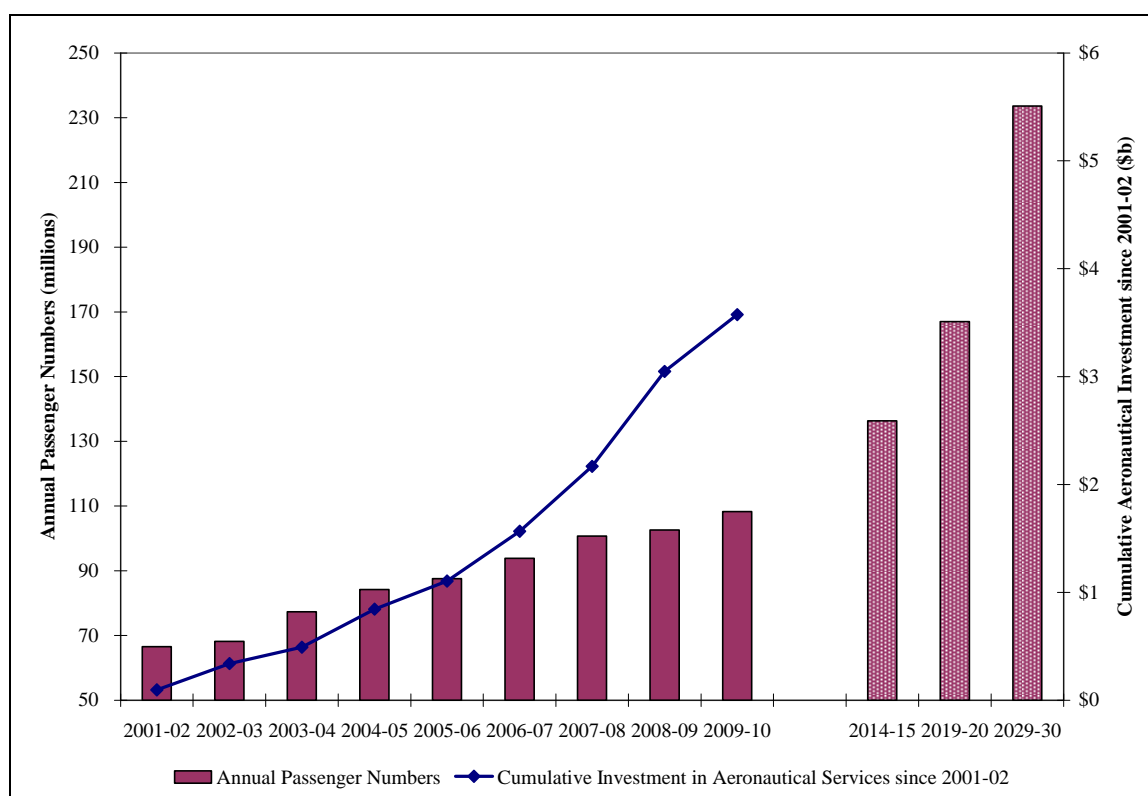
<sup>12</sup> In this sense, the interim monitoring arrangements have been very successful at recreating what Dr Darryl Biggar describes as: ‘the long-term contract that the parties would have agreed to if they could have negotiated costlessly prior to making any investments’. See: Biggar, D, *Submission: Economic Regulation of Airport Services: Issues Paper: January 2011*, 27 January 2011, p.3.



### **Investment in airport infrastructure and related industries**

- 3.19 Airports are capital intensive businesses. Large investments must be made in assets that have no alternative purposes, exhibit decreasing costs over their useful lives and may be in service for up to one hundred years. Recognising and minimising inefficiencies in relation to these long-term investments is crucial to ensuring the long-term dynamic efficiency of the industry. In particular, airports must have confidence that they will have the opportunity to earn a reasonable return on their capital so that they can invest the right amount, at the right time.
- 3.20 The potential costs of getting this wrong in an industry of national importance can be enormous. The long vessel queues that formed off the Port of Newcastle in 2003/04 – due largely to a chronic shortage of port and transport infrastructure – is an obvious illustration of the potential costs of under-investment. The negative impacts upon the Australian economy if similar bottlenecks emerged in the aviation sector would be equally, if not more wide-reaching. Fortunately, the experience at airports has been altogether different and positive.
- 3.21 In particular, the emphasis on commercial agreements has enabled greater cooperation between airports, airlines and other stakeholders and allowed efficient outcomes to be achieved. Since 2002, airports have continued to invest to cater for growing passenger numbers, to improve the quality of the services offered to customers – passengers and airlines alike – and to enhance the efficiency of their operations. Chart 6 illustrates that there has been significant investment in aeronautical services over this timeframe.

**Chart 6**  
**Historical Investment and Passenger Growth**



*Source: Data on annual passenger numbers were provided by all tier 1 airports and three out of four tier 2 airports. Data on annual aeronautical investment levels were supplied by all tier 1 airports and two out of four tier 2 airports.*

3.22 In total, airports have invested more than \$3.5 billion in aeronautical services over the last nine years, growth of almost 50 per cent per annum on average. In addition, many of the investments that have been undertaken during the previous two monitoring periods have been of an ‘airport changing’ nature, and have improved markedly the quality of service offered to customers. Some of the more notable examples include:

- (a) the opening of the new airport multi-user terminal at Adelaide Airport, with substantially improved facilities, services and business opportunities;
- (b) the expansion of the international terminal at Brisbane Airport, which also offered significant improvements;
- (c) the ongoing investment taking place at Canberra Airport completely redeveloping the Canberra Airport terminal building;
- (d) the extension of the main runway at Gold Coast Airport which allowed the direct introduction of long haul international flights which was originally not possible; the surrender of the Qantas Domestic Terminal Lease and the complete redevelopment and expansion of the main terminal building to accommodate a common user international and domestic terminal;
- (e) the terminal expansion programme and expansion of aero-bridge gate capacity at Melbourne Airport; and

(f) the redevelopment and upgrade of the international terminal at Sydney Airport.

3.23 It is also obvious that substantially more investment is going to be needed over the next ten to twenty years to meet the projected growth in passenger numbers. Indeed, by 2029-30, annual passenger numbers are forecast to exceed 230 million – a 250 per cent increase on current levels. The AAA has no doubt that the best way for that investment to occur is through airports and airlines continuing to reach mutually beneficial commercial agreements. Indeed, there would be significant negative ramifications for the efficiency of investment if more prescriptive regulation were to be applied.

3.24 The previous regulatory arrangements that entailed a CPI-X price cap combined with NNI arrangements were far more cumbersome and adversarial. In particular, the burdensome process for obtaining ACCC approval for new investments<sup>13</sup> added substantially to the cost and complexity of undertaking investments. Indeed, the Commission recognised in its 2002 review that those arrangements were likely to have:<sup>14</sup>

*‘[D]iscouraged efficient investment by sending poor price signals both to airport operators and users about the costs of providing aeronautical services and by requiring very detailed regulatory assessment of every investment proposal.’*

3.25 The reintroduction of mandatory approval processes or the introduction of binding arbitration (including through ‘deemed declaration’) would give rise to precisely the same problems and represent a retrograde step. There is simply no justification for jeopardising the excellent outcomes that have been achieved under the flexible and collaborative model that has been adopted over the past nine years. Indeed, it is entirely possible that some of the investments described above would not have proceeded under the previous arrangements, or would have been far more costly to implement.

3.26 It is also instructive to consider some of the investments that *did not* occur throughout the monitoring periods, or that were *delayed* because of changes in circumstances. For example, during the onset of the global financial crisis various capacity-related expansion projects were deferred at some airports so as to limit increases in airport charges during this period. This is a further example of the flexibility inherent in the current regime producing a mutually beneficial outcome. Such an outcome would be far less likely under a more prescriptive form of regulation.<sup>15</sup>

3.27 Finally, it is worth noting the scope within the current arrangements for airports to signal to users through airport charges the long-run incremental cost of providing the relevant infrastructure. This includes the costs associated with constructing *additional capacity* once those costs become reasonably predictable. For example, if demand growth gives rise to the need for investment in additional runways or terminals expansions, those costs are properly recoverable from today’s users. This is equitable and efficient.

3.28 Indeed, as the late Professor Alfred Kahn explained in 2001, the costs of pre-financing prudent investments that are required to meet future demand can and do form a legitimate element of efficient prices *today*.<sup>16</sup> In contrast, if today’s users are not required to pay for investments for which they are

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<sup>13</sup> Including the often protracted process for determining whether or not a project constituted a ‘new investment’ under the ACCC’s restrictive definition.

<sup>14</sup> Productivity Commission 2002, *Price Regulation of Airport Services*, Report no. 19, AusInfo, Canberra, p.XXXII.

<sup>15</sup> Indeed, an airport that has obtained regulatory approval to include the capital cost of a new investment in its regulated price path may be far less inclined to voluntarily reduce its prices than an airport that has a series of commercial agreements with airline customers.

<sup>16</sup> Kahn, A, 2001, *Statement of Alfred E Kahn on behalf of Auckland International Airport Ltd*, August 10, 2001, p.9.

causally responsible until such time as, say, the new facility is commissioned, the outcomes can be perverse. Specifically, it can:

- (a) hold down current prices while the new facility is under construction, perversely accelerating congestion; and
- (b) result in substantial price increases once the new capacity is commissioned, inefficiently restricting use of the more ample capacity once it is built.

3.29 Fortunately, the current arrangements enable airports and airlines to reach commercial agreements that can avoid these inefficient outcomes. Specifically, there is scope for commercial agreements to be reached that allow airlines to pay for expansions from which they will benefit, and for those price increases to be smoothed over a number of years to avoid price shocks and inefficient patterns of usage.

3.30 To summarise, the transitional monitoring arrangements have fostered a greater degree of certainty and provided airports with confidence to invest. The result has been impressive investment in both airports and related industries. This will continue, so long as unnecessary regulatory interference is avoided.

### **Compliance costs**

3.31 The financial costs associated with complying with the existing regulatory arrangements are relatively modest, as they should be. The problem is the significant and entirely avoidable costs arising from the often misleading and judgemental way that the ACCC has reported the information that it collects. Several times during the previous two monitoring periods the ACCC has publicly criticised airports for:

- (a) various financial outcomes, e.g. in its latest monitoring report it criticised Sydney Airport for having the highest aeronautical revenue per passenger of the monitored airports (see discussion in Chapter 4);<sup>17</sup>
- (b) the quality of service that is provided to passengers and airlines, e.g. in its most recent monitoring report it stated that airlines had raised concerns about ‘unsatisfactory levels of service’ at Sydney Airport (see Chapters 4 and 5);<sup>18</sup> and
- (c) the prices charged for car parking and access, e.g. the latest ACCC monitoring report states that Melbourne Airport appears to have imposed ‘excessive access levies’, which has allowed it to earn monopoly profits (see discussion in Chapter 6).

3.32 These and many of the other criticisms levelled at airports by the ACCC are groundless, as Chapters 4, 5 and 6 explain. For example, the criticism of Sydney Airport’s aeronautical revenue per passenger was made despite the fact that its operating expenses had *increased by even more* since 2008/09, reducing its operating margin, and that significant investments had been made with associated capital costs.

3.33 Unfortunately, what are often little more than unsubstantiated contentions are almost always reported ‘as fact’ by the media, generating considerable negative publicity for the affected airport. For example, shortly after the ACCC released its 2009/10 monitoring report, the *Sydney Morning Herald* reported that:<sup>19</sup>

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<sup>17</sup> ACCC, *Airport monitoring report 2009-10*, p.vii.

<sup>18</sup> *Ibid.*

<sup>19</sup> Saulwick J, ‘Watchdog lets fly over airport standards’, *The Sydney Morning Herald*, 8 February 2011, p.2. This article was also the banner headline on the Sydney Morning Herald website on the morning of 8 February 2011.

*'Sydney Airport earns more money per passenger and provides worse service than any airport in the country, the consumer watchdog has found.'*

- 3.34 Within 12 hours the online version of the article had elicited over 150 comments from readers, overwhelmingly negative in tenor.<sup>20</sup> Other airports have received similarly undeserved publicity as a result of misleading statements. This unjustified criticism comes at a significant cost to the affected airport's reputation and, conceivably, to its bottom line.
- 3.35 Misleading and judgemental comments from the ACCC are also not in the best interest of customers, who may be misled into making poor choices. For example, if customers are under the misguided impression that an airport is setting monopoly prices at its car park – a contention that the ACCC has made without basis on a number of occasions (see Chapter 6) – they may mistakenly select a more costly or less convenient form of transport.
- 3.36 This conspicuous shortcoming in the current arrangements can be addressed by giving effect to the recommendations set out in the following chapters. This can be expected to reduce materially the costs imposed on airports and the negative flow-on consequences for their customers.
- 3.37 Finally, it is worth reiterating the potential cost to the Australian economy from imposing inappropriate regulation, including forms that involve protracted and inflexible regulatory approvals for new investments, or more adversarial processes. The welfare impacts of such regulatory failure can be expected to be wide-reaching. The contribution of airports to the economy has already been discussed (and is set out in more detail in Attachment 1). However, to reiterate what is at stake, consider the following example:
- (a) suppose that regulatory failure results in the loss of a one international service per day – a Boeing 747-400 carrying 300 passengers, half of which are tourists;<sup>21</sup> and
  - (b) suppose also that those tourists would have been in Australia for five days, on average, and spent \$500 per day (or \$375,000 in total, i.e. 150 passengers x \$500 x 5 days).
- 3.38 Over the course of a year, the loss of this single daily flight would result in a direct loss to the Australian economy of almost *\$137 million* (\$375,000 x 365 daily flights). Of course, this sum will be inflated further once the indirect costs of that foregone consumption are considered, such as the flow-on consequences for businesses dependent of tourism. In short, a one unit reduction in demand can lead to a substantial reduction in economic output.
- 3.39 Bear in mind that this is only a rough estimate of the potential welfare reduction associated with the loss of a *single flight*. If regulatory failure leads to under-investment due to delays and/or regulatory uncertainty, the potential costs will be *far greater*. For example, if it takes one to two years longer to commission an additional runway at an airport and capacity constraints emerge in the interim, this result may be *many* lost flights per day and *billions* of dollars in deadweight loss.
- 3.40 This serves to reinforce the importance of addressing the shortcomings in the current arrangements (described in following chapters) and, most importantly, not re-introducing more adversarial forms of regulation that have been shown not to work.

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<sup>20</sup> See: <<http://www.smh.com.au/travel/travel-news/watchdog-lets-fly-over-airport-standards-20110207-1ak90.html?comments=157%23comments%3e>>.

<sup>21</sup> Note that the capacity of a 747-400 is more than 400 passengers, ie, a conservative 75 per cent load factor is assumed.

## Conclusions

- 3.41 In light of the above analysis we consider that it is clear that the objectives set for the current airport-specific regulatory regime have been met. From a 'zero-base' as the 'privatised' airports moved out of uniform national ownership and control to individual ownership and operation, the major airport sector is now greatly matured and sophisticated. There is now in place an extensive network of commercially negotiated agreements between airports and airlines that are essentially consistent with what one would expect in any industry in which well-informed and knowledgeable sellers dealt with equally well-informed and knowledgeable sellers. And investment in both airports and related industries has been impressive and will continue to meet emerging needs, so long as unnecessary regulatory interference is avoided.
- 3.42 This is not to say, however, that these impressive results have only been achieved because of the present regulatory regime. Rather, the greatest benefit of the present regime is that it has to some extent permitted and, more importantly, has not unduly hindered these developments.
- 3.43 Nor is it to say that the status quo should necessarily remain. Indeed, there are a number of problems with the current arrangements that lead to unnecessary costs being imposed upon airports, with negative flow on consequences for customers. For this reason we consider in Chapter 7 whether there is any ongoing need for an airport specific regime of economic regulation and, if it is to continue, what changes should be made to further enhance it.
- 3.44 To better inform that discussion, we discuss in the following 3 chapters specific aspects of the current arrangements that have given rise to problems with the current regime, notwithstanding the overall success of the regime in achieving its overarching objectives.

## 4 FINANCIAL REPORTING AND MONITORING

### The current regulatory framework

- 4.1 Part 7 of the *Airports Act 1996* provides that airports specified in Regulations (currently Adelaide, Brisbane, Melbourne, Perth and Sydney) must prepare and provide to the ACCC, accounts, statements and reports as required by the Regulations.
- 4.2 Sections 141 - 143 provide that audited accounts and statements prepared in accordance with the Regulations (which may adopt with or without modification AASB accounting standards) must be prepared and lodged with the ACCC by these airports.
- 4.3 Section 145 provides that these airports must also prepare and provide to the ACCC reports required by the Regulations or by the ACCC if a power to require a report is conferred on it by the Regulations.
- 4.4 Sections 143A and 145A empower the ACCC to publish reports, statements and accounts provided to it in accordance with these requirements.
- 4.5 The *Airports Regulations 1997* specify a range of aircraft related and passenger-related services and facilities for which financial reports and financial statements are to be prepared and defines financial statements and financial records to be those required by the *Corporations Act 2001*. The required financial reports must separately show costs and revenue in relation to the provision and use of those services and facilities. Additionally the Regulations require airports to provide an annual report on the total average equivalent staff concerned with the provision of those services and facilities.
- 4.6 In contrast with Part 8 of the Act, dealing with quality of service, the ACCC is not required or indeed empowered to 'monitor and evaluate' the accounts, statements and reports it receives under Part 7 of the Act.
- 4.7 However, a series of instruments made under Part VIIA of the *Competition and Consumer Act 2010* empower the ACCC to:
  - (a) control the price of 'regional air services' at Sydney Airport - this element of airport regulation is outside the scope of the Commission's present inquiry;
  - (b) monitor the prices, costs and profits related to the supply by Adelaide, Brisbane, Melbourne, Perth and Sydney Airports of the same range of aircraft related and passenger-related services and facilities; and
  - (c) monitor the prices, costs and profits related to the supply of car parking services by Adelaide, Brisbane, Melbourne, Perth and Sydney Airports.
- 4.8 The ACCC has issued a specification of its information requirements in relation to Part 7 of the Airports Act and Part VIIA of the Competition and Consumer Act. It has also issued guidelines for its quality of service monitoring (discussed in the following chapter).
- 4.9 The ACCC then releases annually one combined report of its monitoring of:
  - (a) prices, costs and profits; and
  - (b) quality of service.

These reports have proved to be highly contentious.

