



**Productivity Commission Inquiry into
Economic Regulation
of Airport Services**

Response to Issues Paper:
Supplementary Submission

June 2011

Introduction

Melbourne Airport is supportive of the current Productivity Commission (PC) Inquiry into the Economic Regulation of Airport Services. The five yearly review of the regulatory regime governing former federally owned airports is essential to determining its effectiveness to date and to consider the need for ongoing regulation into the future.

Melbourne Airport supports the success of the existing regulatory regime to the extent that it fosters the efficient operation of airports and commercially negotiated outcomes; minimises compliance costs on all parties; promotes transparency and accountability for providers of airports services; and encourages strong private capital investment in privately owned public leased infrastructure assets.

Having reviewed the 69 public submissions currently before the PC, Melbourne Airport would like to take the opportunity to provide further evidence in support of the current regulatory regime and to clarify inconsistencies and inaccuracies presented to the Commission.

Further, Melbourne Airport will demonstrate the extent to which it has provided: high quality aeronautical services at a lower cost than other major Australian airports and in line with agreements negotiated with its airline customers; equitable and appropriately priced access to providers of ground transportation services to and from the airport; a range of transport options to suit the needs of the full spectrum of airport users.

Success of the current regulatory regime

The current 'light handed' regulatory regime has been successful. As previously identified, the current structure has led to long-term investment and continued levels of service with strong productivity and efficiency gains over time. This is evident through the ACCC monitoring results and Leigh Fisher's independent research on international airport performance and charging which found that Melbourne's charges are the lowest within a sample of nine airports in Australia and New Zealand and compare favourably to 58 international benchmarks.¹

Broader industry endorsement for the success of the current regime can be found in the public submissions of both airport and other key stakeholders and industry observers:

- The Commonwealth Government articulates the success of the current regime. They state that since privatisation, "Australia's major airports have continued to invest in, improve and operate aeronautical infrastructure to meet steady growth in the aviation market.... The success can be seen in part as testimony to the underlying soundness of the current Private Public Partnership

¹ Leigh Fisher (2011) *Benchmarking International Airport Performance*; Melbourne Airport (2011) *Review of Economic Regulation of Airport Services – Response to Issues Paper*.

model for Australia's major airports."² They also note that contrary to the views of airlines "The Department are yet to see convincing arguments that the current approach is not working in terms of service quality"³.

- Infrastructure Partnerships Australia, who reviewed Australia's infrastructure needs in July 2010, noted shortfalls in all sectors (road, rail, ports, water and electricity), with the exception of aviation. They commented that "central to the demonstrated success of the airports over the last 10-15 years is the introduction of private sector funding and innovation within a light-handed regulatory environment. This has seen commercial decision-making normalised and has encouraged growth of innovation, flexible and commercial negotiations between airports and airlines"⁴.
- Airport investors such as Colonial First State Global Asset Management, Hastings Funds and IFM also provide evidence that the current price monitoring regime has provided an environment of competition and investment certainty for current and future capital plans. They demonstrate that the regime has allowed appropriate return on capital investment and facilitated direct and effective commercial discussions between airports and airlines, often resulting in flexible and innovative outcomes. These organisations have highlighted that any re-introduction of a more heavy handed regulation would significantly impact on the industry, increasing the degree of regulatory risk associated with infrastructure investments and could potentially lead to deploying funds elsewhere, limiting future investment into Australian airports.

Ground Transportation

A number of submissions before the PC relying on materials presented in the 2010 Australian Competition and Consumer Commission (ACCC) Report on monitoring of airport services discuss matters concerning ground transportation and car-parking at Melbourne Airport. As outlined in our April submission and evident through the findings of the PwC Car Parking Services Benchmarking paper, Melbourne Airport's ground transportation access and parking charges are considered appropriate and reflective of locational rent values, capital investment in capacity and the safe and efficient management of the finite forecourt resource.

With more than 27,000 vehicles entering the Melbourne Airport forecourt each day, efficient and effective management of this area utilising appropriate economic and operational levers is essential for the safe and equitable operation of the ground transport network.

There are a wide range of ground transportation options for accessing Melbourne Airport.

