Economic Regulation of Australian Airports

A Submission to the Review of the *Prices Surveillance Act 1983*

Australia Pacific Airports Corporation

April 2000

Executive Summary

- Airport privatisation has delivered significant benefits to the Australian community although these benefits have been largely in the form of increased services and frequencies rather than fare reductions induced by restraint of airport charges.

- Returns on regulated aeronautical assets are low (below 3%) and in many cases negative. Such low returns are not conducive to efficient pricing.

- Airport price regulation is constructed under the *Prices Surveillance Act 1983* and is administered by the Australian Competition and Consumer Commission. The regulatory processes have proven to be cumbersome and time consuming, to a significant extent as a result of the Act being used for a purpose it was not designed for.

- The market for airport services can be characterised as a bilateral oligopoly, that is, both consumers and suppliers possess significant market power. Given that there is little transmission of price restraint through to the ultimate consumer (the travelling public) the function of the regulatory system is largely to divide up rents in the aviation industry. There are adequate provisions in other statutes to deal with abuse of market power.

- It is the current policy of the Commonwealth Government (and indeed it was the policy of its predecessor) that airport pricing arrangements should become a matter of commercial negotiation between airports and airlines. The current regime does not encourage this.

- In the event that commercial negotiations fail and on-going regulation is required, the *Prices Surveillance Act 1983* as currently structured is not a suitable device for airport pricing regulation.

Introduction

Australia Pacific Airports Corporation (APAC) is an airport management and ownership company. It has four shareholders:

- AMP Funds Management (49.9%)
- Deutsche Funds Management Australia (25%)
- BAA plc (15.1%)
- Hastings Funds Management Limited (10%)

APAC owns Australia Pacific Airports (Melbourne) Pty Ltd (APAM) which acquired on 2 July 1997 a 49 year lease (with a 50 year option) from the Commonwealth Government to operate Melbourne Airport. APAC also has a 90% interest in Australia Pacific Airports (Launceston) Pty Ltd (APAL) which acquired a similar lease over Launceston Airport on 29 May 1998. The Launceston City Council has the remaining 10% interest in Launceston Airport. These interests were acquired for $1,300 million and $17.1 million respectively.

The airport industry reform process embarked upon by successive Commonwealth Governments has by and large been successful. At Melbourne Airport, APAM and its partners have invested a total of $218 million since July 1997. Investment is expected to be strong over the coming years and will include the construction of a new multi-user domestic terminal to facilitate the operation of domestic and regional carriers not associated with Qantas and Ansett.

The importance of the break-up of the Federal Airports Corporation (FAC) network must be seen as the core of this policy success. Not only have pricing and investment decisions become more focused on individual airport activities, but more importantly, business development has become keenly focused on the markets that individual airports serve. This has led to competition in certain markets between airports at the same time as the bargaining strength of the FAC was eliminated.

A variety of airport charges are subject to formal surveillance under s21 of the *Prices Surveillance Act 1983* (PS Act) whilst other are subject to monitoring under s27. In addition, a number of other Acts address various aspects of economic activities on airports that are relevant to matters under consideration in this review.

The current arrangements under the PS Act mentioned above in relation to Melbourne Airport (and the other Phase 1 airports Brisbane and Perth) are due to expire on 30 June 2002 and at Launceston and other Phase 2 airports (Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart and Townsville) on 30 June 2003. In late 1999, the Australian Competition and Consumer Commission (ACCC) issued a document setting out its proposed timetable for the review of Phase 1 airports and as such, APAC welcomes the opportunity to participate in a review of one of the primary statutes used for regulating its businesses.

Whilst not central to this review, it is important to understand the policy intent of the pricing arrangements for airports that have been constructed under the PS Act. They can be summarised in the following quotes:

For airlines, the overall price direction for the next five years will be downwards. For passengers, the restraint on airport prices should help keep airfares down.[1]

[1] Hon J Sharp Minister for Transport and Regional Development, Press Release, 6 August 1996.