### **Experience to date with the current framework**

- 4.10 Airports incur additional expense in preparing the separate financial accounts and statements required for the purposes of Part 7 of the Airports Act. It is thus important that, if separate financial reporting in respect of aircraft related and passenger-related services and facilities is to continue, the present correlation of that reporting with Corporations Act standards and requirements should be maintained.
- 4.11 Airports also incur additional expense in meeting the information requirements of the ACCC in respect of its role under Part VIIA of the Competition and Consumer Act. It is thus similarly important that the ACCC does not change the nature of its information requirements.
- 4.12 An important element in containing cost (and in ensuring that regulation does not intrude beyond scope) is to ensure that the range of services to which the financial reporting and price monitoring applies is no greater than it should be. We discuss price monitoring of car parking separately in Chapter 6, where we suggest that the case for such monitoring has not been made out. There is in our view no justification for extending the present reporting and monitoring regime to any other non-aeronautical service. Nor in our view has any justification been made for expanding the range of aeronautical or aeronautical-related services beyond that presently covered.
- 4.13 However it is not the cost of complying with the ACCC's financial monitoring requirements that has been the most contentious issue. Nor is it the nature of the information that is required to be made available to the ACCC. Rather, it is the interpretation that the ACCC has placed, or has been seen to place, on that information.
- 4.14 In particular, there are a number of important limitations with that data that reduce substantially the insights that can be meaningfully drawn. Unfortunately, these limitations have not always been properly acknowledged by the ACCC, which has been prepared to make statements that cannot reasonably be substantiated.
- 4.15 This chapter describes the principal limitations of the financial information that is collected and provides some illustrations of that data being used in a misleading, selective and judgemental way by the ACCC in its monitoring reports and media releases.

### **Data limitations**

- 4.16 The vast majority of the financial information that is collected and reported by the ACCC provides no insight whatsoever into whether airports have exercised market power. Much of this information comprises 'partial' financial measures, including:
- (a) aeronautical revenues and costs (excluding the costs of capital);
  - (b) security revenues and expenses;
  - (c) aeronautical revenue per passenger – which is used by the ACCC as a proxy for average prices;
  - (d) aeronautical operating margins (excluding the costs of capital);
  - (e) car parking operating margins (excluding the costs of capital and land); and
  - (f) asset values and the return on total assets (based on their depreciated historic cost).



- 4.17 All of these measures must be interpreted with care. In particular, each metric can be misleading when presented out of context, or without proper consideration of other relevant variables. Most notably:
- (a) revenues do not reveal anything about overall financial performance in isolation from the relevant costs (including costs of capital) and vice versa;
  - (b) margins cannot reasonably purport to represent overall profits unless they include all relevant costs, including the cost of capital; and
  - (c) measures that include returns on non-aeronautical investments such as shopping centres provide no insight into whether market power is being exercised.
- 4.18 In short, in isolation, these metrics provide virtually no indication as to whether an airport has been earning aeronautical revenues substantially in excess of its underlying costs, including its cost of capital and the opportunity cost of land.
- 4.19 There is little (if anything) that a consideration of aeronautical revenue per passenger (average prices) or operating margins can reveal about airports' financial performance in isolation from a full consideration of airport costs, including interest costs and other financial costs. Indeed, the capital intensive nature of operating an airport means that interest costs/finance charges are generally the highest single expense of airports – often totalling 50-70% of total expenses. The ACCC's tendency to ignore this fact risks providing a misleading picture of how airports operate and of the financial returns they generate.
- 4.20 In addition, like almost all financial statistics, these measures collected by the ACCC have a tendency to fluctuate from year to year – including in response to macroeconomic conditions. In some years passenger numbers will be greater than expected and lift aeronautical revenues and, potentially, profitability. In others, passenger numbers may be less than anticipated - financial year 2000/01 is an obvious example. Similarly, airports will be at a different point of their investment cycles in each year.
- 4.21 For these reasons, yearly fluctuations are less relevant than *trends over longer periods*. In particular, if returns are higher in one year, this is unexceptional and could be symptomatic of any number of things, e.g. strong passenger growth, successful new investments, etc.
- 4.22 These limitations mean that care must be taken when reporting outcomes in order to avoid conveyed misleading impressions about airports' financial performance. Unfortunately, the ACCC does not always exhibit the requisite level of diligence in this regard.

#### **Shortcomings in ACCC reporting**

- 4.23 There are a number of problems with the way in which the ACCC presents financial data in its monitoring reports. The first is one of emphasis. The financial measures that feature most prominently are total aeronautical revenue, aeronautical revenue per passenger and aeronautical operating margins per passenger.<sup>22</sup> This emphasis is perplexing; because these three metrics provide no guidance whatsoever as to whether an airport has earned revenues that significantly exceed its underlying costs. In particular:
- (a) total aeronautical revenue and aeronautical revenue per passenger do not even *account* for aeronautical costs; and
  - (b) aeronautical operating margins do not factor in the *cost of capital*, which is a critical cost building block for a capital intensive business such as an airport.

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<sup>22</sup> These three measures are displayed prominently in Tables 1 and 2 in the Summary chapter of the 2009/10 report. See: ACCC, *Airport monitoring report 2009-10*, pp.ix-x.

- 4.24 The second problem is with the way in which the ACCC has interpreted these financial measures. Put simply, the manner in which it has done so has the potential to mislead. Often the limitations described hitherto are not fully explained. On other occasions, qualifications that appear in the detailed body of a report have been removed from summaries and from subsequent media statements.
- 4.25 For example, the ACCC's 2009/10 report included a number of important qualifications, most notably that:<sup>23</sup>

*'[T]he monitoring results **do not provide conclusive evidence as to whether or not the airports are earning monopoly rents.** A more detailed evaluation of the airports' performance, which is beyond the scope of monitoring and would include comparison with an economically efficient benchmark, would be required to make more definitive findings ...*

*'[T]he overall ratings for quality of **service do not provide the most reliable indicator of whether or not an airport has provided quality of service at an efficient level.** Importantly, passengers' perceptions of airports' quality of service can be influenced by the services also provided by airlines and border agencies.'* [Emphasis added]

- 4.26 However, these vital caveats were missing from the ACCC's summary of 'Key points' that appears on the first page of its report in which it stated that:<sup>24</sup>

*'Sydney Airport has the highest aeronautical revenue per passenger and the lowest overall rating by airlines, border protection agencies and passengers for quality of service in 2009-10 ...*

*Over several years airlines have raised concerns about unsatisfactory levels of service at Sydney Airport. Over the same period, prices and profitability continued to increase. The monitoring results, when considered within the context of the airport's market power as well as the incentives and ability to use that market power, point to Sydney Airport earning monopoly rents from services provided to airlines.'*

- 4.27 The unqualified statements in this passage coupled with the selective use of metrics have the potential to create the wrong impression about the performance of Sydney Airport. The fact that Sydney Airport had the highest aeronautical revenue per passenger is unremarkable and provides no indication whatsoever that monopoly rents are being earned. Indeed, other measures suggest otherwise:

- (a) its operating margin *decreased materially* from 2008-09 to 2009-10, and increased *only modestly* over the monitoring period;<sup>25</sup> and
- (b) its EBITA on average tangibles and non-current assets has also been stable over the entire reporting period.

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<sup>23</sup> ACCC, *Airport monitoring report 2009-10*, pp.viii and x.

<sup>24</sup> ACCC, *Airport monitoring report 2009-10*, p.vii.

<sup>25</sup> ACCC, *Airport monitoring report 2009-10*, p.263.

4.28 The ACCC's statements in relation to quality of service (a topic discussed in detail in Chapter 5) also appear to be disingenuous. Setting aside the significant shortcomings in the methodology employed (see Chapter 5), there has been *no noticeable deterioration* in the overall quality of service provided by Sydney Airport as reported by the ACCC. Rather, over the whole reporting period:<sup>26</sup>

- (a) Sydney Airport's overall ratings for international and domestic terminal services remained satisfactory and improved slightly;
- (b) there was no noticeable deterioration in Sydney Airport's overall rating for other airport services, which remained satisfactory throughout the period; and
- (c) Sydney Airport's overall rating for availability and standard of airport services were satisfactory, improving slightly over the period.

4.29 In other words, there was a clear discrepancy between the 'facts' contained in the detailed body of the report and the contentions that the ACCC sets out in its summary. Unfortunately, because the summary is far more prominent, this inevitably becomes the focus of adverse media attention. This is compounded by the fact that the same contentions feature in the media release posted on the ACCC website.<sup>27</sup> For example, the *Sydney Morning Herald* reported that:<sup>28</sup>

*'Sydney Airport earns more money per passenger and provides worse service than any airport in the country, the consumer watchdog has found.'*

4.30 Within 12 hours the online version of the article had elicited over 150 comments from readers, overwhelmingly negative in tenor.<sup>29</sup>

4.31 And, when the ACCC moves beyond written press releases to 'live' commentary in the electronic media, the chance of an airport's position being fairly dealt with is further diminished as exemplified in the following exchange on ABC radio 702 on 8 February 2011:

**ABC:** *Look, Mr Samuel, the reality of it is being this is the only airport in Sydney, privately owned by Macquarie, what's wrong with them making as much money out of it as they can until we have the guts to open up a second airport?*

**Graeme Samuel:** *Well it's not for us to comment about whether or not a second airport, I've had a few people try and get me to say we should have a second airport and I won't do that of course. All that we're doing is we're monitoring these airports and providing these reports on an annual basis which in every case reflects the fact that the airports do have monopolies and if they have got monopolies then as far as airlines charges are concerned they'll be high and they are increasing. As far as car parking charges are concerned they'll be very high and they are increasing and then in the case of Sydney Airport, as far as its quality of service is concerned, it will be very low – unsatisfactory – that's what happens when you have a monopoly.*

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<sup>26</sup> ACCC, *Airport monitoring report 2009-10*, pp.269-270.

<sup>27</sup> ACCC Media Release, *ACCC issues annual report on airport performance*, 7 February 2011. Available at: <<http://www.accc.gov.au/content/index.phtml/itemId/971558>>.

<sup>28</sup> Saulwick J, 'Watchdog lets fly over airport standards', *The Sydney Morning Herald*, 8 February 2011, p.2. This article was also the banner headline on the Sydney Morning Herald website on the morning of 8 February 2011.

<sup>29</sup> See: <<http://www.smh.com.au/travel/travel-news/watchdog-lets-fly-over-airport-standards-20110207-1ak90.html?comments=157%23comments%3e>>.

- 4.32 Notably, at page 34 of the ACCC 2009/10 monitoring report, the overall rating for quality of service at Sydney Airport is recorded as between 'satisfactory' and 'good' – not the 'very low – unsatisfactory' that Mr Samuel talks about.
- 4.33 Worse still is the following exchange from the same interview, which contains a contention that is so untenable that it was recognised and highlighted by the interviewer:

**Graeme Samuel:** *I suggest to the Sydney Airport that they really ought to compare themselves to some of the regional shopping centres, you know, those run by Westfield and CFS and others and see what the car parking charges are there which are by my reckoning almost free and compare that to Sydney Airport and I think it's a very unfavourable comparison.*

**ABC:** *But Mr Samuel, with the greatest of respect, Westfield's parking is free to encourage you to go there and stay around to buy stuff.*

**Graeme Samuel:** *Yeah, so is Sydney Airport. Sydney Airport is encouraging you to go there to go and use the airlines.*

**ABC:** *I don't think many people drive to the airport and while they're there think, oh I might go on a flight. Surely it's demand that's influencing supply in the other direction?*

- 4.34 Prices to park at regional shopping centres simply cannot be compared to the prices to park at an airport. The respective attributes of these facilities are not remotely analogous.<sup>30</sup> The fact that the ACCC has never undertaken such a comparison in its monitoring reports suggests that it is well aware of this.
- 4.35 Unfortunately, Sydney Airport has not been the only airport to receive unjustifiably poor publicity as a result of unsubstantiated contentions contained in an ACCC monitoring report and accompanying media statements. In the same 2009/10 monitoring report the ACCC made a number of claims in respect of the landside access fees levied by Melbourne Airport. The 'body' of the report again contains two important qualifications, namely:

*'High prices can be a symptom of market power problems, but price levels alone are far from conclusive. The monitoring results only provide for indirect indicators of whether or not airport operators have increased car parking prices excessively ...*

*'To make more definitive findings about the efficiency consequences of the airport's behaviour, an evaluation of the market for landside access is required to estimate traveller's willingness to substitute between on-airport car parking, and off-airport parking, private buses and taxis.'*  
[Emphasis added].

- 4.36 Both statements are accurate. In particular, prices alone reveal nothing about the existence and/or exercise of market power without a proper consideration of the underlying costs of providing the relevant service (including the costs of capital and land). Nevertheless, the summary of 'Key points' set out on the first page of the report, contains an unqualified (and unsubstantiated) contention that Melbourne Airport is earning monopoly profits:<sup>31</sup>

*'Melbourne Airport appears to have reduced the ability of off-airport parking and private bus operators to compete with its own car parking services. For example, the airport appears to impose excessive access levies and controls the available space for those operators. This can lead*

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<sup>30</sup> This point is examined in more detail in chapter 6. The contention that Sydney Airport (or any airport) has 'some form of monopoly over car parking' is also a misnomer, for the reasons discussed in chapter 6.

<sup>31</sup> ACCC, *Airport monitoring report 2009-10*, p.vii.

*to increased demand for on-airport parking, which brings about higher prices paid by consumers and allows Melbourne Airport to earn monopoly profits.* [Emphasis added].

- 4.37 There is simply no basis for this statement, or the virtually identical contention that appeared in the media release posted on the ACCC website.<sup>32</sup> As the ACCC acknowledges in the body of its report:<sup>33</sup>
- (a) prices alone are ‘far from conclusive’ and because it undertook no analysis of the underlying costs of providing landside access (including the opportunity cost of the relevant land) it has no basis to identify monopoly rents;<sup>34</sup> and
  - (b) the fact that an airport controls kerbside access and might place conditions on those parties wishing to enter those areas – such as imposing landside access fees – is unremarkable, since:
    - (i) kerbside space is highly sought after by many parties, but in strictly limited supply, and so it is perfectly understandable if an airport takes certain steps to manage that finite resource – including levying access fees; and
    - (ii) there are substantial costs associated with providing landside access facilities and it is perfectly reasonable for those costs to be recovered, as the ACCC has acknowledged.<sup>35</sup>

- 4.38 Not surprisingly, the claim attracted significant media attention that presented Melbourne Airport in a distinctly unfavourable light, e.g. *The Age* reported that the ACCC had:<sup>36</sup>

*‘[B]lasted Melbourne Airport over the high cost of parking, which constitutes a fifth of the airport’s revenue - more than any other Australian airport.’*

- 4.39 Within 12 hours, the article attracted more than 200 comments from readers on the paper’s website, overwhelmingly negative in tenor. Similarly, the *Herald Sun* reported that:<sup>37</sup>

*‘The great Melbourne Airport car parking fee sting has been exposed by the nation’s consumer watchdog. The airport is singled out in an Australian Competition and Consumer Commission report raising concerns that its monopoly is used to crimp competitors and punish drivers.’*

- 4.40 The above discussion provides analysis of criticisms made by the ACCC in respect of Sydney and Melbourne airports. However, these are used as examples only and it should not be assumed that similar complaints cannot justifiably be made by other airports of the criticisms levelled at them by the ACCC over time.

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<sup>32</sup> ACCC Media Release, *ACCC issues annual report on airport performance*, 7 February 2011. Available at: <<http://www.accc.gov.au/content/index.phtml/itemId/971558>>.

<sup>33</sup> See further discussion of landside access in chapter 6.

<sup>34</sup> The fact that the revenues that Melbourne Airport earns from landside access fees exceed those earned by Sydney and Brisbane Airports does not mean that the fees at Melbourne are excessive. Indeed, such a comparison is meaningless absent a proper consideration of the circumstances at each particular airport, including the underlying costs of providing the relevant landside services.

<sup>35</sup> ACCC, *Airport monitoring report 2009-10: Price, financial performance and quality of service monitoring*, January 2011, p.72 (hereafter: ‘ACCC 2009-10 Report’).

<sup>36</sup> Heasley A, ‘Melbourne Airport parking in cross-hairs’, *The Age*, 8 February 2011. Available at: <<http://www.theage.com.au/travel/travel-news/melbourne-airport-parking-in-crosshairs-20110207-1ak5o.html>>.

<sup>37</sup> Collier, K, ‘Melbourne Airport parking sting exposed’, *Herald Sun*, 8 February 2011. Available at: <<http://www.heraldsun.com.au/news/victoria/watchdog-probes-airport-parking-service-gripes/story-e6frf7kx-1226001702381>>.

- 4.41 In summary, the experience to date with the financial reporting framework is far from ideal. The explanatory power of the financial metrics reported by the ACCC in its monitoring reports is limited, which means that great care needs to be taken before conclusions are reached and reported. Unfortunately, the ACCC often does not display sufficient diligence in this respect. Two examples of misleading statements about financial outcomes are provided above, but there are many others.
- 4.42 The adverse (and entirely avoidable) consequence of these shortcomings is that the public is frequently provided with the wrong impression about airports' performance. This unjustifiably damages the affected airports' reputations and, conceivably, their bottom lines. It is not in the best interests of airport customers, since they may make poor choices based on that misleading information

#### **Financial reporting and monitoring in the future**

- 4.43 We address in chapter 7 of this submission the question of whether or not there is an ongoing need for financial reporting and price monitoring at any airports and, if so, of which airports. In short, the AAA does not believe there is a need for financial reporting and price monitoring – certainly not at all of the airports that are currently subject to the regime.
- 4.44 However, if the eventual conclusion of the Commission and the Government is that there remains a need for such regulation then, in the interests of ensuring that the public is better informed about the inferences that should be properly drawn from the monitoring of airport financial data, it is recommended that the legislation should be amended so that the ACCC is obliged to:
- (i) confine its monitoring and commentary strictly to prescribed aeronautical and aeronautical-related services;
  - (ii) undertake detailed and transparent consultation with monitored airports in relation to each of the relevant sections of its draft monitoring reports - including the overview and summary chapters;
  - (iii) provide a penultimate and final draft versions of each of those sections to monitored airports prior to their publication; and
  - (iv) if requested by an airport, include in its report that airport's comments on the conclusions reached by the ACCC.
- 4.45 Implementation of these recommendations (even as a 'second-best' alternative to the approach described in chapter 7) should go some way to ensuring that a more balanced view is presented of airports' financial outcomes than is currently the case. This will benefit airports, their customers and, ultimately, the ACCC, since its reports will assume a greater degree of objectivity and credibility.

