

Brisbane Airport Corporation

Supplementary Submission to the Productivity Commission Inquiry into the Economic Regulation of Airport Services – Response to Draft Report

Introduction

Brisbane Airport Corporation Pty Limited (BAC) welcomes the Productivity Commission's ('the Commission') Draft Report into the Economic Regulation of Airport Services. The Draft Report presents a broadly fair assessment of the current reality of airport operations, investment and management across Australia. The Draft Report is consistent with Brisbane Airport's view that the current light-handed regulatory pricing regime proposed by the Commission in 2002 and endorsed in 2007 has been an outstanding success, delivering an environment in which the aviation sector has flourished.

At the same time, however, aspects of the Draft Report are of concern to Brisbane Airport. The purpose of this submission is to provide additional information to the Commission where it has sought such a request, and to also re-affirm BAC's perspective on several of the findings the Commission has presented in the Draft Report. Specifically, BAC is pleased to provide comment on the following information requests:

1. Whether an airport's ability to earn non-aeronautical revenue provides an incentive to constrain aeronautical charges;
2. The appropriateness of including capital costs such as the cost of borrowing, in the Australian Competition and Consumer Commission's (ACCC) price monitoring program;
3. Whether the ACCC should be responsible for both issuing show cause directions and conducting any subsequent Part VIIA inquiry;
4. Whether there is additional readily assessable financial or other data that would assist the ACCC to determine if a 'show cause' direction was warranted;
5. Whether any further guidelines could improve commercial negotiations;
6. The potential means to standardise passenger survey methodology without incurring substantial increases in compliance costs;
7. Whether annual publication of the coverage of, and performance under, service level agreements improve regulatory outcomes;
8. The adequacy of communication between airports and the tiers of government;

9. Whether an airport should contribute to the cost of infrastructure outside its boundary as a result of future on-airport non-aeronautical development.

The remainder of this submission presents BAC's view with respect to these issues.

Information Request 1

BAC has an aeronautical business and a non-aeronautical business, which itself is further disaggregated into different business units, such as real estate development, car parking, retail etc. In the context of setting prices and earning profits, each BAC business unit is charged with generating a return on investment given the external constraints placed on that business, such as economic regulation, planning regulations and competition.

Given that aeronautical price setting in Australia is regulated on a dual-till approach, rather than a single-till approach, BAC determines aeronautical charges on a 'stand-alone' basis. That is, in privatising the airports the government recognised that economic efficiency would best be served by allowing aeronautical pricing to be set on a dual-till basis. This created the incentive for airports to grow their non-aeronautical businesses in a 'normal' manner, without creating the disincentive of averaging down returns for the airport which occurs under a single till model.

Finally, BAC note that the methodology it employs in setting aeronautical charges is based effectively on a 'sub-dual till' approach, which ensures that there is no cross-subsidisation between landing, domestic terminal, domestic common-user terminal, and international terminal users. That is, prices are set for each sub-till based on the cost of service provision for that stand-alone service, including an appropriate return on asset.

Information Request 2

BAC has considered the appropriateness of including capital costs such as the cost of borrowing, in the ACCC's price monitoring program. In doing so BAC recognises that the objectives of the ACCC in monitoring prices, costs and profits include;

- The need to maintain investment and employment; and
- To discourage abuse of market power in setting prices.

BAC also recognises that for the ACCC to do so it must:

- Report on meaningful and holistic measures of profitability; and
- Comparable measures of profitability.

Inclusion of the cost of borrowing based on an individual airport's capital structure is misleading from a regulator's perspective. It is more appropriate to consider returns (prior to debt costs) on net assets employed over the medium to longer term.

Information Request 3 and 4

BAC has considered the recommendations within the Draft Report regarding the implementation of a new 'show cause' mechanism within the regulatory framework governing airports and believes at present there are several reasons why such an approach would be problematic.

Currently it is our understanding that if the ACCC has concerns about airport pricing or profitability it can request that the Minister issue a show cause notice. This would appear to be appropriate.