² Commonwealth Department of Transport and Infrastructure (2011) *Review of Economic Regulation of Airport Services – Response to Issues Paper*, p1.

³ Ibid

⁴ Infrastructure Partnerships Australia (2011) *Review of Economic Regulation of Airport Services – Response to Issues Paper*, p1.

- Private vehicles using the kerb for pick-up/drop-off
- Private vehicles using airport provided short and long term car parks
- Commercially operated buses servicing off-airport car parks
- Private vehicles using airline provided valet car parks
- Taxis
- Commercial limousine hire cars licensed by the Victorian Taxi Directorate
- Commercially operated on-airport car rental operations
- Skybus
- Orbital Smart Bus
- Metropolitan public bus services
- Commercially operated buses servicing regional centres
- Commercial courtesy buses operated by hotels, universities and other organisations
- Commercially operated tour coaches
- Commercially operated off-airport car rental operations.

This offering provides users a wide range of travel options at varying price points.

All commercial users of the Melbourne Airport forecourt, which includes the modes described above with the exception of private vehicles using the kerb for pick-up/drop off and public buses, pay an access fee to utilise the airport forecourt and its operational infrastructure.

Private vehicle pick-up/drop off is the main form of access to the airport by mode share. Parties that obtain a commercial benefit from access to the forecourt contribute to the cost of providing and maintaining those facilities. The access charges applied to commercial operators are summarised in the Table below.

Kerbside Access Charges	Seat Capacity (Aprox)	Cost per seat (Aprox)
1. Private vehicle pick-up/drop off – no charge		
2. Metropolitan public bus – no charge		
3. Taxi access charge - \$1.32 per collection	4	\$0.33
4. Limousine hire car access charge - \$3.00 per 30 minutes per collection	4	\$0.75
5. Commercial vehicle / Van up to 10 seats - \$4.00 per collection	10	\$0.40
6. Commercial vehicle / Van with trailer up to 10 seats - \$6.00 per collection	10	\$0.60
7. Small bus 10 – 24 seats - \$6.00 per collection	24	\$0.25
8. Large Bus more than 24 seats - \$12.00 per collection	48	\$0.25

Table One: Kerbside access charges for Melbourne Airport; Source: PwC (2011)

Charges are applied on an equitable basis to all commercial users who rely on and derive commercial benefit from the infrastructure provided by the airport and from its investment in management of the diverse traffic mix and finite kerbside. This charging model is based on economic principles, reflecting locational rent, convenience for travellers (particularly those carrying large bags), size of vehicle and demand. The charges are used to cover costs, such as roads, lighting, security infrastructure and traffic management personnel.

This charging regime also ensures, to the extent possible that ground transport activities being conducted at the airport are being provided by licensed operators. Ground access charges levied by Melbourne Airport represent a relatively small proportion of the total costs of the particular access mode to the end user. The commercial operators then have the ability to absorb or pass through this cost to consumers.

In its own submission to the Commission, Skybus highlights the advantages of operating in this highly competitive environment by evidencing patronage increases of some 350% between 1998/1999 and 2009/2010⁵.

27% passenger mode share for access to the airports is via on-airport parking. The remaining share comprises of 15% off airport car parking, 9% bus, 14 % taxi/hire car, 35% private vehicle drop off /pick up.

In order to improve safety outcomes in the forecourt and way-finding for the customers of ground transport operators, Melbourne Airport implemented a zoning policy providing fixed zones for the set down and pick-up of passengers. Considering the frequency of their individual services, the size of vehicle and the time of day, Melbourne Airport allocated zones to optimise the safe and efficient operation of the forecourt precinct. By establishing these zones, ground transport operators are able to communicate their location to their customers in advance and mitigating the need for their staff to enter the terminal to greet customers. This initiative provides both operators and customers with certainty as to the location of their services. Recommendations before the Commission which seek to designate sections of kerbside for individual operators would not be practical given the fact that the number of operators exceeds the available kerbside and would only serve to compound congestion in this area.

The prices for Melbourne Airport car parking services reflect the proximity of the individual car parks to the terminal as well as service level provided and takes into consideration the capital and operational investment made in relation to each car park and the amenity associated with each product. The services provided by airport car parking sites have a high amenity value in the same way that car parking at the CBD has high amenity value and embody a commensurate locational rent.