## 5 QUALITY OF SERVICE MONITORING

### The current regulatory framework

- 5.1 Part 8 of the *Airports Act 1996* provides that Regulations may require the ACCC to monitor and evaluate the quality of certain aspects of airport services and facilities, and allows the ACCC to do so of its own initiative.
- 5.2 The only airports that can be subjected to this quality of service monitoring are those that are specified in the Regulations - currently Adelaide, Brisbane, Melbourne, Perth and Sydney.
- 5.3 And the only airport services and facilities to which quality of service monitoring can apply are those provided by the airport itself, or by another person under an agreement with the airport - section 152.
- 5.4 Section 155 provides that the ACCC has the function of monitoring and evaluating the quality of those aspects of airport services and facilities as are specified in the Regulations - currently a range of passenger-related and aircraft-related services as set out in Regulation 8.01A of the *Airports Regulations 1997*.
- 5.5 Very importantly, however, section 155 then provides as follows:
- (2) *The monitoring and evaluation of an aspect specified for the purposes of subsection (1) must be against the criteria determined by the ACCC in writing in relation to the aspect.*
- (3) *Before determining criteria under subsection (2), the ACCC must consult the Department and the Department administered by the Treasurer.*
- 5.6 The combined effect of these provisions is that:
- (a) where services at an airport are provided by anyone other than the airport operator or their subcontractor, they are not subject to quality of service monitoring; and
  - (b) while it is the Government that determines which airports are to be monitored and which services offered by them are to be monitored, it is the ACCC that determines the criteria by which those services are to be measured with the only constraint on its discretion being the requirement that it first consult the Minister's Department; and
  - (c) the ACCC has absolute and unfettered discretion in deciding the methodology it uses to monitor those criteria in respect of those services.
- 5.7 This situation stands in stark contrast with the legislative position in respect of financial reporting and price monitoring where the Act and Regulations combine to impose on the ACCC an obligation to abide by recognised accounting standards.

## Experience to date with the current framework

- 5.8 The ACCC quality of service monitoring methodology produces perverse results that actively mislead the public and the Government about the true state of the quality of service actually delivered at monitored airports by monitored service providers. By way of illustration, we note the following examples and issues.
- 5.9 The ACCC gives all airlines equal weight regardless of the volume of traffic they generate so that an international airline with only an occasional flight can make a negative comment that adversely affects an airport's results notwithstanding the complimentary comments of another airline that regularly arrives and departs with high frequency.
- 5.10 The ACCC methodology relies upon comments made by individual employees of surveyed entities, without satisfying itself that those comments represent the views of the entity itself. When questioned about the critical comments attributed to them, a number of airlines or agencies have been simply unaware of that attribution and have disagreed with the views expressed.
- 5.11 The ACCC methodology also fails to ascertain whether or not a critical comment is justified. For example:
- (a) one airport was rated poorly on aerobridge availability simply on the strength of a complaint by one limited use airline which wished to remain parked at an aerobridge continuously between its morning arrival and evening departure but was required to move to a separate parking apron to allow multiple other airlines to disembark and embark passengers at that aerobridge in the intervening period; and
  - (b) another airport was rated as providing 'poor to very poor' facilities for Customs clearance of passengers, notwithstanding that such facilities were simply not provided because the airport was not used by any scheduled international flights.
- 5.12 Some ACCC conclusions and criticisms just do not accord with common sense. For example;
- (a) it is rational to assume that the higher the percentage of passengers that use an aerobridge to board or disembark an aircraft, the higher should be airlines' satisfaction with aerobridge availability. Despite this, while 100% of passengers at Adelaide Airport have used an aerobridge since 2006-07, the satisfaction rating for aerobridge availability continues to be just 'satisfactory'; and in Perth, the periods of highest aerobridge use (2008-09 and 2009-10) correspond to the lowest satisfaction ratings, including a 'poor' rating in 2009-10; and
  - (b) the rating of runway availability at Canberra airport increased for the period during which it closed the runway overnight and reduced its length while constructing an extension and tarmac strengthening and yet, when the runway reopened not only was availability rated as having declined but also the quality of the runway was rated as having declined - notwithstanding that the surface was brand new.



- 5.13 The ACCC's objective measures are also unhelpful. For example, the ACCC reported that the number of flight information display screens (FIDS) at Sydney Airport was reduced in 2006-07:

*'Since 2003–04 the number of FID screens within the international terminal has decreased from 1050 screens to 697 screens in 2006–07.'*<sup>38</sup>

However, what the ACCC did not acknowledge, and what its calculations took no account of, was that this reduction was due to an *upgrade* from small, older televisions to larger and clearer digital LCD screens. While the passenger survey showed an improvement for flight information display screens, the crude quantitative measure produced a perverse outcome that reported that passenger facilities had been reduced. The ACCC gave prominence in its commentary to this quantitative measure and used the reduced number of screens to mark down Sydney Airport's overall quality of service. This is a textbook case of regulatory over-reach producing a flawed outcome.

- 5.14 And, very importantly, the ACCC methodology appears to pay no regard to the fact that different airlines seek different levels of service and facilities for their passengers. For example, low-cost carriers airlines are less focused on quality at airports and actively do not want to contribute to the investment in assets needed to achieve the quality of service outcomes sought by full-service carriers.

#### **Quality of service monitoring in the future**

- 5.15 The original rationale for the introduction of quality of service monitoring reflected a quite logical concern that a price-controlled airport operator might reduce the quality of services provided by it in order to indirectly increase its profit margin in a situation where price control prevented it from doing so directly. Once price controls were removed, that rationale disappeared.
- 5.16 In the present situation where airports are not price controlled, airports have every commercial incentive to offer airlines the quality of service they desire for themselves and their passengers. Given that they are able to negotiate and mutually agree a reasonable price for providing service at the airline's desired standard, agreements between airports and airlines increasingly prescribe service level standards to be met by airport operators. In these new circumstances it would be reasonable to argue that there is no longer any need for quality of service monitoring.
- 5.17 Despite this, airports do not seek to avoid accountability for the quality of the services they provide. They recognise that the travelling public have a clear interest in these matters, and that there needs to be transparent and meaningful information readily available to the public.
- 5.18 From the traveller's perspective, however, the present system of monitoring does not effectively monitor and evaluate the quality of their airport experience. This is for two reasons:
- (a) first, being limited to service provided by airports and their subcontractors, the present regime completely ignores a very significant proportion (and in some cases probably the majority) of the services provided to travellers at airports; and
  - (b) second, the current monitoring methodology does not generate results that accurately assess or promote improvement in the quality of those limited services that are in fact monitored.

Passengers simply do not assess their travel experience in the same way as the present quality of service monitoring regime.

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<sup>38</sup> ACCC, Airport monitoring report for price monitored airports; Quality of service, price monitoring and financial reporting 2006-2007, p 242.

- 5.19 In relation to the first matter, the AAA notes that:
- (a) there is no monitoring of any services provided by airlines or their subcontractors in any airport terminal - for example, while airports may make check-in desks available, it is airlines who decide how many desks to staff;
  - (b) in some terminals, the only services are those provided by airlines or their contractors;
  - (c) at no airport is the full range of travel-related services provided to travellers monitored - for example, for international travellers a significant part of their travel experience involves interaction with the 'border agencies' of Immigration, Customs, Quarantine and the Australian Federal Police and yet those services are completely outside the scope of monitoring.
- 5.20 We address in chapter 7 of this submission the question of whether or not there is an ongoing need for statutorily imposed quality of service monitoring of any airports and, if so, of which airports. In that chapter we suggest that neither airports nor airlines should be statutorily subjected to quality of service monitoring because:
- (a) each has strong commercial and contractual reasons for achieving service levels that satisfy passenger demands; and
  - (b) there is nothing that makes airports so different from train stations, ferry and bus terminals, shopping centres, libraries or banks as to require a legislative quality of service regime.
- 5.21 However, if the eventual conclusion of the Commission and the Government is that there remains a need for such regulation then, in the interests of ensuring that the public is better informed, significant changes to the present system are needed.
- 5.22 The AAA suggests that, the original rationale for the current quality of service monitoring now having been superseded, it is time to reset the quality of service monitoring regime so that it actually focuses on and can prompt improvement in the quality of the services provided to travellers.
- 5.23 There is no need whatsoever for quality of service monitoring as a measure to assist either airlines or border agencies. Airlines are able to, and do, negotiate openly with airports for the quality of service they seek for their particular niche passenger markets. And border agencies are empowered to require the provision of facilities at airports reasonably necessary to enable them to provide the services for which they are responsible and without which airports simply cannot function.
- 5.24 It is of course a matter for judgement how widely the net of services to travellers should be cast - for example, should it extend to the quality of public transportation services that carry people from the city centre to the airport, or should it be limited only to services provided on-airport? And, on airport, should it cover all services such as the range of stock in the sub-let newsagency, or should it be more directly focussed on those services that are inherent in the travel activity such as check-in, baggage handling, departure gates, etc?
- 5.25 Wherever these lines are drawn, however, there is no reason why only the airport service provider (or its subcontractor) should be monitored to the exclusion of other service providers of the same services - whether they be airlines or their subcontractors, border agencies or others.

- 5.26 In relation to the second matter of methodology, the AAA notes the expert research papers that were commissioned by Sydney Airport and that are attached to that airport's own submission to the Commission. Those papers highlight actual or potential inadequacies in the statistical methodology that has been adopted by the ACCC in the exercise of the discretion allowed to it under section 155(2) of the Act. While agreeing with the ACCC Chairman's response that the role of the ACCC is not to engage in an 'academic exercise', the AAA nevertheless believes it is important that, if it is to continue its present monitoring role, the ACCC's methodology should meet minimum and professional standards. If it does not, there can be no adequate assurance that the results will not mislead the public about the standard of the services they receive.
- 5.27 Having said that, however, the AAA does not believe it would be sufficient for the present methodology to simply be amended to address statistical issues of sample size, etc.
- 5.28 Instead, the AAA believes that the monitoring methodology needs to be particularly designed for and attuned to the situation 'on the ground' at each airport. If monitoring is to deliver real service improvement for passengers, it should not be an instrument of merely passive measurement.
- 5.29 For example, it is not sufficient to simply measure the average time spent by passengers waiting in a check-in queue. Whenever that time exceeds an acceptable limit, it is necessary to go further and ask why that has occurred and how recurrence can be avoided:
- (a) if there are too few check in desks to meet the demand from airports, then this is an issue that needs to be addressed by investment in additional desks. If it is the airport operator that is responsible for providing check in desks, that is an issue that should be addressed by the airport operator. But if the terminal is exclusively leased and operated by an airline, it is an issue for that airline and not the airport operator;
  - (b) if there are adequate check-in desks but the airline has simply declined to staff and use those available for use, then this is a matter for the airline and not the airport operator; and
  - (c) if the delay is caused because additional flights have been unexpectedly diverted to the airport due to bad weather, there may be absolutely no underlying problem at all.
- 5.30 Failure to collect relevant data and apply it to the circumstances runs the risk that either problems will be perceived when they do not really exist, or that responsibility for their resolution will not be apparent.
- 5.31 Moreover, simple airport-to-airport comparisons such as those published by the ACCC can be fatuous - some airports cater for a high volume of business travellers while at others the traffic is heavily directed at personal and leisure travellers. The airfares paid by these different categories of passengers dictate not only the quality of in-flight service provided to them by airlines, but also the quality of the terminal-related services for which those airlines are prepared to pay for those passengers at their points of departure and arrival.
- 5.32 Airports should not be expected to impose on, and demand that airlines pay for, a 'one-size-fits-all' quality of airport service when their airline customers may be demanding something else. Low cost carriers have generated major benefits for the Australian traveller but their capacity to do so fundamentally depends on their ability to control their costs. If they wish to purchase a lesser level of airport service than their full-service competitors in order to further extend their operating methodology, they should be able to do so, assuming it is reasonably achievable.

- 5.33 At the end of the day, it is passengers who will decide if the overall travel experience with low cost carriers is something they wish to purchase. Airports should not be castigated for giving a low cost carrier the level of service it seeks for its passengers just because a full-service carrier seeks a higher level of service for those who choose to pay a higher fare and legitimately look for a higher level of on-ground amenity. For example, design and construction of Melbourne Airport's Tiger Terminal was developed directly with Tiger and reflects its business model and its perception of its customer needs.
- 5.34 And it is airport customers - that is airlines - that can and do translate passenger demands into quality of service requirements for airports through the agreements they can and do negotiate with airports. This is ordinary commercial practice. There is no need for some special quality of service regime in an environment where agreements between airlines (who are directly accountable to their own customers) and airports can set the level of service to be provided at airports
- 5.35 If airport-by-airport comparisons are to be made, they should be strictly on a like-for-like basis.
- 5.36 Airports are complex pieces of infrastructure. They only operate efficiently when a web of inter-related activities of various entities operates in synergy. Moreover, no two airports are the same. Ground handling facilities that are provided by the airport operator at one port may be provided by airlines or unrelated providers at another. There can be distinctions of this nature for each of the passenger-related and aircraft-related services currently monitored. And they can change over time.
- 5.37 It is not unknown for an airport to want to upgrade its terminal services in the near future and yet face resistance from airlines who wish to see upgrades deferred to a future date because they are not prepared to contribute to the inherent cost in the short term. Clearly there would be legitimate grounds for concern if airports could enforce a 'take-it-or-leave-it' position and unilaterally impose upgrades and higher costs on airlines - which is simply not the case. Equally it should be a legitimate ground for concern if an airport is criticised for providing airport services at only the level for which airlines are prepared to pay.
- 5.38 All of this means that the monitoring methodology needs to be carefully designed to reflect the situation as it applies from time to time at the individual airport. Current ACCC methodology is too simplistic and too unsophisticated to generate truly meaningful metrics.
- 5.39 If monitoring is to become properly passenger focussed and tailored to the individual airport (rather than airport-operator tailored), there is a real question about who should undertake that monitoring. Given that the original rationale of curbing inappropriate exercise of market power has now been superseded, there is no compelling reason why it should be undertaken by the competition regulator. Indeed, there is already a range of aviation reporting that is not undertaken by the ACCC - for example, the Bureau of Infrastructure, Transport and Regional Economics monitors and publicly reports on the on-time performance of airlines, and Airport Coordination Australia reports on international seat capacity utilisation.
- 5.40 The Government appears to have recognised this in the position it has taken with Canberra, Darwin, Gold Coast and Hobart Airports. These airports are not specified in the Regulations and are exempt from ACCC monitoring. However, in the interest of ensuring the ready availability of transparent and relevant information for travellers, the Government has agreed to an administrative and self-administered monitoring regime designed by the individual airport (in consultation with the Department of Infrastructure and Transport), with the airport making its monitoring results available directly to the public. These regimes allow for direct customer input on any issue, require reporting to the Department (in a formal sense) and the public (via the internet), and contain obligations for the rectification of service failures.

5.41 The AAA submits that this provides an optimum model for enhanced quality of service monitoring at the currently specified airports of Adelaide, Brisbane, Melbourne, Perth and Sydney.

### **Conclusions**

5.42 The AAA believes, as detailed in Chapter 7, that there should be no statutory requirement for quality of service monitoring because the need for that monitoring has been made redundant by the conclusion of mutually negotiated commercial agreements between airports and airlines that include quality of service requirements and measures. However, if there is to remain any statutory requirement for quality of service monitoring of airports (a proposition that is inherently difficult to sustain if there is no such monitoring of other passenger terminals such as those for road, rail and sea), the AAA makes the following recommendations:

- (a) quality of service monitoring at Adelaide, Brisbane, Melbourne, Perth and Sydney Airports should cover the present range of aircraft related services and facilities;
- (b) however it should also extend to a wider range of passenger-related services and facilities, such as airline check-in and boarding through departure lounges, aerobridges, etc, passenger security, immigration, customs and quarantine, so that the key elements affecting the passenger experience are monitored;
- (c) those services and facilities should be monitored whether they are provided by the airport operator (or their contractor) or a third person;
- (d) the methodology used to monitor the relevant services and facilities should be designed for and tailored to the circumstances of the individual airport so that it reflects differences between operational responsibilities of the various service providers and allows better identification of systemic problems and attribution of responsibility for their resolution;
- (e) monitoring should be undertaken not by the competition regulator but by individual service providers at airports who may separately liaise with the Department of Infrastructure and Transport in the development of their own methodologies;
- (f) monitoring results should be transparently and readily available to travellers; and
- (g) airports should publish their monitoring results on their own web-sites and include links to the web-sites of other relevant service providers.

5.43 At the very least, if a regime along the above lines is not to be implemented and the ACCC is to continue its present role, then the current legislation should be amended so that:

- (a) the Regulations or a Ministerial determination specify not only the services to be monitored but also the criteria by which those services are to be monitored;
- (b) the Regulations specifically require that the monitoring methodology must meet minimum professional standards;
- (c) monitoring should extend to all service providers at the specified airports; and
- (d) the ACCC is obliged to:
  - (i) consult with all affected service providers before determining its monitoring criteria/methodology;

- (ii) consult with all affected service providers on its draft monitoring reports;
- (iii) if requested by a service provider, include in its report (and its Executive Summary) with appropriate prominence that service provider's comments on the conclusions drawn by the ACCC in its report; and
- (iv) assess each airport individually but not seek to rank airports because such rankings are meaning-less as no two airports are the same.

## 6 GROUND ACCESS TO AIRPORTS - a misunderstood complexity

### Introduction

6.1 The efficient operation of Australia's airports necessitates that passengers must be able to readily access airport facilities. Airport operators cannot, by themselves, ensure this outcome. While there is much that they can do, State and Territory Governments bear primary responsibility for off-airport road and public transport networks

6.2 The Commission has been asked to consider planning systems for land transport access to the major airports. The Tourism & Transport Forum published in February 2011 a major report entitled *Accessing Our Airports - integrating city transport planning with growing air services demand*.

6.3 As noted in that report:

*Australia's major airports are essential pieces of economic infrastructure, driving income, investment and employment at a local, state/territory and national level. Not only are airports hubs for domestic and international travellers and freight movements, but the workplace of tens of thousands of direct employees and a myriad of business. The sum total of the economic value of six of Australia's major airports is estimated at almost \$25 billion per annum - almost 2 per cent of Australian GDP.*

*Our airports are not silos. They are vital transport hubs operating in multi-layered local, state, national and international transport networks. Ensuring ease of access to our airports is therefore critical for the end-to-end value chain. Whether for business or leisure, a journey never ends at the airport. At present, land transport access to our major airports is problematic. Planning and investment in land transport to airports has not kept pace with the rapid growth in airport passenger traffic over the last decade.*

6.4 As is made clear in the Booz and Company report commissioned by the Tourism and Transport Forum, there will be a requirement for additional land access to all major airports in the immediate future – and land access to some airports is already inadequate.

6.5 The AAA commends the Booz and Company report for consideration by the Productivity Commission, noting that its recommendations include the need for state transport agencies to prioritise resources to address the existing problems and a call for funding from the commonwealth under Infrastructure Australia. It also highlighted the need for a more collaborative approach between the three levels of government and airports.

6.6 The AAA understands that, in their own submissions to the Commission, individual airports may expand on these issues as they affect their particular circumstances. Accordingly, the AAA does not deal further with this matter in this submission. Instead, this chapter focuses on ground access issues over which airports have a more direct capacity to exercise influence.

