



Australian
Competition &
Consumer
Commission

**Submission to the Productivity Commission's
inquiry into the economic regulation of airport
services**

July 2011



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The purpose of this submission is to respond to two issues raised by MAp Airports Limited (MAp) regarding the ACCC's March 2011 submission to the Productivity Commission's Economic Regulation of Airport Services inquiry.

MAp's recent submission (dated June 2011) states firstly that the ACCC submission 'claims that there has been evidence of positive outcomes under arbitration at UK airports'. Secondly, MAp's submission states that, as the Civil Aviation Authority (CAA) sets prices, there is no possibility for arbitration or negotiation in the UK regime. Both of these statements contain some inaccuracies, which this letter seeks to address.

The ACCC's submission does not refer to arbitration at UK airports but rather refers more broadly to 'dispute resolution mechanisms'. The submission does not draw a direct parallel with the UK's Constructive Engagement process and the negotiate-arbitrate model. Rather, the ACCC drew on the example of Constructive Engagement as instituted by the CAA to support its view that, under declaration of aeronautical services, airports and airlines are likely to reach commercially negotiated outcomes in preference to those imposed by a regulator. The ACCC referred to Professor Littlechild's work in citing this example, who in turn had referred to the CAA's 2009 paper. While Professor Littlechild describes determination by the CAA as a form of regulatory arbitration, the ACCC submission discussed the UK model more broadly in the context of dispute resolution mechanisms.¹

Further, the Productivity Commission should be aware that negotiation between airports and airlines is possible under the UK approach of Constructive Engagement.

Constructive Engagement is a process that has been incorporated into the CAA's broader price determination process. It offers the opportunity for airports and airlines to agree on some of the parameters that are utilised by the CAA to determine price. MAs' submission does not recognise that the UK model allows for certain important matters to be negotiated. There are a number of parameters that the CAA determines independently of the airports and airlines, and certain other aspects on which the CAA works jointly with the airports and airlines. These are summarised in figure 1 below.

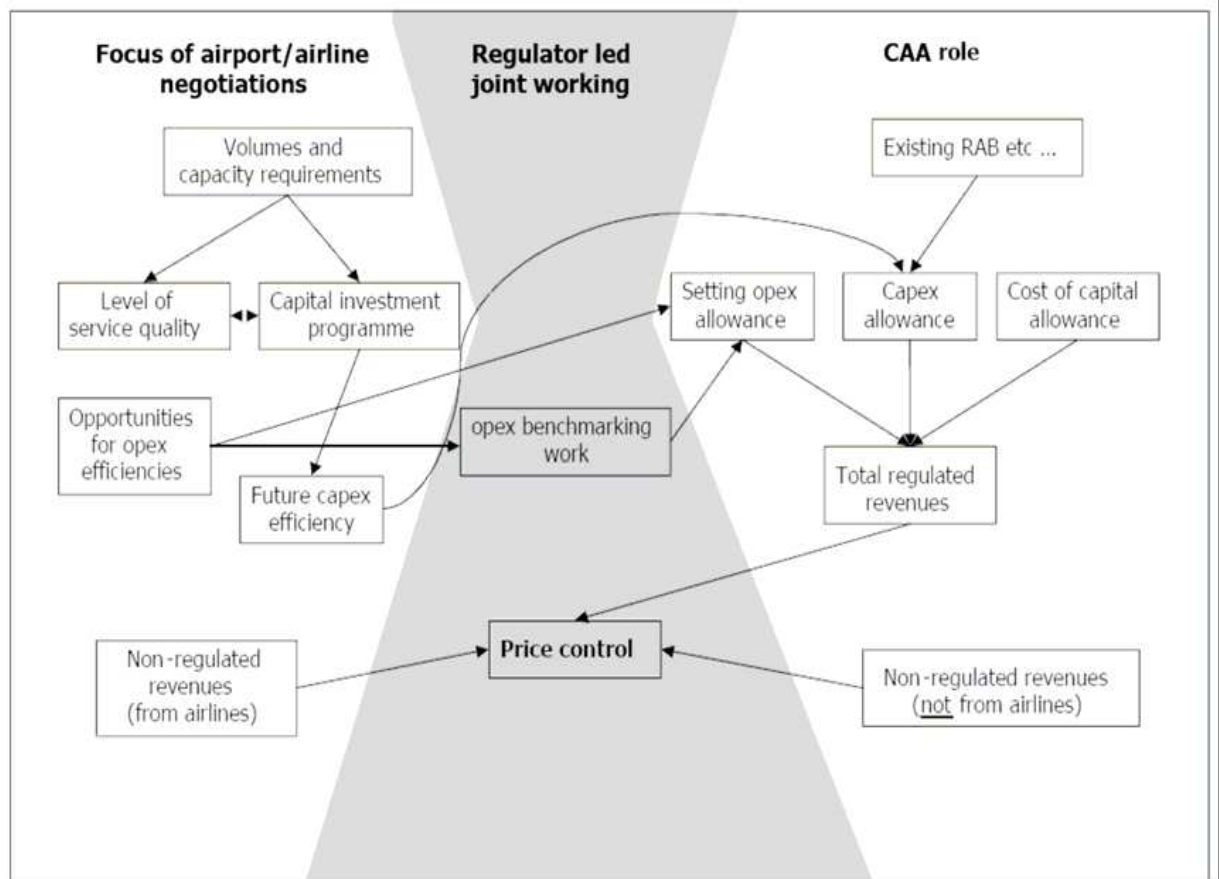
The parties (airports and airlines) have an opportunity to determine the value of parameters used in the price determination. If parties cannot agree, or if it becomes evident that the process is unlikely to be successful, this opportunity is lost. Instead, the CAA will make a decision, and its decision will not necessarily represent a compromise between the parties' opposing positions. According to Professor Littlechild, there were a few initial hiccups but the process worked at Heathrow and Gatwick airports, and later at Stansted airport.²

The ACCC encourages the Productivity Commission to examine the substance of the UK model in considering the likelihood of airports and airlines reaching a negotiated agreement where a decision by a regulator is otherwise available.

¹ See ACCC Submission to the Productivity Commission's inquiry into economic regulation of airport services, March 2011, p. 23.

² S. Littlechild, 'Australian airport regulation: exploring the frontier', University of Cambridge, October 2010, p. 22.

Figure 1



Source: CAA, *The Civil Aviation Authority's response to the Department for Transport's consultation, Supporting paper 1 – Constructive Engagement*, May 2009.