As understood by BAC, the following scenario describes the process which would be followed under the proposed show cause mechanism:

- An airport submits its annual price and service quality monitoring data to the ACCC;
- The ACCC analyses this new information, particularly in the context of the long-term data series it has reviewed;
- The ACCC forms an opinion that the new information provided demonstrates that the airport has potentially operated in an anti-competitive way;
- The ACCC issues a show cause notice to the airport, which sets out the concerns of the ACCC in detail and requests the airport to respond to these concerns by a set date;
- The airport prepares a response to the ACCC, providing additional information to that which was contained in the data previously provided;
- The ACCC considers this new information, and if it remains unsatisfied, may recommend to the Minister that a Part VIIA inquiry be conducted, possibly by the ACCC itself.

While the above chronology of events seems simple enough BAC has a range of issues about the practical implementation of such an approach.

Firstly, BAC finds the annual price and service quality monitoring process to be less than ideal. As outlined in our earlier submission, our concerns regarding this process relate to:

- The lack of an analytical framework from which to assess the information provided by airports;
- Concerns around the reporting period, scope of analysis and profit measures used in the ACCC analysis;
- The cost of compliance to airports in meeting this process; and

- The lack of real consultation with airports during the process, particularly in the period between draft and final reporting.

It is BAC's experience that through its public statements and actions the ACCC has demonstrated that it holds the view that airports should be subject to economic regulation, and that it, the ACCC, should be the authority that implements this regulatory oversight. This perspective is confirmed in the ACCC's own submission to this review where it made statements supporting its perception that various airports, including Brisbane Airport, behave in an anti-competitive way. BAC rejects these claims and welcomes the Commission's recognition that these claims are unfounded.

BAC therefore finds the recommendation to allow the ACCC to have an increasing 'seat at the table' with respect to the economic regulation of airports to be challenging. However, should the ACCC be given these new powers a number of safeguards should be put in place to allow greater transparency to the ACCC analytical process.

One such safeguard would be the development of an analytical framework to conduct the annual assessment and show cause notification. This framework should be prepared in conjunction with the Commission and the National Competition Council so that a 'whole of Government' approach could be developed. Ideally this framework would then be presented in draft to airports and airlines for consultation. By having such a transparent framework, airports would be able to better understand the explicit triggers for a show cause notice.

Another safeguard would be the requirement for the ACCC to formally consult with airports during the annual review process. This early intervention would enable the ACCC to better understand the background to the 'numbers on the page'.

The final safeguard would be separating the ACCC from conducting both the 'show cause' process and the Part VIIA review. BAC contends that it would be difficult for the ACCC not to carry over any preconceived views from the 'show cause' into the Part VIIA review. To overcome the potential for implicit or explicit bias the Part VIIA review would be better conducted by another suitably qualified government entity, such as the Commission or the NCC.

Finally, with regard to Information Requirement 4, BAC contends the annual data collection process is sufficient to provide all the necessary information for the ACCC to conduct an assessment on the performance of airports. Again, it is BAC's view that the challenge is not related to the amount of data collected at the moment, but rather the assessment of the data in a financially sound, fair and balanced manner.

Information Request 5

BAC believes that the current guidelines and monitoring templates are sufficient to meet the needs of their intended purpose.

Information Request 6

BAC would, in principle, be prepared to participate in a standardised passenger surveying approach, such as the ACI Airports Service Quality survey. In saying this there are a number of issues that would need to be resolved, including:

- Cost relative to the current process;
- Ability to survey passengers concurrently on issues outside of the standard questions; and
- Ability to participate in the analysis process to help with the interpretation of the survey results.

The Commission needs to consider the benefits of such an approach compared to the current QSM regime.

Information Request 7

BAC contends that Service Level Agreements (SLA) are a negotiated arrangement between an airport and an airline and reflect the particular requirements established between the two parties. Further, it is possible for an SLA to reflect a price-service quality trade-off between the airport and the airline, such as that which exists for some airports and low cost carriers (LCCs). As such, these SLAs form part of the commercial negotiations between the parties and therefore may be considered commercial-in-confidence.