⁵ Skybus (2011) *Review of Economic Regulation of Airport Services – Response to Issues Paper*, p3.

There has been some commentary as to the level of revenue generated by Melbourne Airport car parks. As evidenced by data collected by the ACCC, revenue yield per bay from car parking at Melbourne Airport is more than 10% below the average yield across the other monitored airports⁶. In addition Melbourne Airport provides 852 car parking bays per million passengers with plans for further terminal proximate multi-level car park development compared to an average 506 car parking bays per million passengers across the other monitored airports. Accordingly, Melbourne Airport's high proportion of revenue from car parking is a direct consequence of the relatively higher number of car parking bays at the airport in conjunction with its comparatively low aeronautical charges.

Unlike the majority of other monitored airports, Melbourne Airport which is located approximately 23 kilometres from Melbourne's CBD is solely reliant on road infrastructure for ground transport access to and from the airport. In absence of a light or heavy rail access option to their airport, it is to be expected that private vehicle travel and car park utilisation will be comparatively higher as a result. It is not only distance from the CBD but other factors including Melbourne Airport's curfew free operation which sees flights departing both early in the morning and late in the evening that influence user preferences of private vehicle transport and on airport car parking.

Pricing of car parking at the airport, and attendant charging for terminal forecourt access, is focused on efficiently managing access to the kerb in front of the terminal complex and giving effect to the safe and efficient flow of traffic in the forecourt area.

The Commission has before it submissions relating to a matter concerning former Melbourne Airport neighbours the McLaughlins. These submissions identify a complex issue involving a number of parties including Melbourne Water, Melbourne Airport, Hume City Council, and the Victorian Civil Administrative Tribunal concerning the rezoning of land under the Victorian planning scheme. The submissions also refer to a claim for access to a private road which was ultimately rejected by the Commonwealth Administrative Appeals Tribunal. Each of these submissions contains a number of assertions which are demonstrably factually incorrect and have been found to be so by appropriately qualified government and judicial authorities.

It has been submitted to the Commission that airports have exhibited unreasonable behaviours and excessive pricing in relation to the provision of staff car parking to airline customers. It is relevant to note in the case of Melbourne Airport that parking provided to Qantas staff by their employer is neither located on nor controlled by Melbourne Airport.

It has been asserted that Melbourne Airport requires ground transport operators including bus operators to sign agreements in order to access services and infrastructure. Melbourne Airport operates a licensing regime in relation to limousine and chauffeur driven car services. This regime

⁶ Australian Competition and Consumer Commission (2011) *Airport monitoring report 2009-10*, pp 61 and 355.

and its relevant conditions are intended to protect passengers and legitimate drivers from unsafe and unlicensed drivers who unlawfully tout for business at the airport. This regime is supported by the Victorian Taxi Directorate, the responsible authority for administration of the anti-touting legislation in Victoria. This approach seeks to prevent the harassment of passengers and to remove unauthorised and unlicensed drivers from the terminal and forecourt areas and serves to protect the business of lawful operators as well as the safety of the travelling public. Limitations to the number of driver authorities conferred by Melbourne Airport reflect the need to manage the volume of such vehicles in the forecourt in order to accommodate other competing vehicle uses in that area.

Allegations as to airports engaging in conduct which limits competition in relevant ground access markets is ably refuted by the Australian Taxi Industry Association when it states that it "...is not aware of airports using their monopoly power to reduce the level of competition from alternative ground transport modes. To the contrary, airports in the capital cities at least seemingly recognise the natural segmentation that exists within passengers' ground transportation preferences."⁷

Contrary to the assertions of a submission to this Inquiry, recently installed safety barriers along the Tullamarine Freeway approaching the airport were part of a safety initiative to prevent run-off-road crashes not to encourage travellers to utilise on airport car parking services. The Victorian Government's *Safer Roads Infrastructure Program* funded by the Transport and Accident Commission and managed by VicRoads is a ten year \$650 million program that commenced in 2007 and includes the installation of vehicle run-off barriers on key roadways. Between 2000 and 2010 there were 69 documented run-off-road crashes on the Freeway, four of which were fatal⁸. The installation of these safety barriers occur in a variety of appropriate locations around the state and are designed to improve safety on Victoria's roads. It is important to note that the same barriers were installed both airport and city bound providing further evidence of the safety drivers for the initiative.

