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Our ref: LEG:PCR

9 November 2011

Ms Wendy Craik AM
Commissioner
Airport Regulation Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

cc: Mr Alan Johnston
A/g First Assistant Commissioner
Productivity Commission
L2, 15 Moore St
Canberra City ACT 2600

Via email: airport-regulation@pc.gov.au

Dear Ms Craik

I refer to the show cause recommendation as proposed by the Productivity Commission in its draft report.

As you know, while not applicable to Canberra Airport, Canberra Airport does not support the recommendation for a show cause process, and in particular Canberra Airport is very concerned about the ACCC being the body that both undertakes the show cause process and any resulting price inquiry.

If a show cause process is to be introduced, it is critical that any subsequent Part VIIA price inquiry is undertaken by a body other than the ACCC. Without suggesting any improper motive or other impropriety on the part of the ACCC, if the ACCC has decided that a pricing inquiry should occur, they have, by applying the criteria of the show cause process, already made significant steps towards deciding that the relevant airport has abused its alleged market power.

However, in the hearings it was quite rightly pointed out by the Commissioners that if we objected to the ACCC undertaking the show cause process, what was our suggestion for an alternative body?

While Canberra Airport's preference is still for the Department of Infrastructure and Transport or the Productivity Commission to undertake the show cause inquiry, we understand from both bodies that they do not believe that they are the appropriate body.

Given this, Canberra Airport believes that consideration should be given to the following bodies undertaking the show cause process:

1. The Department of Treasury or the Department of Finance – both of these organisations are independent from the ACCC, and both have personnel with the requisite skills and experience to undertake a show cause inquiry; or

2. Assembling a body similar to the Planning Assessment Commission in NSW. This body would simply be a pool of relevantly experienced and qualified individuals who could be called upon by the Minister for Infrastructure and Transport to undertake the show cause process and provide a recommendation. The relevant individuals would only be called upon on an as needs basis, with all administrative support being provided by existing resources within the Department of Infrastructure and Transport.

Please do not hesitate to contact me if you wish to discuss.

Yours sincerely

Andrew Leece
General Counsel