The publication of SLA performance could, therefore, be problematic for a number of reasons, including:

- Attribution of fault, including the issue of force majeure, if the SLA actual performance is below targeted performance;
- Partial presentation of SLA indicators if some are deemed to be commercial-in-confidence; and
- Analysis of SLAs across airports, and even across airline users at the same airport, where the context of performance is poorly explained.

The consequence of presenting this information either out of context, partially or in a misleading way, would heighten the potential for increasing conflict between airports and airlines. It is unlikely the publication of SLAs would improve the quality of service or regulatory outcomes.

BAC contends that regulatory outcomes and business outcomes more generally are improved through better consultation between airports and airlines – either on an individual basis or even through collective forum for some issues. For SLAs, annual reviews of performance between individual parties is a much better way to ensure overall service improvements occur than the public presentation of collective data which has the strong potential for misinterpretation.

Information Request 8

BAC undertakes an active program of communication with the Commonwealth, and Queensland Governments and Brisbane City Council. BAC considers all tiers of government its partners in the successful management and development of Brisbane Airport and, as such, dedicates significant resources and time to ensuring that communication with government is proactive, transparent and mutually beneficial.

There are always individual activities that can be better delivered, but BAC cannot identify a systemic failing that needs specific intervention as part of the Commission review.

Information Request 9

BAC believes there is no need for regulation of off-airport infrastructure funding for infrastructure outside its boundary for future on-airport non-aeronautical development. BAC has in place an agreement with Brisbane City Council (BCC) for payment in lieu of Council Rates. Further BAC pays land tax on the same basis as other Queensland companies, although it is paid to the Federal Government. The Queensland Government and BCC have no responsibility for on airport infrastructure. BAC bears the cost of developing and maintaining airport roads, street lights, water, drainage, sewerage, electricity and telecommunications. Given this level of contribution already, BAC does not believe in ordinary circumstances that further off-airport infrastructure funding is reasonable.

In practice BAC has, through negotiation, already made the following contribution to off-airport developments and infrastructure that is not its direct responsibility:

- Gateway and East West Arterial / Airport Drive roundabout - Cash contribution to the slip lane construction (circa 2001);
- Gateway and East West Arterial / Airport Drive roundabout signalisation - Cash contribution (2005);
- Gateway Upgrade Project - 1.7km across airport - Land transfer (in fee simple - confidential). No cash contribution (2009);

- Airport Roundabout Upgrade - Land transfer (in fee simple - confidential)- No cash contribution (2011);
- Subsidies and facilities on airport for public bus services.

These contributions were completed on a case-by-case basis, enabling the contributions to be more effective as they were tailored to the specific needs of each project.

If airports were to be formally required to make such contributions to off-airport infrastructure as a result of the airport's growth impacting infrastructure in the surrounding region, BAC contends that it would not be unreasonable for the state governments and councils to be required to contribute to the upgrade of airport infrastructure needed as a result of population growth.

Furthermore, as outlined in the National Aviation Policy White Paper, introduced in 2009, airports are required to deliver Planning Coordination Forums, which see the airport authorities and all levels of government meeting quarterly to discuss the integration of off-airport planning with on-airport planning. BAC believes these forums to be highly effective in highlighting future planning issues and opportunities and enabling government and the airport authorities to plan strategically and financially in advance, to ensure sufficient infrastructure upgrades are delivered in a timely fashion to meet growth demands on and off airport precincts.

BAC therefore believes the current land tax and agreements with BCC, combined with planning coordination forums, and voluntary contributions to off-airport infrastructure on a case-by-case basis, are sufficient and the most appropriate mechanisms for airports to contribute to the integration and upgrade of off-airport infrastructure linking with on-airport infrastructure.

Conclusion

BAC supports the balanced findings of the Commission's review into the Economic Regulation of Airport Services in Australia. In this submission we have responded to the Information Requests identified in the Draft Report. Of most concern to BAC is the proposed 'show cause' process, although we have suggested a number of safeguards which if implemented would alleviate our concerns to a great extent.

We are pleased to expand or clarify any of the comments in this submission at the public hearing on the 4th October.