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Board of Airline  
Representatives  
of Australia Inc

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Dr Wendy Craik  
Presiding Commissioner  
Economic Regulation of Airport Services Inquiry  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

Dear Dr Craik,

The Board of Airline Representatives of Australia (BARA) offers the following comments on the Productivity Commission's Draft Report on the *Economic Regulation of Airport Services*. Overall, BARA is pleased that the Commission has recognised the need to strengthen the current arrangements, albeit the proposal is less than sought by a number of member airlines. BARA's comments on specific issues are provided below.

#### **The Australian Competition and Consumer Commission's enhanced role**

BARA supports the Commission's recommendation for the Australian Competition and Consumer Commission (ACCC) to undertake a more formal and active role in implementing the prices monitoring regime. As described in BARA's initial submission to the Commission, a key weakness of the current regime is the lack of a formal process that is necessary for airport operators to be held accountable for their commercial conduct.

BARA notes the Commission's preference for the ACCC not to issue a 'show cause' direction solely on the basis of particular outcomes contained in the monitoring report in any one year. BARA would agree that the results of the annual monitoring report need to be evaluated carefully in light of the particular circumstances of each airport. In some instances lower service quality outcomes and/or seemingly excessive rates of return may be due to unanticipated factors, such as passenger growth far higher than forecast.

Nevertheless, BARA's experience is that the commercial conduct of an individual airport operator can change markedly (both better and worse) in a short period of time, given changes in its strategic direction, often associated with changes in its senior management. BARA, therefore, considers that the ACCC does require some discretion to respond to identified instances of poor commercial conduct, even if such conduct is relatively recent. This would hopefully discourage an airport operator seeking to abuse its market power in any particular year because its rate of return was lower than expected in a previous year.

## **Market power and regulation**

In its Draft Report the Commission has sought additional information on whether an airport's ability to earn non-aeronautical revenue provides an incentive to constrain aeronautical charges.

BARA maintains that:

- (a) Australia's major international airports continue to have substantial market power in the provision of aeronautical services and facilities to international airlines, and
- (b) non-aeronautical revenues provide no meaningful constraint on this market power.

BARA, at least, has never even heard an airport operator make any link between aeronautical prices and non-aeronautical revenues in price discussions. It is true that given the importance of non-aeronautical revenues, airport operators should actually be prepared to expand aeronautical capacity at far lower rates of return than currently obtained. This is because the opportunity cost of not providing the capacity necessary to cater for growth includes both the aeronautical and non-aeronautical revenue streams associated with the additional traffic. While some airport operators may claim to the Commission that non-aeronautical revenues discipline their aeronautical pricing, BARA has yet to see any evidence of this in practice.

As described in BARA's first submission to the Commission, Sydney Airport Corporation Limited (SACL) has actually diminished the quality and efficiency of international terminal passenger services to some airlines in order to increase non-aeronautical revenues. This is further evidence of the lack of an effective constraint that non-aeronautical revenues are in curbing the market power of major international airports.

### **The commercial conduct of Sydney Airport Corporation Limited**

BARA does not agree with the Commission's assessment that there is no evidence of systemic misuse of market power across all airports. SACL's conduct continues to remain problematic. It is notable that SACL's response to a poor finding in the quality of service monitoring is to hire consultants to refute the claims. What SACL did not do was discuss with airlines ways of improving outcomes for airlines and passengers. An organisation focused on passenger outcomes would seek to improve its performance regardless of whether they agree with the findings and statements by the ACCC.

One reason why SACL does not seek to improve outcomes for airlines and passengers is because, when necessary, SACL will lower the quality and efficiency of services to increase non-aeronautical revenues and profits. To negotiate better outcomes for passengers and airlines would require them to confront their current strategies and practices.

### **BARA's role in collective negotiations**

BARA would like to clarify its role in undertaking collective negotiations over the provision and pricing of aeronautical services and facilities. Some statements contained in the Draft Report do not appear to accurately reflect BARA's role in the negotiation process. In particular, the footnote on page 200 notes SACL's claim that BARA recommended that its members accepted an agreement negotiated between SACL, BARA and other airlines.

BARA undertakes negotiations with airport operators on behalf of its members on a voluntary basis. After conducting negotiations with an airport operator over the provision and pricing of international aeronautical services and facilities, BARA forwards the outcomes to its member airlines for consideration. BARA does not recommend that airlines accept commercial agreements. Member airlines make their own decisions over whether to accept or reject the

outcomes negotiated through BARA. Member airlines are in no way bound by the outcomes negotiated through BARA.

Critically, the fact that BARA has forwarded the final outcome to member airlines for consideration does not mean that BARA has endorsed the outcomes as reasonable. Instead, the outcomes represent the best that could be negotiated given the circumstances and approach to negotiations undertaken by the airport operator. BARA's position on the conduct of individual airport operators is contained in BARA's initial submission to the Commission. BARA would appreciate statements that appear to misinterpret its role in the negotiation process being amended in the Commission's Final Report.

### **Service quality monitoring**

The Commission has recommended that where an airport has service level agreements with all of its regular passenger airlines, which stipulate methods for recourse in the event of a failure to meet a standard, the airline survey should no longer be conducted for that airport.

BARA considers that this recommendation is likely to prove problematic in practice and should be removed from the Commission's final recommendations. BARA's concern is that some airport operators are likely to seek to implement (or impose) arrangements that they will argue justify removing it from service quality monitoring, while in practice the agreement has little impact on their commercial conduct.

In particular, BARA is concerned that SACL would claim that it already has 'commercial agreements' in place with the airlines, virtue of the fact that it has stated that it will refuse access if the airline does not sign its conditions of use document. It is also predictable that SACL will engage various lawyers to draft the most superficial clauses that they would argue pass the Commission's test, while in practice they would be designed to ensure SACL was never held accountable for its performance. While the Commission may find BARA's prediction of SACL's conduct somewhat harsh, it is, unfortunately, the outcome of many years of experience in dealing with the management of SACL.

BARA considers that the public should also have access to information on the service quality performance of Australia's major international airports from both passengers and airlines. The views of airlines should not be excluded because agreements (usually confidential) may be in place between the airlines and airport operator. If the airlines are rating an airport operator's performance poorly when a service level agreement is in place, then this raises questions over the effectiveness of the agreement.

Please contact the undersigned if you require any further information regarding the BARA's response to the Draft Report.

Yours sincerely,

Warren Bennett  
**Executive Director**