The pricing oversight guidelines provided to the ACCC are designed to strike a balance between protecting airport users and creating the conditions for commercially-driven decisions on the part of airport operators. Over time, the Government wants to see airport operators and their customers negotiating directly on pricing and investment decisions but with the ACCC remaining empowered to prevent monopoly pricing.[2]

The price cap is designed to be as simple and straight forward as possible, in the interests of minimising costs of regulatory oversight for both the ACCC and the airport operators, while ensuring appropriate outcomes.[3]

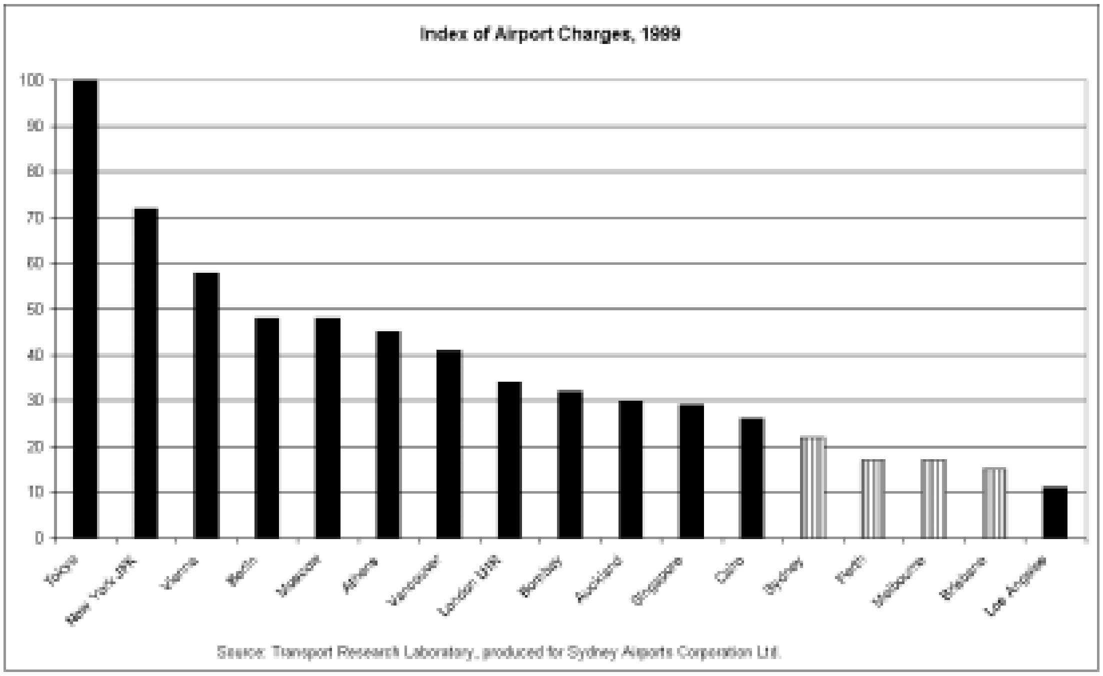
When reading the original Pricing Policy Paper, one forms the view that it was the intention of the Government that the cap should be "a genuine constraint on prices". The cap, both by it's stated intention and clearly from its design, is not a device for regulating airport profits. Indeed, given the information provided in the ACCC's monitoring reports that is reproduced in the following table, nor is it a device for ensuring airport shareholders received normal returns on their regulated businesses. The purpose and effect of the cap is to ensure airlines enjoy the benefits of real productivity gains through prices for services that decline in real terms.