Part Two of the *Aviation Transport Security Act 2004* (Cth) requires that Melbourne Airport prepare a Transport Security Program (TSP) for submission to and approval by the Secretary of the Commonwealth Department of Infrastructure and Transport. Melbourne Airport prepares this plan in consultation with relevant security agencies and seeks to reflect international standards of best practice to ensure the safe and secure operation of Melbourne Airport at all times. The presence of unattended vehicles in the forecourt of a major piece of infrastructure such as a major international airport presents a significant security risk to airport security. The potential for the concealment of large quantities of explosives in close proximity to the airport terminal constitutes a serious threat, with any successful detonation risking the lives of thousands of people as well as crippling critical state and national infrastructure. It is to that end that Melbourne Airport, like a number of other

⁷ Australian Taxi Industry Association (2011) *Review of Economic Regulation of Airport Services – Response to Issues Paper*, p22.

⁸ Patricia Lieu, VicRoads in Clay Lucas (10 February 2011) [Plan to widen freeway to Melbourne Airport](#) *The Age Newspaper*.

Australian and overseas airports, does not permit unauthorised vehicles to be left unattended in its terminal forecourt. This approach is documented and has been approved as part of the Melbourne Airport TSP. A range of remedies are set out in the Act to respond to a failure to comply with a TSP and range from the issuance of an infringement notice to the imposition of an injunction.

Melbourne Airport understands the concerns of some ground transport operators wishing to leave their vehicles unattended in the terminal forecourt to provide a better level of service to their customers. However, the safety and security of the travelling public must be paramount in the planning and operation of any airport facility.

It is also for reasons of safety and security that Melbourne Airport seeks to be able to identify ground transport operators accessing the forecourt for commercial purposes. It is to that end that Melbourne Airport seeks to incentivise such operators to enter into a formal agreement by reducing the individual transaction costs to those operators. Private bus operators accessing the forecourt who have an agreement in place with Melbourne Airport for example will pay between \$1.50 and \$3.50 (depending on the size of vehicle) less than an operator who prefers to purchase a casual ticket. An awareness of the number of operators and the frequency of their visits to the forecourt also enables better safety and planning outcomes for all forecourt users whilst casual users are difficult to account for and therefore accommodate.

There have been adverse inferences drawn to the location of public bus services at Melbourne Airport. It is important to note that the location of these services are the result of agreements reached by the Airport and the Victorian Department of Transport and reflect the needs of users, the operational requirements of the services themselves, and capacity constraints in the terminal forecourt which has the potential to negatively impact the on-time performance of these services.

Accelerated growth in passenger movements at Melbourne Airport over the last five years has generated a commensurate increase in vehicle movements to and from the site placing increased pressure on the road network and terminal forecourt. To manage this increased demand and create future capacity in the forecourt Melbourne Airport will be commencing upgrade works at the end of the year. These works are expected to create an additional 40% capacity and will complement the construction of a new city bound ramp on to the freeway which will soon commence construction and will relieve pressure on the internal airport road network.

Melbourne Airport is also currently examining the establishment of a waiting area outside the terminal precinct where meeters and greeters can await a telephone call from their arriving passenger prior to entering the forecourt to collect them. This is expected to significantly reduce congestion created by vehicles recirculating through the precinct and provide greater convenience to those collecting passengers from the airport. Melbourne Airport also currently offers a \$3.00 rate for up to 20 minutes and \$6.00 for 40 minutes parking in the short term, express and multi-level long term car park and continues to explore service options that meet customer needs and those of our stakeholders.

Aeronautical services.

The light handed regime has encouraged investment, promoted efficiencies and created an environment in which infrastructure shareholders are willing to invest in future development and growth. Commercial agreements between airports and airlines have supported aeronautical investment and have ensured that airlines can contract to receive the level of service appropriate for their customer base at a price they have negotiated.