6.7 The ACCC is legislatively required to monitor car-parking prices at Sydney, Melbourne, Brisbane, Adelaide and Perth Airports.

6.8 This arrangement has ostensibly been put in place because of concerns expressed by the ACCC (particularly in its 2007-08 and 2008-09 monitoring reports) that airports may be taking advantage of a 'monopoly position' in 'on-airport' car parking.

6.9 The AAA is concerned that the rationale for monitoring car parking charges was not sound then and does not withstand analytical scrutiny now. As a matter of good public policy, for regulation to be justifiable it should be shown that:

- (a) the airport possesses a substantial degree of market power in relation to car parking or landside access arrangements - i.e. it must have the ability:
  - (i) to increase charges to levels that exceed significantly the costs of providing the relevant services (including opportunity costs of land); or
  - (ii) to reduce its quality of car parking or landside access facilities without a corresponding reduction in price; or
  - (iii) to restrict unduly its competitors' access to airport land without reducing its overall profits, including from other aeronautical and non-aeronautical services.
- (b) it has taken advantage of that market power by implementing successfully at least one of these strategies; and
- (c) the benefits of introducing regulation, even in the form of price monitoring, would not be outweighed by the additional costs that inevitably would arise.

6.10 None of these conditions have been shown to hold. There is therefore no sound basis for the existing arrangements, let alone a compelling case for more extensive regulation. Indeed, much of the rhetoric in the commentary about airport car parking and landside access arrangements in both ACCC reports and in the media is misguided.

6.11 For this reason, in the following sections we describe some of the important misunderstood complexities about car parking and landside access arrangements at airports. Our hope is that, by providing this broad overview, some of the current misperceptions can be corrected. The chapter is structured as follows:

- (a) the first section describes some of the factors that would need to be considered before an airport could reasonably be said to possess a substantial degree of market power in relation to either its car parking or landside access services;
- (b) the second section explains some of the things that might (or might not) provide an indication of an airport taking advantage of a substantial degree of market power in relation to car parking or landside access services;
- (c) the third section sets out some of the factors that would need to be considered before any conclusion was reached that the potential benefits of regulation outweighed the associated costs; and
- (d) the final section draws conclusions from this discussion.

6.12 Our aim in this chapter is to set out an analytical framework by reference to which valid decisions can be made about whether there is any need for regulation of airport car-parking. Individual airports can provide the Commission with airport-specific information in their own submissions or otherwise in response to Commission inquiries that would allow the application of this framework to each relevant airport.



## Do Airports Possess Substantial Market Power?

- 6.13 The ACCC and the media often speak of airports having a ‘monopoly position’ in airport car parking that they are in a position to exploit to set higher prices.<sup>39</sup> This is a misnomer. Although an airport may be the only provider of parking on its land, this does not mean that it has a ‘monopoly position’. A monopolist is a business without any competitors. However, there are generally a number of different ways to get to and from an airport and car-parking must be viewed within its proper broader context of land access more generally. Put another way, airports typically face *competition*.
- 6.14 First, many airports face competition from ‘off-airport’ car parking providers that are in close proximity to their terminals. These businesses usually provide a free shuttle bus to and from the airport and often offer additional services such as car cleaning packages (for an extra cost). Such operators provide a clear alternative to parking at the airport, particularly for people wishing to park for longer periods who are happy to spend longer in transit.<sup>40</sup> Airports may also face competition from other ‘on-airport’ parking providers, such as the valet parking arrangements offered by some airlines within their own leased areas.
- 6.15 Second, airport visitors can avail themselves of a number of other transport options that do not involve driving a car to the airport and paying to park. There is a range of potential alternatives, including:
- (a) dropping-off and picking-up passengers for free;<sup>41</sup>
  - (b) some airports are served by train lines and/or public bus services;
  - (c) customers can travel to and from the airport by taxi, hire car or shuttle bus; and
  - (d) visitors may choose to rent a car at the airport, or at nearby locations.
- 6.16 Each of these transport options will offer various advantages and disadvantages to different people in different circumstances. A time-sensitive business traveller may prefer to catch a taxi to and from the airport than to take public transport or spend time getting into and out of a car park. In contrast, a person that lives near a public bus route serving the airport may prefer this mode of transport. The key point is that there will typically be a choice available in all circumstances.
- 6.17 Clearly, if customers can choose between several competing alternatives, airports cannot reasonably be said to possess a monopoly position. This is tautological. Indeed, the AAA understands that, at many airports, the majority of visitors *do not* park in an on-airport car park. If an airport was found to face *workable (or effective) competition* from off-airport car parking providers and other transport modes, then there is obviously no need for any form of regulation.

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<sup>39</sup> See: ACCC 2007-08 Report, p.62; ACCC 2008-09 Report, p.71; and ACCC 2009-10 Report, p.65.

<sup>40</sup> Note that the contention in the ACCC’s 2009-10 monitoring report that the existence of 17 such operators near Melbourne Airport ‘could actually be a symptom of the airport’s market power’ is simply untenable. See: ACCC, 2009-10 Report, p.72.

<sup>41</sup> This is an option that is not available at some airports in Europe, including London Heathrow, Birmingham, Luton, Belfast International and Edinburgh Airports.

- 6.18 It may also be instructive to consider whether an airport has done anything else that is demonstrably inconsistent with it having a monopoly position, such as:
- (a) promoting alternative modes of transport, such as:
    - (i) providing information about alternative modes of transport on its website;
    - (ii) lobbying for improvements to be made to those transport links, including the addition of public transport options such as public bus services;
    - (iii) subsidising alternative bus services; and/or
    - (iv) advocating the issuance of additional taxi plates; and/or
  - (b) investing in landside access facilities (such as taxi queuing areas, access roads and traffic control services) to make it easier for people to get to and from terminals by alternative means.
- 6.19 Such steps would not be expected from an airport trying to protect a ‘monopoly position’ in airport car parking and landside access. Quite the opposite: they would suggest a desire to make it as easy for people to get to the airport as possible. Indeed, in many cases these initiatives – if successful – can be expected to *reduce* an airport’s car parking and landside access revenue.<sup>42</sup>
- 6.20 Thus, while the ACCC has repeatedly conveyed the misleading impression that airports have a monopoly position in car parking, they do not. A comprehensive fact-based inquiry that considered each of the matters described hitherto would be needed before such a conclusion could be reached. That analysis has not been done and, if it was, it is the AAA’s view that monitored airports would be found *not* to possess market power. It follows that there is no sound basis for the existing arrangements, much less more extensive regulation.

#### **Have Airports Exercised Market Power?**

- 6.21 Even if substantial market power was shown to exist (which it has not), that would still not be a sufficient basis for regulating car parking. Rather, there should also be demonstrable instances of that market power being *exercised* to the detriment of airport customers. If market power exists, but has not been acted upon, regulation will impose needless costs for no perceivable benefit. In particular, the introduction of regulation should be preceded by clear examples of an airport:
- (a) increasing its car parking charges above its underlying costs of supply (including opportunity costs); or
  - (b) reducing the quality of car parking facilities without a corresponding reduction in price; or
  - (c) restricting unduly the ability of competitors to offer alternatives to on-airport car parking.

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<sup>42</sup> For example, more people arriving by public bus and train is likely to mean less visitors paying to park or generating landside access fees.

- 6.22 The ACCC has often spoken of airports setting ‘monopoly prices’ for car parking. However, it has not had any basis for those claims because it has not sought to familiarise itself with all of the relevant underlying costs of providing services, which include:
- (a) the operating expenses incurred providing the services;
  - (b) an allowance for depreciation of the capital assets;
  - (c) a return on capital assets; and
  - (d) a return on the land occupied by them.
- 6.23 The ACCC gathers data on the first item, but not the other three. Naturally, without that information it cannot possibly ascertain whether prices exceed total costs or reflect a misuse of market power. Unfortunately, this tends not to be faithfully presented in either the ACCC’s reports or its media releases and, as a consequence, the public’s perception of airport car parking and landside access charges is overwhelmingly negative.
- 6.24 The return on land is a particularly important omission from the monitoring reports, since it is needed to distinguish between two forms of economic rent that may be present at an airport. These are locational rents and rents arising from the use of substantial market power (or ‘monopoly rents’). This distinction is critical because, although monopoly rents *may* justify regulation,<sup>43</sup> locational rents *do not*, and form a legitimate part of cost-reflective prices, ie:
- (a) locational rents arise if the space or land available at the preferred location for an economic activity is limited and users are prepared to pay a premium (though not because of artificial restrictions); and
  - (b) monopoly rents come about through the use of market power, which exists when the owner of a facility has the ability to set a price that exceeds the cost of supply, or the price that would prevail under workable competition.
- 6.25 Because an airport is a centre of commerce, proximate land tends to be scarce and premiums must be paid to secure prime locations. Millions of passengers a year transit through the terminals operated by monitored airports. This makes the limited number of square metres adjacent to those buildings some of the most attractive real estate in Australia. Car parking (and landside access charges) will therefore always entail *locational* rents.
- 6.26 However, those charges will only contain *monopoly* rents if they deliver a return that exceeds that which could be earned if the land was used for something else (the ‘opportunity cost’). The trouble is that this distinction is intrinsically difficult to make *in practice*. This is because the opportunity cost of airport land can be very high<sup>44</sup> and difficult to measure, given its unique attributes – no two tracts of land are the same.
- 6.27 Nonetheless, various price comparisons can be attempted to provide some indication of whether prices reflect locational or monopoly rents. In particular, car parking charges at an airport could be contrasted with prices charged at car parks located in central business districts (CBDs), where locational factors will

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<sup>43</sup> Although not necessarily if the costs of regulation are likely to exceed the potential benefits – see discussion below.

<sup>44</sup> See Forsyth P, ‘Locational and monopoly rents at airports: creating them and shifting them’, *Journal of Air Transport Management* 10 (2004), pp.51-60.

also be in play<sup>45</sup>. Put simply, if airport prices are less expensive than prices in the CBD where there is likely to be effective competition, this suggests strongly an absence of monopoly rents.

- 6.28 The PC recognised the potential utility of such a comparison in its 2006 report, which included an analysis that revealed that prices in CBDs were far more expensive. Other more detailed analyses would require extensive data on the four key cost building blocks described above, and would differ from airport to airport and, indeed, for each bespoke parcel of land (which will have unique locational attributes).
- 6.29 There are also significant challenges associated with judging whether an airport has exercised market power by reducing the quality of car parking or landside access facilities. Quality is intrinsically difficult to measure and, as chapter 5 explains, the existing monitoring arrangements do a very poor job. Accordingly, the metrics reported by the ACCC do not form a sound basis for reaching any conclusions on this point.<sup>46</sup>
- 6.30 It is more likely to be more relevant to consider the investments that an airport has made over time, including whether capacity has kept track with demand. However, in undertaking any such analysis it is also important to be cognisant of the following:
- (a) car parking buildings, access roads, taxi queuing bays and other such assets are large, lumpy investments that cannot be added in small increments; and
  - (b) such investments are therefore of strategic importance and need to be very carefully thought through to ensure that the land is put to the most efficient use.
- 6.31 In other words, there is nothing wrong with an airport taking time to ensure that an investment that will have a significant effect on its operations over the next twenty years is the best development option. The fact that car parking capacity may become a little tight in the interim does not necessarily mean that the airport is strategically delaying an expansion to create an artificial shortage. Predicting future demand is far from an exact science. And, of course, the airport planning regime means that airports cannot speedily make more parking facilities available as they must ensure that all Master Plan, Major Development Plan and Airport Building Controller obligations are met.
- 6.32 Finally, any assessment of whether an airport has unduly restricted access to its land must be mindful of the fact that substantial costs are incurred to provide such access, including taxi queuing bays and access roads. It is entirely appropriate that these costs be recovered, as the ACCC has recognised.<sup>47</sup> Ready access to the airport also provides a convenience benefit, some of which should rightly accrue to airport operators through landside access fees. This is a further manifestation of locational rents and does not constitute disadvantaging competitors, as the PC recognised in its 2006 review.<sup>48</sup>

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<sup>45</sup> Comparisons to charges levied at non-CBD parking facilities – such as at hospitals and stadiums outside of the CBD – are not as relevant. The locational attributes of these facilities are not as comparable to the circumstances that exist at an airport because visitors can usually park somewhere on the surrounding streets for free. This is not something that can usually be readily done either at an airport or in the CBD and reduces the prices that non-CBD parking facilities are able to charge. Comparisons to the parking charges levied at shopping centres owned and operated by the likes of Westfield are similarly unrevealing, given the substantial cross-subsidies contained in those prices

<sup>46</sup> Moreover, as noted in chapter 4 above, Sydney Airport has been singled out as having allegedly exercised market power by providing ‘unsatisfactory service’ to airlines when, in fact, its overall ratings have consistently been satisfactory and have generally *improved* over the monitoring period.

<sup>47</sup> ACCC, *Airport monitoring report 2009-10: Price, financial performance and quality of service monitoring*, January 2011, p.72 (hereafter: ‘ACCC 2009-10 Report’).

<sup>48</sup> PC Review (2006), p.115.

- 6.33 Moreover, the fact that landside access fees tend to be levied only on *some* visitors (i.e. taxis, shuttle buses and private hire cars/limousines) raises serious questions about whether even the considerable costs of providing the relevant infrastructure – including access roads, taxi holding areas, shelters, etc – are in fact being recovered through the application of such charges. It is also worth noting that some airports in Europe have started charging for pick-up and drop-off, in part to cover the costs of providing the relevant assets<sup>49</sup> – something no tier 1 or 2 airport does.
- 6.34 To summarise, the application of regulation requires there to be demonstrable instances of an airport increasing its prices above its underlying costs of supply (including opportunity costs), reducing its quality of service or restricting unduly access to its competitors. We believe there are no such examples of monitored airports engaging in such strategies. Most notably, the ACCC’s assertions of monopoly pricing are groundless because it has not considered all of the relevant costs of providing the services. This serves to reinforce the earlier conclusion that there is no basis for the existing regulations, or for more extensive arrangements.

### **Would Regulation be Cost Beneficial?**

- 6.35 Even if substantial market power exists in relation to car parking (or landside access services), and has demonstrably been exercised (neither of which have been established), regulation may not necessarily be in the best interest of airport customers. This is because regulation is a costly exercise. Although it can, in principle, improve on problems of monopolistic pricing, it comes at the expense of regulatory costs which may outweigh the benefits to be achieved – particularly if it results in inefficient underinvestment.
- 6.36 This weighing exercise was not undertaken before the current monitoring arrangements were set in place. The preceding sections indicate that, if it had, it is highly likely that it would have revealed that the arrangements would offer no benefits and result simply in needless additional costs.

### **Conclusions**

- 6.37 The AAA believes that, properly analysed, no sound basis will be found for why car parking and landside access arrangements at airports should be monitored. For that regulation – or any alternative arrangements – to be justified, it would need to be shown that:
- (a) the airports possess a substantial degree of market power in relation to car parking (or landside access arrangements), i.e. they must have the ability:
    - (i) to increase charges to levels that exceed significantly the costs of providing the relevant services (including opportunity costs of land); or
    - (ii) to reduce the quality of their car parking or landside access facilities without a corresponding reduction in price; or
    - (iii) to restrict unduly their competitors’ access to airport land without reducing their overall profits, including from other aeronautical and non-aeronautical services.
  - (b) they have taken advantage of that market power by implementing successfully at least one of these strategies; and
  - (c) the benefits of introducing regulation would not be outweighed by the additional costs that inevitably would arise.

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<sup>49</sup> For example, Edinburgh has introduced a £1 charge for drop-offs. The charge was put in place to pay for the development of two new drop-off areas, barriers and associated road improvements that were expected to cost £4 million. See: The Scotsman, ‘Raising GBP1 drop-off fee can’t be ruled out – airport chief’, 13 July 2010.

- 6.38 None of these conditions have been shown to hold.
- 6.39 First, the ACCC has repeatedly conveyed the misleading impression that airports have a monopoly position in car parking. They do not. Any analysis of whether airports have market power would need to consider the potential constraining effects of:
- (a) off-airport car parking providers and other modes of transportation, including buses, trains, taxis and so on; and
  - (b) the incentives that airports are likely to have to promote (as opposed to hinder) access by alternative means.
- 6.40 Second, there are no substantiated examples of monitored airports exercising market power. The ACCC's assertions of monopoly pricing are groundless because it has not considered all of the relevant costs of providing the services. Its contentions in relation to service quality are also misplaced because its monitoring arrangements are unreliable, as chapter 7 explains.
- 6.41 Third, the costs of the monitoring arrangements were not weighed against the potential benefits before they were introduced. Such an exercise is likely to have shown that the arrangements deliver no benefits and simply create unnecessary costs. More extensive regulations would be even less cost beneficial.
- 6.42 It follows that there is no justification for the car parking and landside access charges to be regulated. This is, of course, also the conclusion that the PC reached in its 2006 review of airport regulation.<sup>50</sup> That was the correct view then, and it remains the correct view now. We therefore encourage the PC to recommend that the current arrangements be removed.
- 6.43 Having said that, the AAA accepts that the public has a legitimate interest in being able to assess the most cost-effective manner in which, in their individual circumstances, they can access an airport. For this purpose an annual report by the ACCC on the level of car-parking prices at airports is hardly of great benefit to consumers.
- 6.44 The AAA suggests that it would be preferable for the Minister to ask, and airports to agree, that they maintain on their websites up-to-date information on their on-airport parking charges and details of alternative transport options (which many airports do already). In this way consumers will be well-positioned to make the best choice amongst the various land transport options that are available to them. A review of airport websites confirms that this material is already included by many airports.

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<sup>50</sup> PC Review 2006, p.99.