	Earnings before interest and tax ($m)	Property, plant and equipment ($m)
Adelaide	(2.1)	99.0
Alice Springs	(0.8)	15.7
Brisbane	3.0	291.0
Canberra	(0.2)	57.6
Coolangatta	(1.2)	16.5
Darwin	(3.0)	54.2
Hobart	1.0	9.8
Melbourne	12.8	444.5
Launceston	(0.2)	11.9
Perth	0.6	96.5
Sydney	8.8	1,174.5
Townsville	(0.9)	11.5

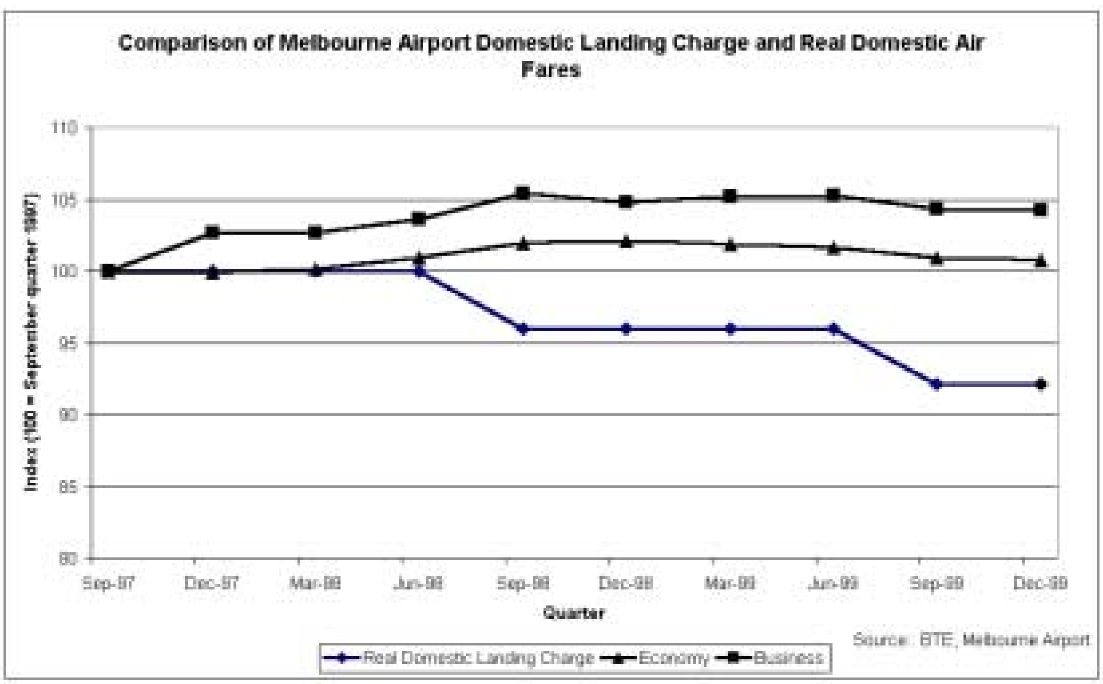
Earnings and Assets Values of Aeronautical Businesses as Regulated Airports: 1998/99[4]

Further, it is clear that airlines using major Australian airports enjoy some of the lowest charges in the world.

[2] Hon P Costello, Treasurer, Press Release, 25 June 1997.
[3] Pricing Policy Paper, Department of Transport and Regional Development, November 1996.
[4] These data are drawn from the various ACCC Monitoring Reports for 1998/99. Earnings exclude costs of amortisation of lease premium



To date there is no evidence to suggest that the travelling public have benefited from reductions in airport charges. Indeed whilst Melbourne Airport domestic landing charges have fallen by 4% real per annum, indicator indices of domestic airfares have risen as evidenced in the following chart.



It is APAC's view that whilst many of the benefits envisaged by the reform of Australia's airports have been delivered, pricing regulation has not met the standards set out in the above aspirational statements. The arrangements have led to some perverse outcomes and the industry has been involved in a process of almost continuous regulatory discovery, both of which generate uncertainty that has and will continue to effect investment and other business decisions. The current arrangements do nothing to encourage an environment in which normal commercial arrangements between airport operators and airlines will emerge.