Commercial negotiations are a key feature of the light-handed regime that allows airports to set priorities, and invest in areas for the benefit of all users. Under these commercial agreements, airports give commercial incentives to offer airlines the quality of service and facilities that they desire for themselves and their passengers. As highlighted in the April submission and by many third parties, the commercial agreements promoted efficient investment. Aeronautical Services Agreements (ASAs) are contracts that secure a level of service at an agreed price. Contrary to arguments currently before the Commission, Melbourne Airport will incur financial penalties to the benefit of the relevant airline(s) where agreed service levels are not met whereby fees payable by airlines are reduced. Should terms not be agreed, ASAs would not be signed or agreed to.

Whilst these commercial negotiations are central to capital investment in aeronautical assets, airports must also consider the long term infrastructure needs of an airport in line with broader state and national economic development needs. Infrastructure capacity must be provided in line with forecast growth in order to accommodate that growth and to position itself to deliver economic benefit to all aviation reliant sectors. A natural consequence of this economic imperative is that existing airlines will be agreeing to and in some instance funding, capital works which will ultimately benefit airlines or services not yet in existence. This is a natural balance to the risk absorbed by airports by creating capacity for the projected growth of airlines which may chose to pull out of particular destinations or markedly reduce services.

The commercial negotiation process ensures that there is transparency, accountability and balance between flexibility and rigidity. In their submission to the Commission, some airlines advocate for the mutually exclusive outcomes of flexibility and rigidity in capital investment programs. Clearly both objectives can not be satisfied simultaneously and decisions for the long term benefit of the infrastructure asset in question must be made by airport operator companies. Melbourne Airport has a strong record of investing in necessary aeronautical infrastructure over and above what had been agreed through the ASA process following the appropriate and agreed level of consultation with affected airlines. The application of a rigid approach or failing to bring forward critical infrastructure investments in this regard would have significant adverse impacts on the capacity of Melbourne Airport and in turn affect the ability of airlines, not only to grow their business but meet existing demand into Victoria. Furthermore, given the nature of Australia's domestic network, constraints experienced at any one of the monitored airports will create significant flow on effects for all airports and are to be avoided. By flexibly bringing forward investment in close consultation

with affected parties, Melbourne Airport creates benefit for all users in a manner reflective of unforeseen changes to prevailing market and growth conditions.

Commercial negotiations allow all parties to identify priorities and reach the appropriate balance. Through the terms of the agreement, Melbourne Airport provides regular progress reports to the Board of Airline Representatives Australia (BARA) and other airlines in the form of an annual formal meeting and regular dialogue with major stakeholders. Melbourne Airport will soon commence a program of quarterly meeting with BARA and continues to work with BARA as well as directly with the airlines to continually improve the process.

As indicated by many airport investors through their submissions to the Commission, airports accept substantial risk in making new investments in aeronautical infrastructure such as new runways and terminal facilities given the high dollar value of these projects. Pre-funding of these high dollar value projects is necessary and reflects the substantial risk airports take on making these investments. This argument is supported both theoretically and practically and is outlined in greater detail in Melbourne Airport's April 2011 submission. Infrastructure deregulation expert Alfred Kahn for example, in his statement to the New Zealand Commerce Commission, noted that charging for capital expenditure projects is based on long run incremental costs. Under these arrangements, the airport essentially sets user charges to allow existing assets to earn an appropriate return on investment, but also to allow new discrete projects to earn the same return by charging an increment to the base charge⁹.

Appropriately, the current regulatory regime takes into consideration risks borne by involved parties. It reflects the fact that airports are required to make large infrastructure investments and through the ASA, provide airlines certainty of the pricing structure for a fixed five year period. This in turn enables airport costs, which constitute a relatively small proportion of total airlines costs, to be budgeted for and factored into airline costs and ultimate charges.

While it is recognised that airlines themselves incur substantial costs such as aircraft and fuel it is important to note that these are relatively liquid and highly transportable as compared to the fixed, bespoke and long-life assets required to be developed by airports. The highly mobile nature of primary airline assets means that airlines are capable of changing routes and withdrawing services from particular destinations with little to no notice during the life of an ASA without incurring financial penalty. Contrary to airline submissions currently before the Commission, this situation sees airports bearing volume risk. As discussed in greater detail in Melbourne Airport's primary submission, airlines possess significant countervailing market power to the extent that network decisions of airlines are considered on an international basis which means airlines have considerable opportunities to avail themselves of substitute airports.