## **7 FUTURE REGULATION - status quo or change?**

- 7.1 In previous chapters we have set out our belief that the underlying objectives of the current regime of airport-specific economic regulation have been achieved but that there are problems with the implementation of the current modes of financial reporting, price monitoring and quality of service monitoring.
- 7.2 This is not intended to suggest, however, that the only thing that now needs to be done is to simply address those individual problems but otherwise confirm the continuation of the present system.
- 7.3 It was an underlying precept of the Commission's reports in both 2002 and 2007 that future reviews should consider not only whether the then-current system was working well but also whether there was any need for its continuation in any form.
- 7.4 The fact that the objectives of the current regulatory regime have been so fully met (as discussed in Chapter 3) provides a compelling argument against any claim that there is a need for a return to the former heavy-handed regulation, or for an increase in the present level of regulatory intrusion. Given the current prevalence of mutually agreed commercial arrangements, there would be both legal problems in seeking to regulate in a way that deprived a party of their commercial rights under those agreements, and a very real risk that over-regulation would inhibit the efficient operation of and investment in economically vital airport infrastructure.
- 7.5 At the same time the achievement of the objectives of the present regime does not provide a compelling basis for now concluding that there is no need to retain that regime. The AAA believes that it is necessary to look quite fundamentally at whether there is any continuing need for an airport-specific regime of economic regulation.
- 7.6 Economic theory readily recognises two states - monopoly and monopsony - and predicts how incumbents of each state may behave if they are not otherwise constrained. Real-life examples of each are not hard to find and their behaviour observed and recorded in support of that theory.
- 7.7 Less analysed and observed is what happens when a monopolist confronts a monopsonist where the market power of each party may be the same. In theory, where each party has equal countervailing power, necessity drives commercial resolution.
- 7.8 But these theories and observations are not of great assistance in considering the capacity of major Australian airports to exercise market power to the disadvantage of their airline customers. It is simply not the case, as airlines often allege, that airports relevant to the Commission's current inquiry can adopt a 'take-it-or-leave-it' attitude with their airline customers.
- 7.9 We do not say that airports have no market power. But we do say that the degree of their market power is far from absolute and that, when the limitations on use of what power they do have are properly recognised and factored in, there are real questions about whether or not there is any continuing justification for airport-specific economic regulation.
- 7.10 In this chapter we explore that question in some detail.

### **Access and pricing - systemic constraints**

- 7.11 While it is certainly true that some airports may often be the only alternative for an airline seeking to operate to a particular destination, this is not always the case. To a greater or lesser degree secondary airports like Avalon or Bankstown may provide viable access alternatives to Melbourne and Sydney. And there is certainly considerable competition between Australian airports for international services as well as route competition with other international destinations.
- 7.12 But, even where this is not the case, the privatised airports are subject to major limits on their dealings with airlines. Some of these are common to other industries, but one is specific to these airports alone.

### **Lease constraints**

- 7.13 The head leases issued by the Commonwealth for each of the airports subject to the Commission's inquiry are in generally common terms. They each contain clauses that significantly restrict the ability of the airport to act in a monopolistic manner by denying, or threatening to deny, airline access.
- 7.14 This is because the head leases:
- (a) subject only to a *force majeure* exception, oblige the airport lessee to provide for the use of the airport as an airport at all times and specify that this obligation applies to intrastate, interstate and international air transport;
  - (b) only permit the denial of access to an aircraft where:
    - (i) the aircraft operator has failed to pay charges due for use of the airport within 21 days of the due date; and
    - (ii) at least 14 days' notice of the intention to refuse access has been given (to both the aircraft owner/operator and the Minister's Department).
- 7.15 Breach of these obligations by an airport is specifically stated in the head leases to entitle the Commonwealth (among other things) within 2 days to serve a notice of termination of the head lease on the airport operator, upon which the operator must vacate the airport.
- 7.16 In other words, an airport operator cannot deny access to any aircraft other than by placing its entire airport business at risk except where airport charges remain unpaid for an extended period and even then the airport operator would have to prove that those charges were, as a matter of law, 'due' to it. In the absence of an agreement between airport and airline, providing that charges sought by an airport are legally recoverable is a matter of some difficulty.
- 7.17 Clearly airports, even where they may otherwise be a monopoly supplier, do not enjoy the ordinary rights of other sole suppliers - they cannot deny access to their products and, as a matter of necessity, must seek to reach commercial agreements with the airlines with which they deal. That is, they do not have the ordinary attributes or market power of a monopoly.



### **Statutory constraints**

- 7.18 Over and above this very real constraint on an airport's capacity to abuse market power, they are subject to the ordinary competition laws applicable to industry generally.
- 7.19 Part IIIA of the *Competition and Consumer Act 2010* provides a regime under which, if sensible commercial agreements cannot be reached, the ACCC becomes the arbitrator and conclusively determines access and pricing disputes between the parties.
- 7.20 The Sydney Airport/Virgin case provides an example of the preparedness of an airline to pursue this route. While many commentators have suggested that airside services at Sydney should not have been declared in that case, and while the Government has since amended the legislation in a stated endeavour to restore what was said to be the original intention of Part IIIA, those amendments have not been tested and there is no guarantee that the risk of declaration is now materially less for major Australian airports than it was at the time of the Sydney declaration. Affected airports certainly do not regard the prospect of ACCC participation under Part IIIA as an idle possibility and there is no doubt that Part IIIA acts as a constraining influence on their conduct.
- 7.21 Of course, declaration under Part IIIA is not a speedy process and it may be suggested that this means that airports have an extended opportunity to abuse market power while that process works itself to finality.
- 7.22 However, this argument ignores the price-control capacity in Part VIIA of the *Competition and Consumer Act 2010*. Under this Part of the Act a Minister in the Treasury portfolio, with (or even without) the urging of the Minister for Infrastructure and Transport, can at the stroke of a pen place the ACCC in a far more powerful position than that it would enjoy as an arbitrator.
- 7.23 When Part IIIA is activated the ACCC is only able to arbitrate those disputes the parties choose to bring before it. In contrast, when Part VIIA is relevantly activated, the ACCC can go much further and set airport charges regardless of whether or not the parties wish it to intervene.
- 7.24 Airports take seriously the prospect of Part VIIA - it was the means by which the previous general price control was given effect, and it is currently used in respect of regional services at Sydney Airport. Again there is no doubt that the possibility of Part VIIA being triggered by the Government acts as a constraining influence on airport conduct.
- 7.25 And, of course, the ordinary constraints of Part IV of the *Competition and Consumer Act 2010*, and particularly section 46, apply to airports and, following amendments to the Act since the last Commission inquiry, apply with greater enforcement powers and sanctions available to the ACCC.

### **Access and pricing - pragmatic constraints**

- 7.26 Quite apart from these systemic constraints on the access and pricing behaviour of airports, the pragmatic necessity to retain the business of airlines limits the extent to which airports can impose terms and conditions upon airlines. Fundamental commercial considerations dictate that airports must encourage airlines to increasingly use their facilities and airlines will not do this if airports over-charge or provide inferior service. The relationship is equal and symbiotic in the sense that one market participant cannot survive without the other.

- 7.27 Airlines have considerable purchasing power, even where they cannot realistically decide to cease services to a particular airport. They can and do exercise power in other influential ways such as:
- (a) by limiting service schedules;
  - (b) by changing the mix of routes servicing the airport;
  - (c) by changing aircraft types;
  - (d) by substituting intra-group carriers;
  - (e) by airline code sharing; and
  - (f) by negotiating over, or by their use of, particular airports as network hubs or maintenance bases.
- 7.28 No doubt airlines may be in a stronger position in these regards when dealing with smaller or regional airports than with major capital city airports, but even in the latter case they have a strong capacity to extract favourable terms from airports - witness the negotiations by Virgin and various airports over the location of its maintenance base.
- 7.29 And, because of the head lease terms discussed above, in a pragmatic sense airlines have the ultimate power - they can simply refuse to pay charges to which they have not agreed (and have been known on occasions to not pay or short pay even those charges that they have agreed), secure in the knowledge that the airport cannot deny them access unless, at threat to its very existence, it can prove that the claimed amounts are legally due and payable. Airlines cannot complain about the level of airport charges where either they have positively agreed those charges or they have declined airport invitations to negotiate over the same.
- 7.30 Airlines negotiate and negotiate hard to secure the terms that they want. They may complain to the Commission that airports also negotiate hard, but at the end of the day airlines can be in the stronger position for the reasons outlined above. And, in any event, robust negotiations are consistent with ordinary commercial behaviour in any industry.
- 7.31 Airlines may also be expected to complain to the Commission that airports have a 'cost plus' pricing mentality under which they are alleged to seek to pass through to airlines each and every increase in cost that they incur in their day to day operations. But such complaints are baseless. While airports certainly seek airline agreement to cost recovery of significant changes in opex and capex, they routinely absorb many operational cost increases. In this later regard their conduct might be contrasted with the unilateral action of airlines in imposing and increasing charges such as fuel levies, credit card fees, checked baggage fees, exit row seating, and so on.
- 7.32 Simply stated, airlines are in no way unaware of their bargaining power and they exercise that power to great effect.
- 7.33 Attachment 2 to this submission shows that Australian airports are, by comparison to international airports, certainly not earning excessive revenue as a result of the prices they negotiate with their airline customers.

- 7.34 All of the above suggests that it is reasonably arguable that there is no need for continuing airport-specific financial reporting and price monitoring for aeronautical services. At the very least, in the same way that the Commission recommended exclusion of Alice Springs, Launceston and Townsville Airports in 2002 and Canberra, Darwin, Gold Coast and Hobart Airports in 2007, the AAA submits that it is an appropriate time to exclude Adelaide and Perth Airports from the current financial reporting and price monitoring regime. They do not warrant such regulatory intrusion because there is no evidence that these airports have abused whatever market power they may have and they do not have sufficient incentive to do so. In this regard it is noteworthy that the ACCC acknowledged in its 2009-10 regulatory report that Perth Airport's response to quality of service, together with moderation in price increases, had lessened the likelihood that Perth had used its market power, and that its car parking prices were not likely to be excessive.
- 7.35 But, to the extent, if any, that financial reporting and price monitoring remains, the present regime should be improved as recommended in chapter 4 of this submission - that is, the legislation should be amended so that the ACCC is obliged to:
- (a) consult with each on the relevant sections of its draft monitoring reports; and
  - (b) if requested by an airport, include in its report that airport's comments on the conclusions drawn by the ACCC in its report.

#### **Quality of service**

- 7.36 As noted earlier in this submission, the original rationale for quality of service monitoring (to prevent a price-controlled airport from nevertheless increasing profit by curtailing service quality) no longer exists. Because airports are not price constrained, they are able to, and do, provide airlines with the quality of service they seek so long as they are prepared to agree a charge for doing so.
- 7.37 And, as also noted earlier in this submission, airports and airlines have increasingly concluded commercial agreements, a common feature of which is in many cases the specification of service levels and consequences for failure to achieve them. We understand that in some cases such consequences may include a financial penalty or impact for the airport failing to achieve the relevant service standard, set at levels that provide real incentive to avoid failure; in other instances, failure to meet a specified standard may trigger a mutually agreed continuous improvement process.
- 7.38 While there is a legitimate interest in ensuring that passengers experience air travel of a quality commensurate with the fare they pay, their status as consumers fundamentally derives from their contractual relationship with the airline of their choice. Logically it should be for airlines to assume the primary responsibility for ensuring the provision of that quality of service - whether through direct service provision themselves or through their contractual relationships with airports and others who input into that provision.
- 7.39 The recent history of airlines and airports reaching agreement on these matters shows that relationships within the industry are now mature enough for there to be no need for quality of service monitoring as a protection for airlines in substitution for the ordinary operation of market forces. And similarly, because airlines should assume responsibility for the terminal and related services they either provide themselves or acquire for on-provision to their customers, there is no necessary reason why the quality of such services provided by airports needs to be monitored.

- 7.40 But, to the extent, if any, that quality of service monitoring remains, the present regime should be improved as recommended in chapter 4 of this submission - that is:
- (a) quality of service monitoring at Adelaide, Brisbane, Melbourne, Perth and Sydney Airports should cover the present range of aircraft related services and facilities;
  - (b) it should also extend to a wider range of passenger-related services and facilities, such as airline check-in and boarding, passenger security, immigration, customs and quarantine, so that the key elements affecting the passenger experience are monitored;
  - (c) those services and facilities should be monitored whether they are provided by the airport operator (or their contractor) or a third person;
  - (d) the methodology used to monitor the relevant services and facilities should be designed for and tailored to the circumstances of the individual airport so that it reflects differences between operational responsibilities of the various service providers and allows better identification of systemic problems and attribution of responsibility for their resolution;
  - (e) monitoring should be undertaken not by the competition regulator but by individual service providers who may separately liaise with the Department of Infrastructure and Transport in the development of their own methodologies;
  - (f) monitoring results should be transparently and readily available to travellers; and
  - (g) airports should publish their monitoring results on their own web-sites and include links to the web-sites of other relevant service providers.
- 7.41 At the very least, if a regime along the above lines is not to be implemented and the ACCC is to continue its present role, than the current legislation should be amended so that:
- (a) the Regulations or a Ministerial determination specify not only the services to be monitored but also the criteria by which those services are to be monitored;
  - (b) the Regulations specifically require that the monitoring methodology must meet minimum professional standards;
  - (c) monitoring should extend to all service providers at the specified airports; and
  - (d) the ACCC is obliged to:
    - (i) consult with all affected service providers before determining its monitoring criteria/methodology;
    - (ii) consult in a detailed and transparent manner with all affected service providers on its draft monitoring reports; and
    - (iii) if requested by a service provider, include in its report (and its Executive Summary) with appropriate prominence that service provider's comments on the conclusions drawn by the ACCC in its report.

## Other possible issues that may arise for consideration

### 'Show cause'

- 7.42 In its 2007 report the Commission recommended
- introduction of an arrangement whereby the Minister for Transport and Regional Services — drawing on price monitoring reports and any other relevant information — would be required to publicly indicate each year either that:*
- *for the period covered by the relevant monitoring reports, no further investigation of any airport's conduct is warranted; or*
  - *one or more airports will be asked to 'show cause' why their conduct should not be subject to more detailed scrutiny through a Part VIIA price inquiry, or other appropriate investigative mechanism.*
- 7.43 The Minister's department subsequently circulated a discussion paper on a proposal for a form of 'show cause' mechanism. After considering the outcome of that public consultation process, the Minister decided not to introduce such a mechanism. We understand that the Government was particularly sensitive to any potential impact a show cause assessment could have on airports' ability to attract capital, particularly because of the impact of the global financial crisis on investor confidence and access to finance. The AAA believed then, and still believes, that this was the right decision.
- 7.44 The Government has available to it, under the *Competition and Consumer Act 2010*, powerful weapons that it can activate if it receives, from any source whatsoever, information or complaints suggesting what it perceives may be unacceptable conduct by an airport. In such an event airports would expect that any Minister would neither ignore that information nor act on it to trigger new regulation without some form of initial consideration to ascertain whether there was a *prima facie* case for taking such action. And, in the ordinary course of Government administration, airports would expect the Minister to seek their view on the relevant information or complaint as part of that process of consideration- essentially providing them with an opportunity to 'show cause' why regulatory action should not be taken.
- 7.45 In these circumstances we believe there is no need to introduce a formal process to require what should reasonably be expected to occur in any event.

### Dispute Resolution

- 7.46 In its 2007 report the Commission paid considerable attention to whether or not there was a need for some additional mechanism to resolve disputes between airports and airlines either when they could not reach agreements, or when they could not agree on the application of agreements previously reached. At that time some airlines had argued that there was a need for 'some form of' binding independent dispute resolution over and above that available under Part IIIA. However they did not elaborate on what that might be.
- 7.47 In the end result the Commission recommended that:
- the parties should negotiate in 'good faith' to achieve outcomes consistent with the [review] principles, including through the negotiation of processes for resolving disputes in a commercial manner.*

- 7.48 Subsequent experience shows that airlines and airports have been able to reach mutually acceptable agreements (albeit after negotiations that were often 'hard' but nevertheless consistent with ordinary commercial practice). In some of these agreements they have provided for dispute resolution simply by escalation up through senior management to Chief Executive Officers. In others a process for mediation has been agreed. But in no case, so far as we are aware, have the parties chosen to provide for binding arbitration. Our understanding is that, while some airports have been prepared to at least contemplate such a mechanism, airlines have not wanted to go down that path. This is not at all surprising - given the symbiotic relationship between airlines and airports, they each have every commercial reason to try to reach a resolution without running the risk of error by a third party 'quasi-regulator'.
- 7.49 Examples of the dispute resolution arrangements offered or agreed by airports include the following:
- (a) clause 22 of the Brisbane Airport Aviation Services and Charges Agreement<sup>51</sup>, which establishes a process as follows:
    - (i) a dispute is referred to a management committee of 2 senior executives from each party within 14 days;
    - (ii) the management committee is to meet within a further 14 days;
    - (iii) if the dispute is not resolved within 60 days, it is to be referred to the CEOs of each party; and
    - (iv) if not resolved within a further 60 days, the dispute is referred for mediation under the rules of the Australian Commercial Disputes Centre in Brisbane.
  - (b) clause 14 of the Melbourne Airport Aeronautical Services Agreement, which provides that a dispute is to be referred to the CEOs of each party or their authorised delegate and, if not resolved within 14 days, may be referred to an expert with qualifications relevant to the nature of the dispute who, in accordance with the Expert Determination Rules of the Australian Commercial Disputes Centre is to provide an opinion within a specified period which, in the absence of manifest error, is binding on the parties.
- 7.50 Each of the Commonwealth, the States and the Territories has enacted legislation establishing regimes for commercial arbitration that commercial parties can opt into:
- (a) *International Arbitration Act 1974 (Cth)*;
  - (b) *Commercial Arbitration Act 2010 (NSW)*;
  - (c) *Commercial Arbitration Act 1984 (Vic)*;
  - (d) *Commercial Arbitration Act 1990 (Qld)*;
  - (e) *Commercial Arbitration Act 1986 (SA)*;
  - (f) *Commercial Arbitration Act 1985 (WA)*;

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<sup>51</sup> Available publicly at [http://bne.com.au/F93E662C-4C75-4958-B9D2-5AE503F84243/FinalDownload/DownloadId-2D5540C5A7055ED7A01C41C45B21050F/F93E662C-4C75-4958-B9D2-5AE503F84243/files/pdf/Fees%20%26%20charges/23.12.2010%20-%20Aviation%20Services%20Charges%20Agreement.docx\\_.pdf](http://bne.com.au/F93E662C-4C75-4958-B9D2-5AE503F84243/FinalDownload/DownloadId-2D5540C5A7055ED7A01C41C45B21050F/F93E662C-4C75-4958-B9D2-5AE503F84243/files/pdf/Fees%20%26%20charges/23.12.2010%20-%20Aviation%20Services%20Charges%20Agreement.docx_.pdf)

- (g) *Commercial Arbitration Act 1986 (Tas);*
- (h) *Commercial Arbitration Act 1986 (ACT); and*
- (i) *Commercial Arbitration Act (NT).*

7.51 Moreover, there is in Australia a wide range of other alternative established dispute resolution mechanisms offered by various bodies such as the Australian Centre for International Commercial Arbitration (ACICA), the Institute of Arbitrators and Mediators Australia (IAMA) and the Australian Commercial Disputes Centre (ACDC) - fuller details can be found at [http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/ADR\\_Providers](http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/ADR_Providers).

7.52 And, of course, parties are always able to agree upon their own particular dispute resolution methodology if none of the above alternatives suits their individual circumstances.

7.53 In light of experience to date, the AAA believes there is no justification whatsoever for the Government to seek to superimpose what would effectively be a form of price regulation beyond that already available.