When the then Treasurer introduced the PS Act in 1983 it was as part of a range of measures underpinning a Prices and Income Accord. He said in the Second Reading Speech the Act would establish a framework that

…would focus on areas where effective competitive disciplines are not present and where price or wage decisions have pervasive effects throughout the economy. Generally, both conditions will be met before a body is made subject to surveillance.

APAC believes that the countervailing market power of the airlines does provide effective discipline and even if it does not, recourse can be found through both Parts IIIA and IV of the *Trade Practices Act 1974* (TP Act). It should be clear that airport charges do not have a pervasive effect throughout the economy and there is little evidence that since privatisation they have had an effect on domestic airfares.

It is noted that the 1993 Ministerial statement signalled a shift in the focus of the use of the PS Act towards industries with market power. Part IIIA of the TP Act, which applies to airport services, addresses one class of industries where market power may exist. Clearly, there are industries where market power exists that are not covered by the provisions of Part IIIA of the TP Act however APAC makes no comment on these cases.

The then Treasurer also said in the Second Reading Speech that

… the scheme embodied in the Bill is one of price surveillance, not price control….It will not attempt to hold down prices by administrative fiat.

This is frankly not the experience of APAC. The ACCC's processes are highly detailed and prescriptive. Indeed the processes that have developed are more like those envisaged by the then Shadow Treasurer, Mr Howard, who said in his Second Reading Speech

The Bill is an unwarranted, illogical and totally unjustified interference in the free operations of business in the Australian community.

The ACCC now scrutinises every investment decision airports make in relation to their aeronautical businesses for which a price increase is sought. This is in an environment where most airports have negative earnings (before interest and tax) and where they are positive, the ratio of those earnings to the assets involved is less than 3%. The ACCC determines what expenditures are to be considered for price increases, whether those expenditures are acceptable and how prices are to be calculated. It makes decisions on the basis of its view of the adequacy of discussions between airports and airlines. This is all to constrain price increases that are smaller than those experienced on a weekly basis in metropolitan petrol markets.

APAC believes that there is little merit in replacing the current system prior to its expiry in 2002 (or 2003 for Phase 2 airports). APAC is publicly committed to developing a long term (5 year) pricing agreement with its airline customers that will deliver benefits for all concerned. We believe that if such an agreement can be reached, the will be no need for

APAC's airports to be declared for the purposes of the PS Act and the normal processes of contract law, backed up by the provisions of Parts IIIA and IV of the TP Act will be sufficient to protect the rights of the relevant parties.

However, APAC is mindful of the fact that it if it is successful, it will probably have achieved a world airport first. The question is whether airlines will prefer to just take their chances with the regulators. The question then for policy makers is what structure is required.

One option is to do nothing and allow the processes of the TP Act to run their course. This would most likely occur under Part IIIA. Even if matters were ultimately resolved through arbitration, long term pricing structures with built in increases and mechanisms could be put in place that did not involve action by the ACCC in every instance. This is a fairly common regulatory approach that cannot be delivered under the current PS Act.

APAC's view is, however, that a five-year pricing regulation should be put in place if airports cannot reach a pricing agreement with airlines. Such regulation would need a statutory. Effort should be made to maintain the existing incentives for airports to grow their businesses because this is clearly the main source of public benefit, not reductions in airport charges. As such, the emphasis should be on price regulation, not revenue regulation. However action will be needed to address the state of aeronautical returns. This should not be done via some adoption of a single till which clearly does not contribute to economic efficiency but rather through an objective assessment of what a reasonable return on aeronautical assets should be with a commitment to reach that at the end of a five year period. In setting such a price path, consideration should be given to investment levels during the regulatory period and forecasts of traffic growth. The ACCC should only need to get involved during the regulatory period if it becomes apparent that significant investments are not going to proceed or if unexpected major new investment is required. Price increases could be contingent on meeting certain service quality benchmarks.