⁹ Alfred E Kahn (2001) *Price Control Study of Airfield Activities at Auckland, Wellington, and Christchurch International Airports: Response to Draft Report*. pp5-7.

Concerns articulated by airlines in relation to airports investing in capital to accommodate peak period traffic are unfounded and do not reflect the prevailing infrastructure growth models evident in ports, electricity and toll road infrastructure. Without capacity of this kind airports would be unable to deliver agreed service outcomes in line with negotiated prices and would be unable to respond to the accelerated growth of our airline customers such as has been seen by services into and out of Asia and the Middle East over recent years.

As emphasised above, it is important that airports continue to invest in long-term outcomes for the broader economic prosperity of all aviation reliant sectors including airlines operators.

As outlined in its April submission, Melbourne Airport's average annual capital expenditure during the period of price capping was \$37.5 million, in contrast to average annual expenditure of \$112.4 million since the price capping regime was removed on the advice of the Commission in 2002. This difference in capital investment outcomes is indicative of adverse effects of more heavy handed regulation relative to a light handed monitoring approach.

In negotiating commercial agreements with airlines, the airport broadly applies the Weighted Average Cost of Capital (WACC) methodology established under the former price cap regime which relies on methodology endorsed by the ACCC. The WACC is applied to the written down line-in-sand value of existing assets and current cost of new assets being created. This determines the return on capital component which is added to the return of capital (depreciation) and operation costs to be recovered.

Contrary to assertions currently before the Commission, Melbourne Airport does not earn in excess of a 20% return on its aeronautical assets. Melbourne Airport earned a rate of return of approximately 11.5% which is in line with the rate forecasted at the time prices were agreed with airlines in their last two commercial agreements with the airport covering a period of ten years. This forecasted level of return reflects the airport's commitment to deliver on commercial obligations whilst balancing corporate objective of delivering value to shareholders over the long-term, as well as other business imperatives such as safety, environment and growing responsibly within both economic and neighbouring communities.

Melbourne Airport does not support recommendations before the Commission which seek to exclude goodwill from the Airport's cost base. Airport operators are entitled to earn returns on the full purchase price of their assets as based on reasonable expectations at the time of sale. The value of goodwill should be included in the airport's asset values, through incorporation into the non-aeronautical asset base in addition to the value of tangible assets.

Assertions that Melbourne Airport classifies check-in facilities as non-aeronautical rather than aeronautical charges are not correct.

Melbourne Airport has some concerns in relation to the veracity of data contained in the submissions of others and encourages the Commission to satisfy itself of the relevance of historic data before relying upon it to evidence the claims put forward by the relevant organisation. For example, conclusions drawn by airlines as to the balance between aeronautical revenue against long run costs relying on data from 1997 to 2005 without any consideration of data for the most recent six year period should be considered inconclusive at best. Melbourne Airport would also encourage the Commission to satisfy itself that conclusions drawn by submitters is evidenced by available data whether publicly available or on an in-confidence basis to the Commission. Assertions as to what are alleged to be 'windfall gains' accrued by Melbourne, Brisbane and Perth airports in the amount of some \$750m are not supported by any available evidence and as such are difficult areas in which to provide informed and reliable comment.

In relation to suggestions that the aeronautical till should be expanded to include the provision of all car parking services, Melbourne Airport supports the view previously articulated by the Commission in which it stated that "...mandating the transfer of non-aeronautical rent is likely to discourage development by the airport of both aeronautical and non-aeronautical services, generating large efficiency losses in the long run."¹⁰ The current approach strikes the correct balance by encouraging investment through the creation of certainty for infrastructure shareholders.

Deemed declaration

As previously articulated, it is Melbourne Airport's view that commercial agreements between airports and airlines are the best way to establish aeronautical prices, terms and conditions, quality and price of aeronautical services and facilities. Such agreements can, and frequently do, provide a commercial dispute resolution process, which as a last resort in the event of disagreement, provides for binding arbitration for the life of the agreement.