#### **Approaches to funding investment**

7.54 A desirable outcome of the transition from price regulation to the current light-handed regulation and price monitoring regime for major Australian Airports was to bring clarity around acceptable pricing methodology. A significant benefit of the current regime was that it allowed commercial negotiation and agreements to proceed from the pragmatic 'line in the sand' compromise starting point that was accepted by both airports and airlines. This essentially brought the parties to the negotiating table and allowed them to develop and evolve their commercial pricing resolutions over time. As a result, pricing is now routinely seen as a matter for commercial negotiation between airports and their users, and how closely final prices reflect theoretical prices is recognised and accepted as a matter for determination between those parties.

7.55 In such negotiations the issue of when capital expenditure is recovered from airport users can be contentious, as there are clear incentives for airports to continue to seek for 'funding as investment occurs' whilst there are also clear incentives for airlines to argue for recovery of capital costs once the asset is commissioned.

7.56 The AAA believes, however, that this should not be an issue for regulatory intervention. It is a quintessential issue which only seriously arises with respect to major infrastructure investment and on which commercial parties are and should be free to negotiate. If an airport's final assessment is that it can only afford to undertake the investment if it can charge as investment occurs and airlines are not prepared to pay for the asset until it is commissioned, then the airport should be at liberty to not make that investment. Equally, if airlines truly value the proposed new infrastructure, experience shows that they will reach mutually acceptable agreement with the airport concerned as to the timing for, and level of, associated charging without the need for regulatory involvement. This reflects the maturity that has developed in airline/airport relationships over time.

## AIRPORT CONTRIBUTIONS TO STATE AND TERRITORY ECONOMIES

Airport Master Plans give some indication of the economic significance of Australia's airports to the communities they serve:

### 1. Adelaide Airport

Key economic indicators set out in the Adelaide Airport 2009 Master Plan include:

- Adelaide Airport Limited (AAL) was estimated to contribute \$1.6 billion or 2.3% to gross state product (GSP) in 2008 – this contribution grew by 15% p.a. since 2003, whereas GSP growth averaged only 2.7% p.a. during the same period.
- Adelaide Airport is the single largest employer base in South Australia, employing a total of approximately 8,000 people.
- Adelaide Airport substantially increased its aircraft movements and number of passengers since 2003, ie:
  - passenger movements totalled 6.7 million in 2007-2008; and
  - the total number of passenger movements grew by 12.4% in 2003–2004, 9.7 % in 2004–2005, 7.5% in 2005–2006 and 7.2% in 2006-2007
- Key developments between 2003 and 2008 that are likely to have contributed to these outcomes were:
  - the opening of the new airport terminal in 2005 with substantially improved facilities, services and business opportunities;
  - an increase in activity in the airport precinct (both in airport operations, and the influence of Harbour Town) – with a large increase in direct employment;
  - the opening of an IKEA store in the airport precinct in 2006; and
  - growth in the number of entities operating from Adelaide Airport.
- Although the airport had undergone a sustained period of growth when the 2009 Master Plan was released, AAL noted that the long-term contribution of the airport to the state economy was unclear, due to the unknown severity of the global financial crisis (GFC).



## 2. Brisbane Airport

The 2009 Master Plan for Brisbane Airport considered the airport's contribution to the wider economy and noted that:

- In 2008, the airport was expected to contribute directly an estimated:
  - \$3.2 billion in output to the economy of South East Queensland (SEQ);
  - \$1.4 billion in spending in the wider community;
  - \$840 million in total wages for people working on airport; and
  - 16,000 Full Time Equivalent (FTE) jobs, which was expected to increase to more than 50,000 by 2029.
- The airport was experiencing significant growth in total passenger movements, ie:
  - in 2007-08, the airport processed over 18.5 million passenger movements, consisting of
  - 14.3 million domestic and approximately four million international passengers;
  - total passenger movements were projected to grow at an average rate of 4.5% annually until 2029, with international passenger movements growing at around 5.2% and domestic passenger movements growing at 4.2%; and
  - passenger movements were therefore expected to increase to over 45 million by 2029.
- Brisbane Airport Corporation (BAC) was also intending to invest approximately \$4.2 billion over the next 20 years for significant planned expansion, for example:
  - BAC had received approval from the Australian Government to build the \$1 billion plus new parallel runway, located two km west of the current main runway;
  - BAC intended to complete a \$340 million upgrade and expansion of the international terminal and had allocated an estimated \$640 million for expenditure over the next two decades on a range of projects at the domestic terminal.
  - BAC had funded a five km, multi-lane road to provide airport users and tenants with a second major access route to the terminals and on-airport businesses, addressing the area's major road congestion issues; and
  - BAC was continuing to invest in its airport precincts, attracting specific types of businesses and industries.
- By 2029, these investments were expected:
  - to increase Gross Regional Product (GRP) by \$1.2 billion;
  - to increase real household consumption by \$1.7 billion; and
  - to create jobs in the region for approximately 11,000 workers in addition to the projected increase in jobs at Brisbane Airport.

### **3. Canberra Airport**

Key economic indicators set out in the Canberra Airport Master Plan 2009 include:

- The airport was estimated to contribute:
  - \$2.9 billion to GSP;
  - \$882 million in value added; and
  - \$480 million in wage and salary incomes to Australian workers.
  
- It was also estimated that:
  - more than 180 businesses operate at Canberra Airport;
  - there was approximately 8,000 permanent on-airport jobs; and
  - the number of permanent on-airport jobs was expected to increase to 16,000 by 2014 and to 25,000 by 2029/2030.
  
- In addition to permanent on-airport jobs, it was estimated that continuing investments in airport infrastructure had contributed to ongoing employment for over 500 construction workers onsite, and 500-700 workers offsite.

The number of on and off airport construction jobs was expected to further increase following the commencement in 2009 of a \$350 million project involving the integration of the domestic and international terminal buildings and investment in supporting infrastructure.

### **4. Darwin Airport**

Key economic indicators set out in the Darwin Airport Master Plan 2010 include:

- In 2009, the airport and airport related businesses were estimated to contribute:
  - \$124 million in wages and other income;
  - \$296 million in value added (representing approximately 2% of GSP); and
  - 1,640 jobs.
  
- In 2009, it was also estimated that tourists arriving in the Northern Territory through Darwin Airport contributed:
  - \$168 million in wages and other income;
  - \$317 million in value added; and
  - 2,790 jobs.

- It was estimated that in the period to 2030, the airport and airport related businesses would contribute:
  - \$272 million per year in wages and other income;
  - \$648 million per year in value added; and
  - 3,600 jobs.
  
- It was also estimated that in the period to 2030, tourists arriving in the Northern Territory through Darwin airport would contribute:
  - \$370 million per year in wages and other income;
  - \$690 million per year in value added; and
  - 6,100 jobs.
  
- In addition to the projections above, the activities of the Northern Territory Aerial Medical Service and the Royal Australian Air Force at Darwin Airport are expected to further increase the impact of the airport on the Northern Territory economy.

## 5. Gold Coast Airport

The 2006 Master Plan for Gold Coast Airport considered the airport's contribution to the wider economy and concluded that:

- The airport was a key driver for the economy of the Gold Coast/Tweed region and directly employed over 1000 people.
  
- In 2005/2006, total passenger movements were 3.58 million – approximately 33% of the 6 million tourists that visited the Gold Coast and Northern Rivers region in 2005 traveled through Gold Coast Airport.
  
- It was also estimated that, moving forward:
  - average annual growth of domestic passengers would be 5%; and
  - average annual growth of international passengers would be 20% – with the majority of that growth being delivered from 2009/2010 onwards.
  
- This growth was expected to lead to a number of investment projects being implemented at Gold Coast Airport, including:
  - an extension to the main 14/32 runway to 2,500 meters and the construction of associated taxiways to attract a greater number of international flights (completed 2007);
  - an expansion of the existing terminal and car park to account for the projected increase in passenger numbers (completed 2009);
  - the development of a secondary entry to the airport; and
  - the development of additional office space to accommodate the increased number of government authorities and agencies required to meet expanding security and operational requirements (completed 2009 and ongoing).

- As the currently approved Gold Coast Airport dates from 2006, a new Master Plan is to be released for consultation in August 2011. In the meantime it is appropriate to note that in 2010 Gold Coast Airport:
  - had more than 5.4 million passenger movements;
  - facilitated tourism with an estimated contribution of \$1.59 billion into the Queensland and New South Wales economies. This is estimated to be an increase of 61% compared with the 2005 financial year
  - employed more than 1700 on airport.
- The 2011 Master Plan is expected to indicate that by 2031 there will be in excess of 16.2 million passengers using Gold Coast Airport.

## 6. Hobart Airport

The 2009 Master Plan for Hobart Airport considered the economic contribution of the airport under 'low' and 'high' development scenarios. Key economic indicators included:

- It was estimated that:
  - under the low scenario, approximately 294,500m<sup>2</sup> of commercial floorspace would be developed by 2029, which was expected to increase employment at the airport from 250 to 2,120, and lift the direct contribution of value added to Tasmanian GSP from \$25 million to \$175 million; and
  - under the high scenario, approximately 373,000m<sup>2</sup> of commercial floorspace would be developed by 2029, which was expected to increase employment at the airport to 3,130 and lift the direct contribution to Tasmanian GSP to \$232 million.
- These estimates meant that:
  - employment at the airport was expected to increase from 0.3% of total employment in Greater Hobart to between 1.4% (low scenario) or 2% (high scenario) by 2029;
  - the airport's direct contribution Tasmanian employment was expected to grow from 0.1% to 0.6% (low scenario) or 0.9% (high scenario) by 2029; and
  - the contribution to GSP was projected to increase from 0.2% to between 0.4% (low scenario) and 0.6% (high scenario) of GSP by 2029.
- Once all the indirect economic effects of Hobart Airport's operations were accounted for, the total economic impact of the airport on the Tasmanian economy was expected to be much larger, including that:
  - employment was expected to increase from 500 to 4,150 (low scenario) or 6,200 (high scenario) by 2029; and
  - value added to Tasmanian GSP was expected to increase from \$50 million to \$348 million (low scenario) or \$466 million (high scenario) by 2029.
- It was also estimated that contributions to the Gross Regional Product (GRP) of Greater Hobart would grow from approximately 0.6% in 2009 to approximately 1.3% (low scenario) or 1.8% (high scenario) by 2029.

## 7. Melbourne Airport

Key economic indicators set out in the Melbourne Airport Master Plan 200815 include:

- Air links provided by Melbourne Airport were estimated to contribute around \$1 billion to Victoria's interstate domestic tourist revenues each year.
- In 2008, the airport was estimated to employ some 12,500 people in an estimated 11,000 equivalent full time positions – this compares with some 10,300 people in 9,000 equivalent full time positions in September 2002.
- In 2006/07, Melbourne Airport handled 180,200 aircraft movements and 22.5 million passenger movements, of which 4.5 million were international originating and terminating passengers.
- Melbourne carries around 27% of the national total of air freight, handling 350,000 tonnes of international and domestic air freight in 2006/07.
- Expansion of the international terminal commenced in late 2007 – the \$330 million expansion projects are expected to create around 1,400 new jobs.

## 8. Perth Airport

The 2009 Master Plan for Perth Airport considered the airport's contribution to the wider economy and concluded that:

- The airport was estimated to contribute:
  - \$1.4 billion directly to GSP; and
  - a further \$1.5 billion indirectly to GSP, or just under 2% of WA GSP.
- The total number of people employed at Perth Airport was approximately 8,500, including those employed in aviation and by airport tenants – about 30% of all employment in the City of Belmont.
- Indirect employment as a result of the economic activity at the airport is estimated to be around 10,000 jobs in Western Australia (WA), around 800 of which are outside the Perth region.
- In 2008, there were 107,000 aircraft movements and 9.2 million passenger movements – by 2029 these figures were expected to grow to 170,000 and 18.9 million, respectively.
- In the 10 years to 2019, a total of \$2.4 billion, including \$1 billion to construct the new consolidated terminals, was expected to be spent on construction of facilities and associated on-airport infrastructure.
- The Perth Airport capital expenditure program was projected:
  - to increase the total output of the Perth region construction industry by an average of 1.8 percent more than would otherwise be the case;
  - to lead to total economic output and real consumption in the Perth region's economy increasing by an average of 0.09% over the period 2009 to 2019; and
  - to increase the net present value of the Perth region's economic output by \$791 million.

- It was expected that, by 2029, the airport precinct's direct and indirect contribution:
  - to GSP could be higher than \$5.0 billion in 2029, of which some \$2.7 billion would arise directly from the precinct's activity; and
  - to employment in WA could be just under 37,000 jobs (3,500 in regional WA).

## 9. Sydney Airport

Key economic indicators set out in the Sydney Airport Master Plan 2009 include:

- The airport was estimated to contribute:
  - \$8 billion directly to New South Wales (NSW) GSP;
  - a further \$8.5 billion indirectly to NSW GSP, representing 6% of the NSW economy and 2% of the Australian economy;
  - \$3.3 billion directly to household incomes every year; and
  - a further \$4.1 billion indirectly to household income.
- It was also estimated to:
  - provide or generate more than 75,000 jobs and about 131,000 jobs indirectly, making a total of around 206,000 jobs; and
  - it was also estimated that an additional 100,000 jobs would be generated by Sydney Airport over the following ten years.
- In 2008, there were 299,000 aircraft movements and 32.9 million passenger movements – by 2029 these figures were expected to grow to 427,400 and 78.9 million, respectively.
- A wide range of investments have been or are being implemented at the airport, including:
  - major airside infrastructure upgrades to cater for the introduction of new larger, quieter, cleaner and more fuel efficient aircraft;
  - improvements in aviation safety and security for passengers and staff;
  - upgrading of the international terminal and common user domestic terminal (T2); and
  - additional car parking and transport interchange facilities in the international precinct.
- It was also expected that, by 2015/16:
  - the airport's annual economic contribution to the NSW economy will exceed \$27 billion, up by 65%; and
  - the number of jobs directly and indirectly associated with the airport could increase to more than 338,000, up by 64%.

## INTERNATIONAL COMPARISONS OF AIRPORT CHARGES AND REVENUES

1 This appendix sets out the findings of two international benchmarking reports that have been made available to AAA members. The first is a benchmarking study conducted by the Air Transport Research Society (ATRS Report).<sup>52</sup> The second is a report prepared by Leigh Fisher Management Consultants on behalf of Melbourne Airport (Leigh Fisher Report).<sup>53</sup>

**ATRS Report**

2 The ATRS Report compares landing charges and terminal (passenger) charges at sample of airports in North America, Europe and the Asia Pacific. The Australian airports considered in the report are Adelaide, Brisbane, Cairns, Melbourne, Perth and Sydney airports. For the majority of airports, separate landing and terminal (passenger) charges for international services are estimated for four different types of aircraft.<sup>54</sup> However, there are two important exceptions:

- (a) a combined landing and terminal (passenger) charge was estimated for each aircraft at Brisbane, Melbourne and Sydney, since separate charges were said to be unavailable on a comparable basis;<sup>55</sup> and
- (b) terminal (passenger) charges for North American airports were reported for 2008 (rather than 2009), and reflect average charges<sup>56</sup> imposed on both international *and domestic* flights.<sup>57</sup>

3 These exceptions have two important consequences. First, to enable the Australian airports to be compared to the other international airports, the landing and terminal (passenger) charges estimated in the ATRS Report must be combined into a single charge for each aircraft. Further, to account for the effect of exchange rate fluctuations and differences in purchasing power across countries, the charges have also been adjusted so as to use purchasing power parity (PPP) exchange rates.

4 Second, the North American airports should be excluded. The reason is that terminal (passenger) charges tend to be much higher for international flights than for domestic flights, due to the more extensive security and passenger processing requirements.<sup>58</sup> The inclusion of domestic charges for North American

<sup>52</sup> Air Transport Research Society, *Airport Benchmarking Report 2010 - Global Standards for Airport Excellence*, April 2010 (hereafter: 'ATRS Report').

<sup>53</sup> Leigh Fisher Management Consultants, *Melbourne Airport Performance and Charges Benchmarking Study*, February 2011 (hereafter: 'Leigh Fisher Report').

<sup>54</sup> ATRSame Report, p.7-1. The four aircraft considered in the report are the Boeing 747-400, Boeing 767-400, Airbus 320-100, and CRJ200-LR. The report defines a standard set of weights, average passenger capacity and an assumed load factor for each aircraft type (see: ATRS Report pp.7-1, 7-8). The estimated charges exclude ground handling charges, aircraft parking and hangars rentals, and security charges (see: ATRS Report, p.7-1).

<sup>55</sup> ATRS Report, pp.7-7, 7-17. The report notes that these airports typically impose a general per passenger charge to cover both airside and terminal services and hence separate landing and terminal (passenger) charges cannot be estimated.

<sup>56</sup> An average is obtained by dividing the total revenue earned from terminal passenger charges (which will include a mix of both international and domestic passengers) by the number of passengers, see: ATRS Report, p.7-8.

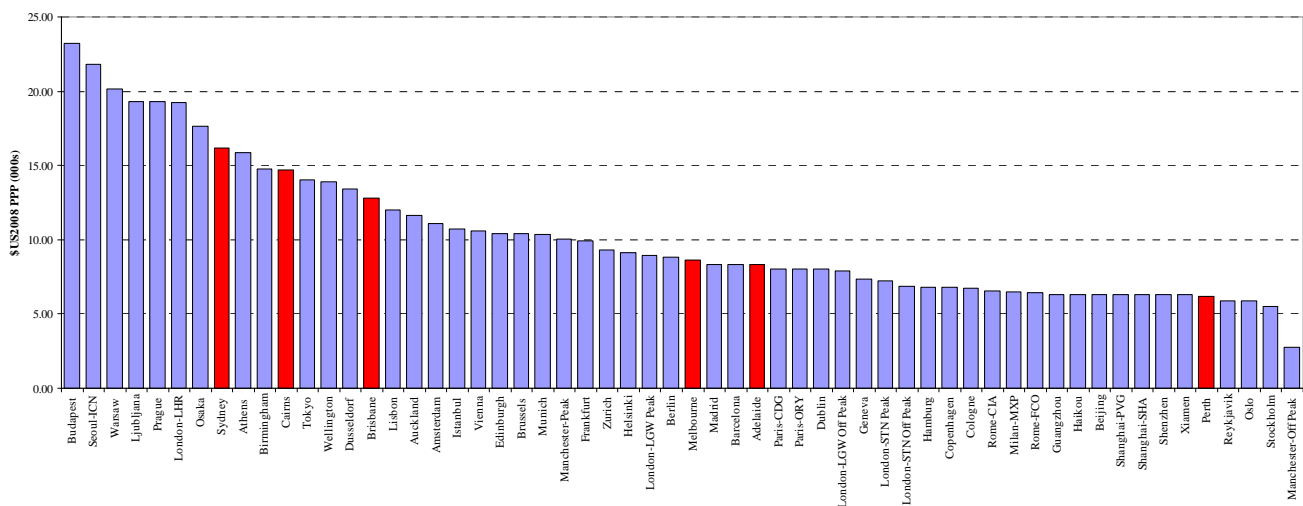
<sup>57</sup> ATRS Report, p.7-8.