In making this submission, APAC hopes to draw out how arrangements under the PS Act are obstructing the intention of the Commonwealth's airport policy, a policy intention APAC wholeheartedly supports.

Current Regulatory Structure

Statutory Basis for Airport Regulation

Economic regulation of airports arises for four principle statues of the Commonwealth Parliament

Air Navigation Act 1920.

Contracting states to the Convention of International Civil Aviation are required to ensure that charges levied by airports on aircraft of other contracting States are no higher than those levied on the aircraft of the state in which the charge is levied.

Trade Practices Act 1974.

Regulated airports are corporations and are therefore subject to this Act. In general, any conduct which may be anti-competitive or abuses market power can be dealt with under Part IV. In addition (as a result of the passage of the *Competition Policy Reform Act 1995*) Part IIIA provides a regime by which access to essential infrastructure services can be sought. Part IIIA makes provision for arbitration on terms and conditions of access (including price) by the ACCC.

Prices Surveillance Act 1983

As mentioned above, certain airport services have been declared for the purposes of prices surveillance and others for price monitoring under the PS Act.

Airports Act 1996

The *Airports Act 1996* is the principal Act for the regulation of airports. It covers a wide range of planning, development and regulatory issues as well as containing the following economic provisions:

- Part 3 - restrictions on airports ownership (foreign ownership, ownership by airlines, cross ownership of certain airport pairs);
- Part 7 - lodgement of certain accounts with the ACCC;
- Part 8 - quality of service monitoring by the ACCC; and
- Section 192 – declaration of airport services for the purposes of Part IIIA of the TP Act.

The Airports Act and PS Act arrangements currently only apply to former FAC airports with significant regular passenger transport services. This is an important issue as unregulated airports are located in the same or at least over lapping markets as regulated airports. For example, Launceston is regulated whilst Burnie and Devonport are not. Similarly, Cairns is not subject to prices oversight but Townsville is. More recently, there have seen suggestions that new domestic entrant carriers have given consideration to serving Melbourne through Essendon Airport or Avalon Airport rather than Melbourne Airport. Regulatory structure seems to be significantly influenced by historic ownership considerations rather than clear policy objectives and analysis. It will be argued later that given the existence of substitutes and countervailing market power, especially but not exclusively in relation to many smaller airports, regulation under the PS Act is simply unnecessary.

PS Act Instruments

Prices Surveillance

The Treasurer has issued three declarations pursuant to s21(1) of the PS Act in relation to airport services that are currently in force. These declarations are substantially the same. Declaration 83 applies to the Phase 1 airports, Declaration 84 to Phase 2 airports and Declaration 85 to Sydney (Kingsford Smith) Airport[5]. The declarations declare "aircraft movement facilities and activities" and "passenger processing facilities and activities". No formal definitions of these are given although a number of items, which are subject to monitoring, are specifically excluded.

Operational effect is given to the price cap for Phase 1 and Phase 2 airports through the Treasurer's Direction 13. The price cap is a weighted tariff basket of annual changes in prices for aeronautical services[6] where the weights are given by the revenue shares in the previous year. The cap requires that prices for the services declared in Declarations 83 and 84 should rise by no more than CPI-X where the CPI is the measure of Treasury underlying inflation as published by the Australian Bureau of Statistics and the value of X is specified in Direction 13. The starting point for prices was those prevailing under the FAC on 1 January 1997. Direction 13 makes provision for the handling of over and under charging relative to the cap in any given year.

In the case of the Phase 1 airports, and most of the phase 2 airports, the value of X has exceeded the underlying rate of inflation since privatisation. This means that compliance with the cap involves a reduction in nominal prices. There is no power in the PS Act to force a reduction in prices but there has been a general pattern of compliance. It is not the PS Act or the ACCC that is causing cap compliance but a view that compliance with the cap was a condition of sale. In other words, a commercial arrangement between two parties (the Commonwealth and the airport owner) is the source of falling nominal airport charges.