Commercial agreements of this kind when taken together with the significant investigation and enforcement powers of the ACCC under the *Competition and Consumer Act 2010* (Cth), and the potential for the declaration of airports services under Part IIIA of that Act provides a significant deterrent not only to misconduct by airports but as a readily available remedy for airlines or other relevant parties.

Notwithstanding this view, Melbourne Airport understands that the Commission may be minded to further strengthen the existing regime and to that end has proposed a model in its April 2011 submission to the Commission.

Submissions before the Commission propose that the aeronautical services be deemed to be declared services for the purposes of the infrastructure access regime in Part IIIA of the CCA, via an

¹⁰ Productivity Commission (2002) *Price Regulation of Airport Services: Inquiry Report*. p251.

amendment to the Airports Act. The effect of a deemed declaration of aeronautical services would be to remove the need for airlines to apply under Part IIIA of the Competition and Consumer Act 2010 (CCA) for their access to services provided by affected airports.

Melbourne Airport has identified a number of risks were such a proposal to be implemented. The existing regimes seeks to balance important policy considerations such as the need to maintain incentives to invest in infrastructure and potential enhancements of competition in related markets. The National Competition Council (NCC) is a specialist independent body that undertakes these decisions. As outlined in the NCC's submission, a number of changes have recently been made to further enhance the existing process.

Circumventing these protections and the rights of appeal otherwise open to infrastructure operators represents a significant policy change and will deter investments. There is presently no evidence supporting that a quarantining of airports as distinct from other infrastructure operators in this way would promote national competition principles or meet Government policy outcomes and may in fact serve only to substantially disadvantage one part of the aviation and/or tourism sectors to the benefit of another.

It is also not clear which services would be covered by a new deemed declaration process. It has been recommended that services be defined as those provided by an airport that are used for the operation and maintenance of civil aviation services. This reflects part of the test applied under the current process, while omitting the requirement that the deemed declaration apply only to services provided by facilities that are not economical to duplicate.

Such a change as proposed would represent a significant expansion of the deemed declaration process that previously applied under section 192 of the Airports Act. The inclusion of the "uneconomical to duplicate" requirement is consistent with the policy principles underpinning Part IIIA. Its removal has the potential to widen the scope of the 'declared' services to include, for instance, administrative office space and sites for cargo terminal and heavy maintenance facilities.

It is also noteworthy that a footnote in the ACCC's submission¹¹ (page 21) suggests that services "used for the operation and maintenance of civil aviation services" includes "all aircraft-related and passenger-related services and facilities within the boundary of the airport." This appears to suggest another expansion from the previous deemed declaration regime.

However, it should be noted that, in the context of a further proposal before the Commission that landside access services be the subject of access undertakings under Part IIIA of the CCA, it does not appear to be proposed that these services be the subject of a deemed declaration process.

¹¹ Australian Competition and Consumer Commission (2011) *Airport monitoring report 2009-10*, p21.

This further expansion of the regulatory regime then has the potential, as outlined above to limit investment and development within airports, undoing the benefits achieved by the light-handed regime to date.

The ACCC's submission states that deemed declaration "would encourage the airports to behave as if their activities were carried out in a competitive market place." Given the evidence provided in the submissions of Melbourne Airport and other key stakeholders, it is clear that the current regime has succeeded in encouraging competitive market outcomes. As such the benefit to be achieved by implementing a system of artificial competition to an environment in which market conditions have produced a naturally competitive situation, is unclear. In such an instance, deemed declaration would appear to create anti-competitive and costly compliance burdens for both ground transport and airport operators whilst simultaneously discouraging operational and capital investments in ground transport infrastructure at airports.

Planning and development

As outlined in its April submission, Melbourne Airport has always worked closely with Commonwealth, State, and Local Governments as well as key stakeholders to ensure that airport operations and planning are integrated with existing systems, policies and future plans.