<sup>58</sup> This difference can be clearly seen in the Australian context (see: ACCC, *Airport Monitoring Report 2009-10 – Price, Financial Performance and Quality of Service Monitoring*, January 2011 (hereafter: 'ACCC Airport Monitoring Report 2009-10'). For instance, at Sydney Airport the international passenger service charge (per pax) is \$21.96, while the domestic passenger service charge (per pax) is \$3.61 (see: ACCC Airport Monitoring Report 2009-10, p.255). Similarly, at Brisbane Airport the international passenger service charge (per pax) is \$22.12, while the domestic passenger service charge (per pax) is \$3.40 (see: ACCC Airport Monitoring Report 2009-10, p.119).

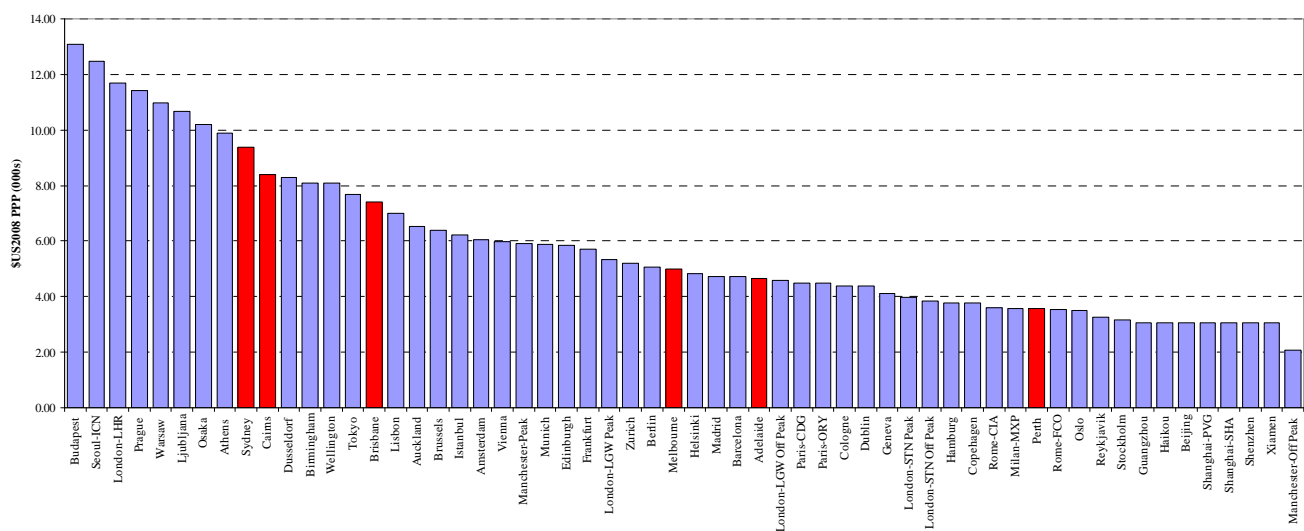
airports and their exclusion at other airports means that the charges at North American airports are consequently biased downwards, and incomparable to the other airports. This discrepancy is amplified in the ATRS Report because the majority of passenger traffic at the sampled North American airports is domestic.<sup>59</sup>

- The aeronautical charges for each type of aircraft are presented in Figures 1(a) to (c). For the reasons set out above, a combined landing and terminal (passenger) charge is reported for each airport, and North American airports are excluded.

**Figure 1(a)**  
**Boeing 747-400 Aeronautical Charges in 2009, ATRS Report (\$US2008 (000s), PPP)**



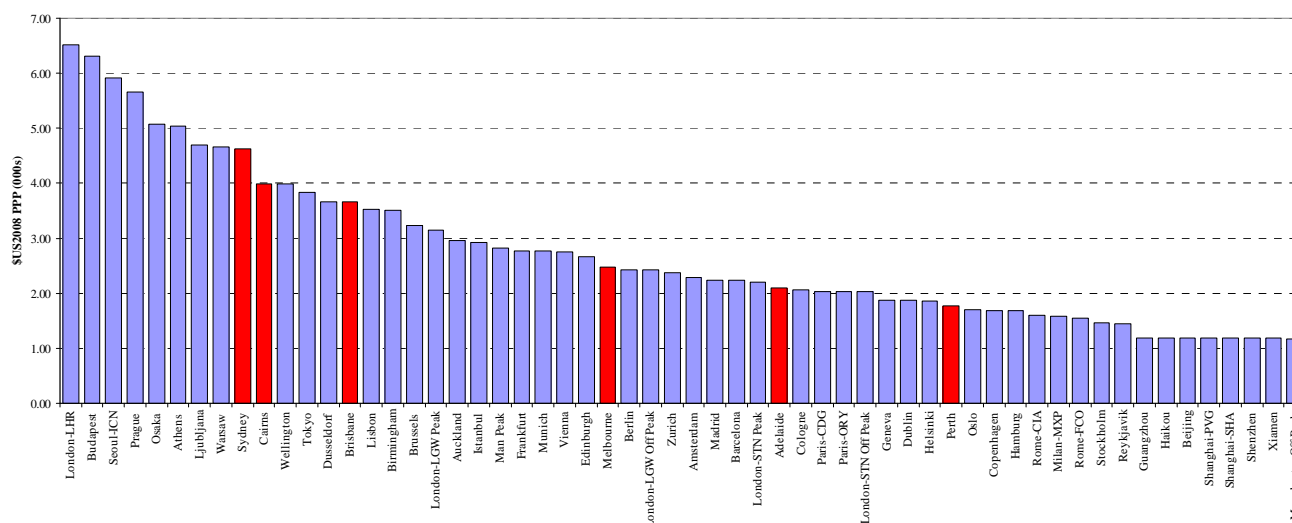
**Figure 1(b)**  
**Boeing 767-400 Aeronautical Charges in 2009, ATRS Report (\$US2008 (000s), PPP)**



<sup>59</sup> ATRS Report, p.6-14.



**Figure 1(c)**  
**Airbus 320-100 Aeronautical Charges in 2009, ATRS Report (\$US2008 (000s), PPP)**

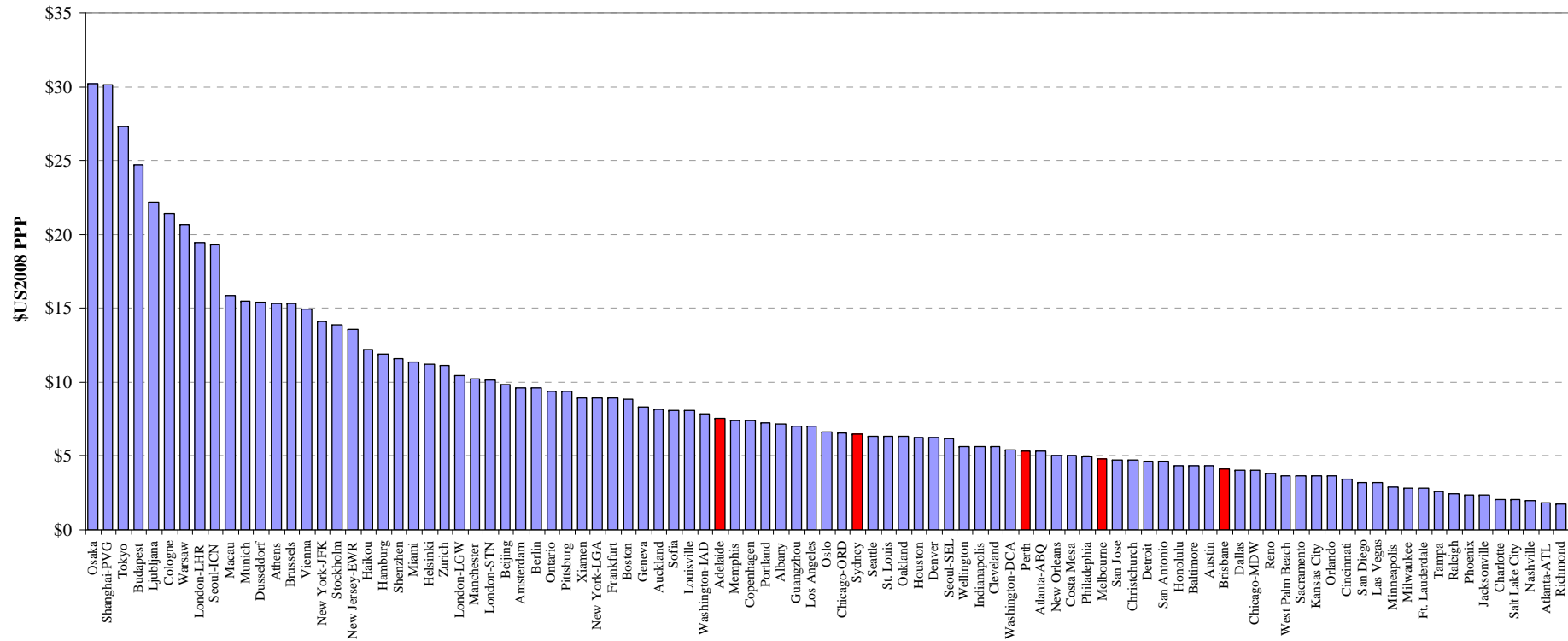


Source: ATRS Report. Notes: (1) The PPP adjustment was made in two steps. First, the airport charges in \$US2008 were converted to local currency based on exchange rates published in Part III of the ATRS Report. Second, the charges in local currency were converted to \$US using PPP exchange rates obtained from: [http://stats.oecd.org/Index.aspx?datasetcode=SNA\\_TABLE4](http://stats.oecd.org/Index.aspx?datasetcode=SNA_TABLE4) (2) Only OECD countries are represented. (3) Aeronautical charges for the CRJ200-LR are excluded.

- 6 The above charts show that Australian airport charges are broadly aligned with the charges at other international airports. Indeed, for each type of aircraft, there are a number of international airports that are significantly more expensive than any Australian airports, including London Heathrow, Incheon (Seoul), and Athens. There is certainly no indication that any Australian airport represents an ‘outlier’ in terms of the level of charges that it is setting, based on these estimates.
- 7 Of course, like all benchmarking analyses, these results must be interpreted with caution. Because charging mechanisms differ from airport to airport and can change over time, aeronautical charges are difficult to measure consistently and precisely. This difficulty has been recognised by the ACCC, which also measures *aeronautical revenue per passenger* as a proxy for the level of aeronautical charges.<sup>60</sup>
- 8 In consequence, Figure 2 compares aeronautical revenues per passenger at Australian airports and at other international airports. Note that North American airports *have* been included in this analysis, since the estimates do not suffer from the same bias as before. Rather, estimates are obtained by calculating total aeronautical revenue (from both international and domestic traffic) and dividing by the total number of passengers.

<sup>60</sup> ACCC Airport Monitoring Report 2009-10, p.10.

**Figure 2**  
**Aeronautical Revenue per Passenger in 2008, ATRS Report (\$US2008 (000s), PPP)**



Source: ATRS Report. Notes (1) Aeronautical revenue per passenger was calculated by multiplying total operating revenue by the aeronautical revenue share, and then dividing by the total number of passengers (data was obtained from Part III of the ATRS Report). (2) The PPP adjustment was made in two steps. First, the airport charges in \$US2008 were converted to local currency based on exchange rates published in Part III of the ATRS Report. Second, the charges in local currency were converted to \$US using PPP exchange rates obtained from: <[http://stats.oecd.org/Index.aspx?datasetcode=SNA\\_TABLE4](http://stats.oecd.org/Index.aspx?datasetcode=SNA_TABLE4)> (3) Only OECD countries are represented.

- 9 There is nothing exceptional about the average aeronautical revenues being earned by Australian airports. In fact, they are quite low by international standards. Indeed, the 'highest ranked' Australian airport is Adelaide Airport, in a lowly 42<sup>nd</sup> position. Revenues are also modest compared to a number of other airports in the Asia Pacific, including Osaka Kansai (1<sup>st</sup>), Shanghai Pudong (2<sup>nd</sup>) and Tokyo Narita (3<sup>rd</sup>).
- 10 It follows that there is nothing to suggest that Australian airports are earning excessive revenue as a result of the prices they negotiate with their airline customers.

### **Leigh Fisher Report**

- 11 The Leigh Fisher Report compares aeronautical charges at 56 airports around the world. The sample of airports is selected so as to cover a broad spectrum of different approaches to airport pricing in a variety of public/private sector operating environments under different regulatory regimes.<sup>61</sup> The Australian airports considered in the report are Adelaide, Brisbane, Cairns, Melbourne, Perth and Sydney Airports.
- 12 Unlike the ATRS analysis, aeronautical charges are considered for eight different aircraft types, with an aggregate charge being reported.<sup>62</sup> The charges taken into account were landing charges, aircraft parking charges, passenger-related charges and terminal navigation charges for international services as at July 2010 (aside from Sydney Airport, whose charges came into force in January 2011).<sup>63</sup> Note that this is a broader set of charges than that considered by ATRS.<sup>64</sup>
- 13 Charges were reported in units of Special Drawing Rights (SDRs).<sup>65</sup> To account for the effect of exchange rate fluctuations and differences in purchasing power across countries, the charges have therefore been adjusted so as to be expressed in US\$ 2009 terms, derived using PPP exchange rates. Figure 3 illustrates the relative rankings of Australian airports once such an adjustment is made.

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<sup>61</sup> Leigh Fisher Report, p.6. The report states that the sample of airports includes almost every airport handling in excess of 10 million international passengers.

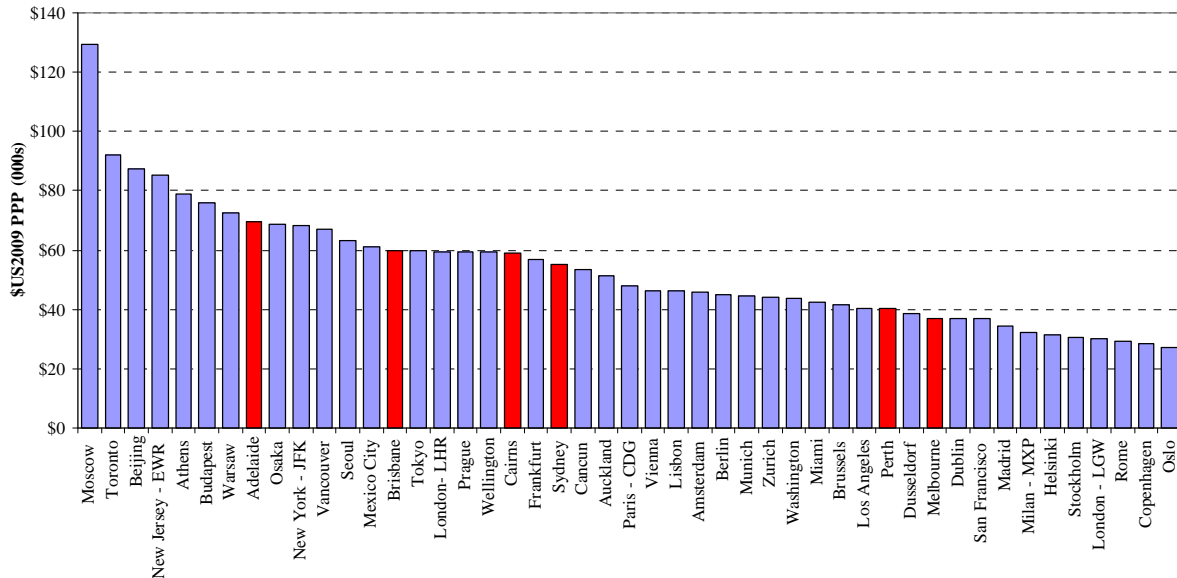
<sup>62</sup> Leigh Fisher Report, p.6. The 8 aircrafts considered by the report were the Boeing 737-500, Boeing 737-700, Boeing 737-800, Airbus 320-200, Boeing 757-200, Boeing 767-300, Boeing 777-200, and Boeing 747-400.

<sup>63</sup> Leigh Fisher Report, p.2. For the purpose of estimating these charges, the report defined a standard set of weights, an average passenger capacity, and an assumed passenger occupancy for each aircraft type (see: Leigh Fisher Report, pp.6-7). To estimate aircraft parking charges, the report also assumed that the 777-200 and 747-400 (which are typically used for long-haul services) are parked for four hours, while the remaining sample aircraft (which are typically used for short-haul services) are parked for two hours (see: Leigh Fisher Report, p.8).

<sup>64</sup> Recall that the ATRS analysis excluded ground handling charges, aircraft parking and hangars rentals and security charges (see: ATRS Report, p.7-1).

<sup>65</sup> Leigh Fisher Report, p.6. The SDR is an international reserve asset, created by the International Monetary Fund in 1969 to supplement its member countries' official reserves. Today, its value is based on a basket of four key international currencies – the euro, Japanese yen, pound sterling, and US dollar. SDRs can be exchanged for freely usable currencies (see: <<http://www.imf.org/external/np/exr/facts/sdr.htm>>). The report uses SDR conversion rates from 1 July 2009 (see: Leigh Fisher Report, p.17).

**Figure 3**  
**Aeronautical Charges in 2010, Leigh Fisher Report (\$US2009 (000s), PPP)**



Source: Leigh Fisher Report. Notes: (1) The PPP adjustment was made in two steps. First, units of SDR were converted to local currency based on exchange rates published by the International Monetary Fund: [http://www.imf.org/external/np/fin/data/rms\\_mth.aspx?SelectDate=2009-07-31&reportType=CVSDR](http://www.imf.org/external/np/fin/data/rms_mth.aspx?SelectDate=2009-07-31&reportType=CVSDR). Second, the charges in local currency were converted to \$US using PPP exchange rates obtained from: [http://stats.oecd.org/Index.aspx?datasetcode=SNA\\_TABLE4](http://stats.oecd.org/Index.aspx?datasetcode=SNA_TABLE4) (2) Only OECD countries are presented.

- 14 The differences in methodology between the Leigh Fisher Report and the ATRS Report have led to some changes in rankings. However, Australian airports' charges are still broadly aligned with most of the other airports in the sample. Melbourne airport has the lowest estimated charges of the Australian airports (ranked 37<sup>th</sup>), and Adelaide the highest (ranked 8<sup>th</sup>). However, estimated charges at Adelaide are still materially lower than charges at a number of other airports, including Moscow, Toronto and Beijing.
- 15 Moreover, Leigh Fisher highlight that these results should be interpreted cautiously, since the high fixed costs associated with running an airport tends to mean that smaller airports charge more than larger airports in order to recover their costs.<sup>66</sup> Adelaide and Cairns (together with Wellington) are the smallest airports in the sample in terms of total passenger numbers.<sup>67</sup> The report also states that Brisbane's position is influenced to an extent by its high levels of capital expenditure in recent years.<sup>68</sup>
- 16 Raw data on aeronautical revenue per passenger at each airport are unavailable in the Leigh Fisher Report. Instead, the report includes two charts (without the underlying data). The first compares the aeronautical revenue per passenger at Melbourne Airport to other

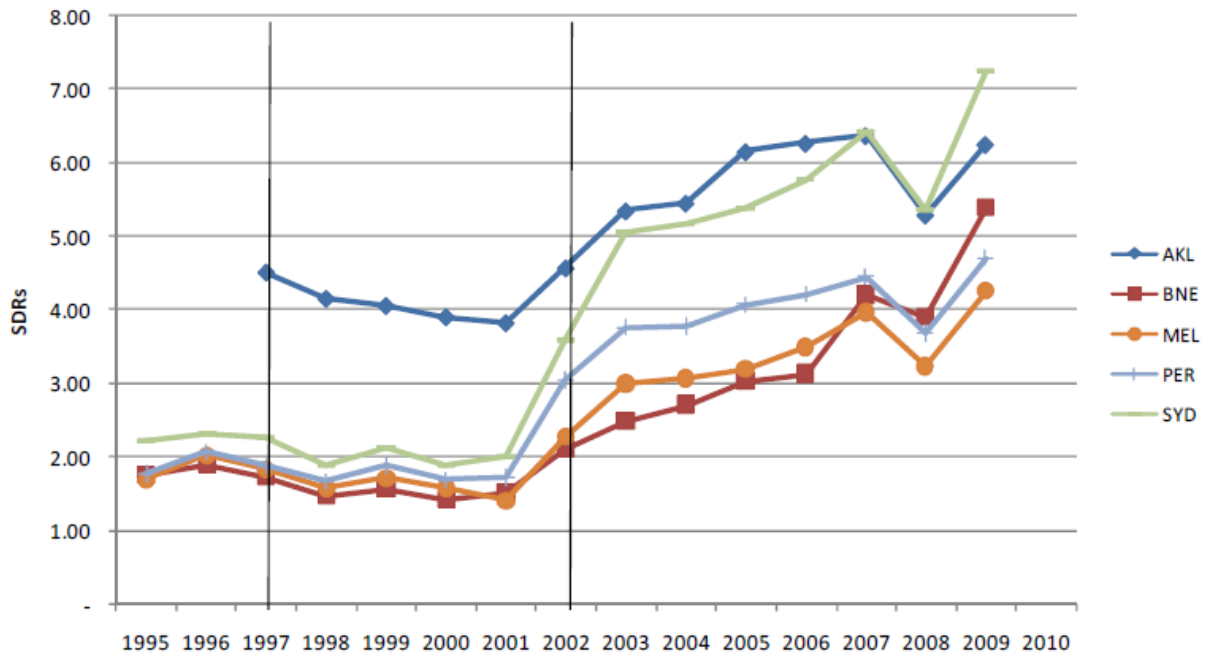
<sup>66</sup> Leigh Fisher Report, p.11.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

Australian and New Zealand airports. The second compares aeronautical revenue per passenger at Melbourne Airport to a sample of northern hemisphere airports. These are reproduced as Figures 4 and 5 below. Note that the unit of analysis is SDRs and that no adjustment has been made to reflect PPP.

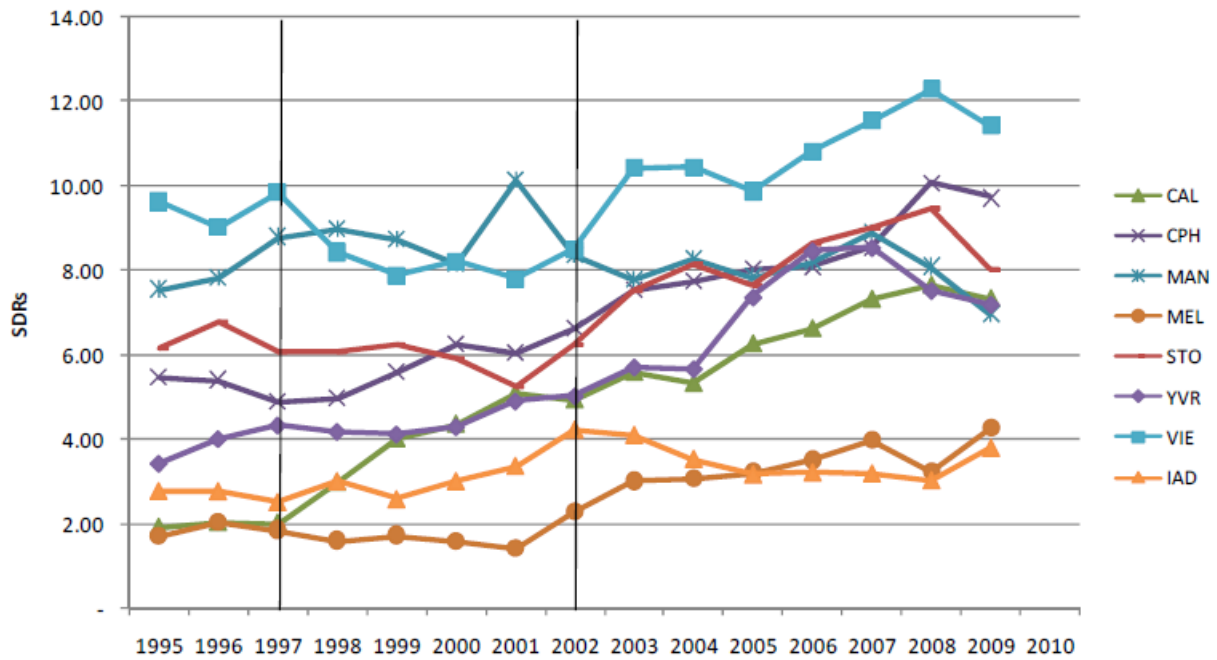
**Figure 4**  
**Aeronautical Revenue per Passenger at Southern Hemisphere Airports**  
**Leigh Fisher Report (SDRs)**



Source: Leigh Fisher Report.

17 Figure 4 illustrates that the estimated aeronautical revenue per passenger at Australian airports ranged from around 4.25 SDRs to 7.25 SDRs in 2009.

**Figure 5**  
**Aeronautical Revenue per Passenger, Melbourne vs Northern Hemisphere Airports**  
**Leigh Fisher Report (SDRs)**



Source: Leigh Fisher Report.

- 18 Figure 5 (which includes Melbourne Airport as the only representative of the southern hemisphere) illustrates that these levels are again unexceptional compared to northern hemisphere airports, many of which generate significantly higher aeronautical revenues in SDR terms. Moreover, if an adjustment was made to reflect PPP, it is likely that the Australian airports would begin to look even less expensive compared to their northern hemisphere peers.
- 19 In other words, there is again nothing to suggest that Australian airports are earning excessive revenue as a result of the prices they negotiate with their airline customers.

**PRODUCTIVITY COMMISSION INQUIRY ISSUES PAPER QUESTIONS AND THE AAA’S RESPONSE**

This appendix lists each of the questions asked by the Commission in its January 2011. For each question it then provides a brief summary answer. The Commission is, however, referred to the body of the AAA submission for detailed information and reasoning dealing with particular issues.

COMMISSION QUESTION	AAA RESPONSE
<b>Price Monitoring</b>	
<p>Is there evidence that the price monitored airports have increased charges by more than could be justified on the basis of costs, new investment requirements, and/or other enhancements to service quality? What is the ability of airports to vary prices year on year given many have long term contracts with airlines? Is price monitoring providing a constraint on aeronautical charges at the major airports?</p>	<p>There is no evidence that airports have increased charges by more than could be justified. Commercial agreements negotiated with airlines generally set prices or an agreed method for adjusting prices and thus constrain airport pricing. Price monitoring is redundant in this environment. Please see Chapter 2.</p>
<p>Has the need to adjust the previous FAC’s pricing legacy been fully accommodated? Has the price monitoring regime promoted efficient investment and facilitated commercially negotiated outcomes? How would it compare relative to counterfactuals of explicit price regulation, or no regulation? Does the information emerging from the price monitoring process assist commercial negotiations between airports and their customers?</p>	<p>While the AAA expects that any failure of FAC pricing to adequately reflect costs has now been accommodated, individual airports are far better placed to comment on this. Price monitoring has not promoted efficient investment and facilitated commercially negotiated outcomes - rather, it is the absence of price regulation that has had this effect. A return to price regulation would hinder investment and undermine commercial agreements. The information emerging from price monitoring does not assist the conclusion of commercial agreements because it is largely irrelevant and often ill-conceived - please see Chapter 4.</p>
<p>Has the ‘line in the sand’ for asset valuations been effective or have airports, airlines or other users encountered problems with this approach? Should the line in the sand be extended to other airports? Is there a better alternative approach?</p>	<p>The ‘line in the sand’ compromise was a helpful transitional measure to bring airports and airlines to the negotiating table and allow them to develop their commercial agreements to the present mature state. There is no need for any extension of the concept, and there is no need for any alternative approach because airport pricing is now recognised as a matter for commercial negotiation and mutual agreement. Please see, in particular, paragraphs 7.54-56.</p>

<b>Data and Methodology</b>	
How adequate are the data in the ACCC's price (and quality) monitoring reports for judging the effectiveness of the monitoring regime? Are the regulatory accounts provided by the airport operators sufficient to reveal monopoly pricing and rates of return? Are there material gaps or limitations in that data and can they be practically remedied? What other data sources should the Commission use in its assessment of the price (and quality) monitoring regime?	The financial monitoring reports are appropriately prepared and fail to disclose any abuse of market power. The methodology used by the ACCC for quality of service monitoring is fundamentally flawed. Please see the analyses in Chapters 4, 5 and 6. More fundamentally, the original purpose of financial reporting, price monitoring and quality of service monitoring is now redundant - please see Chapter 7.
Are the ACCC's monitoring methodologies appropriate? Is there adequate consultation with the monitored airports?	The answer to both questions is 'No'. Please see the analyses in Chapters 4, 5 and 6.
How do recent charges for aeronautical services at the price monitored airports compare with those at comparable international airports? What conclusions can be drawn from international comparisons of airport performance?	Attachment 2 to this submission shows that Australian airports are, by comparison to international airports, certainly not earning excessive revenue as a result of the prices they negotiate with their airline customers.
<b>Compliance Costs</b>	
What are the compliance and administration costs associated with fulfilling the regulatory obligations imposed by the price and service quality monitoring system?	The financial costs associated with complying with the existing regulatory arrangements are relatively modest, as they should be. The problem however is the significant and entirely avoidable costs arising from the often misleading and judgemental way that the ACCC has reported the information that it collects. Please see the analyses in Chapters 4, 5 and 6.
<b>Car park price monitoring</b>	
<b>On-site Parking Alternatives</b>	
What percentage of passengers use the airport's car park facilities? What is the level of competition from other sources of transport? Are off-site car parks a real source of competition to the airport car parks? Is there evidence that airports are influencing the level of competition from alternative transport modes?	Please see the analysis in Chapter 6 and individual airport submissions.



<p>Has the pricing behaviour of airports indicated the use of market power in car parking? Do the price increases reflect monopoly rent, locational rent (e.g. accounting for the opportunity cost of alternative uses of land dedicated to car parking), or both? Are monopoly profits evident for short-term, long-term, or all forms, of parking?</p>	<p>Please see the analysis in Chapter 6 and individual airport submissions.</p>
<b>Service quality monitoring</b>	
<p>How responsive have the monitored airports been to users' service needs and preferences? Are there any significant quality problems for services under the control of the airports that are not being addressed? Have necessary new investments been made in a timely fashion? How does the quality of service at the monitored airports compare with comparable international airports?</p>	<p>The removal of price regulation has meant that airports are in a position to, and do, respond to the quality of service requirements of their airline customers, including by embarking upon major new investments. Please see the analysis in Chapter 3.</p>
<p>How robust are the survey techniques in indicating quality of service? How useful is quality of service monitoring given the differentiation between DTLs and common user facilities, and how would this affect international comparisons?</p>	<p>The ACCC quality of service monitoring methodology is not at all robust and is highly defective. The information it generates does not allow whole of airport assessment of the traveller experience. Please see the analysis in Chapter 5.</p>
<b>Access arrangements</b>	
<p>Has the Federal Court's interpretation led to Part IIIA becoming the operative regulatory instrument for the major airports or has the threat of potentially easier recourse to Part IIIA 'conditioned' negotiations between airports and airport users, or has it had little impact?</p>	<p>The existence of Part IIIA, together with Part VIIA and the access requirements of the Commonwealth's leases agreements (along with the degree of countervailing power held by airlines), significantly constrain airports in their capacity to exercise whatever market power they may have and provide a powerful impetus for reaching commercial agreements with their airline customers. Please see the analyses in Chapters 3 and 7.</p>
<p>Have recent legislative changes (in 2006 and 2010) addressed concerns that Part IIIA could supplant price monitoring as the operative regulatory instrument?</p>	<p>The legislative changes made to Part IIIA have not yet been tested before the courts but nevertheless Part IIIA together with Part VIIA and the access requirements of the Commonwealth's leases render price monitoring redundant - please see the analysis in Chapter 7.</p>

<b>Future arrangements</b>	
Is a further period of price monitoring needed?	No
At a broad level, is there value in continuing the monitoring of aeronautical services and/or parking prices? Is there evidence that the current light-handed approach has not been successful in addressing market power concerns, and if so, what alternatives are available? Is both price and service quality monitoring needed?	The answer to each question is 'No' - please see the analysis in Chapter 7.
Should there be a fixed duration for any future period of price monitoring? Are further prescheduled reviews necessary?	There should be no future period of price monitoring - please see the analysis in Chapter 7.
If there is a further period of monitoring, are there opportunities to streamline arrangements to improve reporting, without compromising effectiveness? Could the number of indicators be reduced? In some areas, would more information be desirable? Do reports need to be produced annually?	If there is to be any continuation of financial reporting, price monitoring and quality of service monitoring, significant improvements must be made to the present regime - please see the analysis in Chapters 4, 5, 6 and 7.
<b>Market power</b>	
Have there been changes in the overall market power enjoyed by any of the price monitored airports and if so why? For example, do Avalon and Gold Coast airports materially reduce the market power of Melbourne and Brisbane Airports?	The aviation industry is dynamic and the extent of the market power held by each participant (airlines and airports) vary from time to time, from location to location, and from issue to issue (e.g. location of maintenance facilities/hubs). The market power of individual airports can clearly be reduced by the availability of alternative and competing airports.
What are the constraints on the airports' market power? Do the airlines have countervailing power in dealing with the airports, especially smaller airports?	The existence of Part IIIA, together with Part VIIA and the access requirements of the Commonwealth's leases agreements (along with the degree of countervailing power held by airlines), significantly constrain airports in their capacity to exercise whatever market power they may have. The strength of the countervailing power that an airline has can vary significantly from airport to airport, and is generally greater with smaller airports.

<p>If monitoring was to continue, should some airports be removed from, or added to, the list of monitored airports? If airports are removed, would the second tier self-administered scheme, or some other web-based self-reporting regime for the major airports, suffice?</p>	<p>Please see the detailed recommendations in Chapters 4, 5, 6 and 7.</p>
<p>Are the definitions of aeronautical services appropriate in reflecting market power in particular services? Should some services be excluded or others included? What is the market power of the major airports in relation to car parking prices?</p>	<p>If monitoring remains, which we consider it should not, there is no cause to expand the range of monitored aeronautical services. The market power of any airport in relation to car parking should be assessed by reference to the analytical framework in Chapter 6.</p>
<p><b>Deterrent and remedies</b></p>	
<p>Is the existing range of remedies effective in deterring misuse of market power? Are these remedies effective 'punishment' for misuse of market power?</p>	<p>The answer to each question is 'Yes' - please see the analysis in Chapter 7.</p>
<p>What impact does the lack of a 'show cause' process have on ensuring appropriate pricing and investment outcomes for aeronautical services? Is there a better approach to developing a 'show cause' process or an alternative trigger process? Would there be benefits in a requirement for independent commercial arbitration and if so, how could this be effected? Are there any public interest reasons for such arbitration to be conducted by the ACCC?</p>	<p>There is no need for a formal show cause process.</p> <p>There is no need for any regulatory intervention to impose commercial arbitration, whether by the ACCC or otherwise - please see the discussion at paragraphs 7.46-53. The AAA will respond separately to the ACCC's own submission in this regard.</p>
<p>Do concerns about the potentially adverse effects of more heavy handed price regulation on investment militate against its reintroduction?</p>	<p>Most definitely. Please see Chapters 2 and 3.</p>
<p><b>Airport planning regulation and transport</b></p>	
<p>The terms of reference request the Commission to focus on the provision of passenger transport services at and surrounding main passenger airports operating in Australia's major cities. Which major cities should the Commission focus on — those housing the five price and service monitored airports, all capital cities or some other combination? Should potential links between airports (such as Canberra and Sydney or Melbourne and Avalon) be examined?</p>	<p>Please see the analysis in Chapter 6</p>

<p>Are planning and development regulations working effectively? Can 'excessive' or 'inappropriate' economic development at airports impinge on effective transport linkages to and from airports, or might such development facilitate better transport linkages?</p>	<p>On-airport planning regimes were reviewed by the Government in the development of the Aviation White Paper and the Airports Act was recently amended in this respect. The AAA believes that there is no cause for further change until experience with the new provisions has been acquired and assessed. In respect of off-airport planning processes, please see the discussion at paragraphs 6.1-6.</p>
<p>What mechanisms exist at airports to coordinate with local and state governments on planning issues? Can more be done by airports and governments to better coordinate planning of transport options? Will recent changes to legislation to impose additional requirements on airport Master Plans (such as ground transport plans) help to alleviate past problems?</p>	<p>On-airport planning regimes were reviewed by the Government in the development of the Aviation White Paper and the Airports Act was recently amended, particularly in relation to coordination and consultation between airports and their local governments. The AAA believes that there is no cause for further change until experience with the new provisions has been acquired and assessed.</p>
<p>What transport options exist at the major airports in Australia? Are these reliable, frequent and cost effective services? Are they integrated into the suburban transport network? To what extent are they used relative to private cars? Is there evidence that land transport service providers (such as taxis, shuttles, off-airport car parking providers) are impeded unduly in gaining access to airports? Are charges and conditions of access to airports (e.g. convenient pick-up and drop-off points) appropriate? Is there a need to monitor such terms and conditions?</p>	<p>Please see the analysis in Chapter 6.</p>