Since the Commonwealth's release of the Aviation White Paper in 2010, substantial changes have been made to the economic and planning framework of leased airports to strike a balance between the commercial objectives of airport operators, the legitimate interest of airlines and the travelling public and the importance of the community being properly consulted about the impacts of current and future airport operations and development. Specific initiatives include changes to the Major Development Plan process and the establishment of the Planning Coordination Forums and Community Aviation Consultation Groups at major airports. Many of these programs were introduced late 2010 to early 2011. We believe it is important to give these forums adequate time to become established and to demonstrate an autonomous credibility. It is not until this occurs that the full benefit of these initiatives will become evident. Preliminary experience indicates that these bodies will enhance existing stakeholder consultation mechanisms established by airports, improve integration between on and off airport planning objectives and formalise stronger links with the neighbouring and economic communities of airports. Failure to give these fora adequate opportunity to demonstrate their capabilities by implementing any further changes in this area would be detrimental to long term planning and stakeholder engagement activities at airports.

Planning mechanisms applying to federally leased airports are intended to ensure that both aeronautical and non-aeronautical developments on airport land support the operation of the airport and are responsive to neighbouring community interests. It is essential therefore that whatever the currently applicable planning regime that any airports wishing to operate RPT

international services should be required to submit to an MDP style process prior to being given approval by the relevant authority in their jurisdiction.

As raised in a number of submissions before the Commission, critical to the ongoing security of airport and airline growth and operations is an efficient and reliable fuel supply. Disruptions to fuel supply as experienced at Melbourne Airport in December 2010 have a considerable financial impact on airlines operating at the airport and significantly inconvenience the travelling public putting at risk both existing operations and future growth. On a usual business day, 75% of fuel used by aircraft servicing Melbourne Airport is delivered by a pipeline between the Shell refinery in Geelong and Melbourne Airport with the balance delivered by truck. On a busy day this ratio is split more evenly with 50% arriving by each mode of transport.

The pipeline to Melbourne Airport is managed by Mobil, on behalf of a Joint User Hydrant Installation (JUHI), a joint venture involving Mobil, Shell, BP and Colonial. This pipeline is a critical piece of aviation and broader economic infrastructure and any actions which would serve to compromise the reliability or volume of fuel supplied by this means would have significant adverse implications for airline business growth into Victoria. Melbourne Airport continues to work with JUHI and its airline customers to support the reliable and efficient supply of fuel as well as the attendant risks associated with a market failure to do so. Ongoing monitoring of the pipeline and support of key stakeholders is required to ensure that any possible change to supply or demand for fuel does not put greater pressure on the existing system.

Municipal Rates

Melbourne Airport is located within the local government municipality of Hume and has enjoyed a cooperative working relationship with the Council and its officers. Recognising the operational, economic and social impacts the airport has on the municipality an equitable rate payment has been agreed between Melbourne Airport and Hume City Council. Though Melbourne Airport itself provides the majority of services for which council rates are generally levied, it considers the rates agreed to appropriately reflect the broader impacts outlined above. This system has worked well for the last 14 years and it is questionable what additional benefits would be achieved if further processes were established.

Conclusion

Melbourne Airport is supportive of the current light-handed regulatory regime. As outlined by ourselves and other major parties including the Department of Transport and Infrastructure, National Competition Council and the Infrastructure Partnerships Australia, the current regime has been a success. Its current structure provides a deterrent to non-competitive behaviour.

As has been evidenced, aeronautical charges at Melbourne Airport are the lowest of all monitored Australian airports and compare favourably with international benchmarks whilst rents charged for

ground transport services to Melbourne Airport are reflective of the safe and efficient management of terminal kerb space and treat all commercial users on an equitable basis.

Applicable dispute resolution and enforcement mechanisms available to both government and aggrieved parties provide an accessible and effective deterrent to airports in the inappropriate exercise of their market power and foster strong competition. The CC Act through Part IIIA provides airlines, third parties and the Government an opportunity for a service to be declared where anticompetitive conduct can be demonstrated.

The success of the regime is evidenced by ongoing capital investment by the private sector in federally leased airports, outcomes of commercial negotiations, growth of the industry and continued delivery of agreed service levels to airlines and their customers.

Melbourne Airport would welcome the opportunity to appear before the Commission to further discuss any issues raised in this or our April submission.