Direction 13 provides for prices to be increased outside the cap in three regards:

- 100% of direct costs associated with mandated security requirements are to be passed through the cap;
- Charges employed as part of a demand management scheme are to pass through the cap; and
- Prices for declared services are allowed to increase in excess of CPI-X as a result of necessary new investment. A number of criteria for assessing increases associated with necessary new investment are set out.

The ACCC monitors the price cap at each airport and publishes its findings in the annual regulatory reports.

The Treasurer's Direction 14 sets out arrangements for Sydney Airport. Whilst there is no price cap, the matters that the ACCC must consider in approving increased prices are identical to those contained in Direction 13.

[5] The Sydney Airports Corporation Limited is the successor to the FAC in respect of airports in the Sydney basin (Kingsford Smith, Bankstown, Camden and Hoxton Park). Where Sydney Airport is referred to in this submission, it should be taken to mean Sydney (Kingsford Smith) Airport.

[6] In the case of Melbourne airport two charges, the landing charge and the international passenger charge, account for over 99% of aeronautical revenue.

Price Monitoring

Directions 14 and 16 set out a range of services which are to be monitored for the purposes of s27A of the PS Act. Direction 14 covers Phase 1 and 2 airports whilst Direction 16 covers Sydney Airport. The ACCC publishes the results of its monitoring in the annual regulatory reports.

Some Economic Considerations

Economic Incentives under the Cap

Under the current price cap, strong incentives exist for airport owners to reduce costs and more importantly in APAC's view, to grow volume whilst airlines benefit from falling real (and currently nominal) charges.

Depending on the competitive environment an airport finds itself in it has a capacity to encourage business growth through its own actions, especially in relation to international traffic. Downstream benefits for passengers and regional economies are delivered through a greater range of aviation services and by placing competitive pressure on incumbent airlines through the efforts of airports to attract new carriers and services and therefore grow revenue. In the case of Melbourne Airport, the result has been greater capacity and frequency of services. This not only enhances both inbound and outbound tourism but also makes those areas serviced by Melbourne Airport more able to participate in global markets for other traded goods and services.

The alternative approach is a revenue cap as is in place in most regulated industries in Australia and the UK, including airports. In these cases, a price path is calculated on an assessment by the regulator of a fair return on capital, depreciation and operating costs over a regulatory period, usually 5 years, with an allowance given for capital expenditure. Incentives here arise largely from the ability of the regulated firm to retain the benefits of efficiency improvements achieved during the regulatory period beyond those expected by the regulator although these may be appropriated at the next review.

The recent pricing proposal issued by Sydney Airport seeks to establish a new aeronautical pricing regime based on such an approach and results in a virtually doubling of charges. It is clear from the profit information provided above that returns on airports' regulated business are very low and typically negative. If such an approach were adopted at other airports, increases of similar multiples would result.

Single Till

Airports are unlike many other regulated businesses in that a significant part of their income comes from non-regulated sources. In the case of Melbourne Airport, only about one third of income is derived from the regulated aeronautical business. It is the global view of airlines that aeronautical charges should be determined as a residual. Namely, the revenue needs (including a fair return on capital) of an airport should be determined, revenue from all other sources deducted from that amount and the residual amount provided by airlines – this is the so called single till. At the same time, airlines argue that they should only pay for the services they use.

These arrangements deliver a situation where the prices charged for aeronautical services bear no relationship with the costs of providing them or the value placed upon them by the consumers of the services, namely the airlines.

There is a clear policy problem presented by the single till. To require its use would be to imply that one group of airport users, airlines, should be subsidised by others. This would be contrary to the spirit of economic policy that has been pursued in Australia over the last decade and clearly does not lead to improved efficiency. There are no issues of social equity involved here, only transfers between companies. The airlines argue that other businesses only use the airport because of the airlines flying to the airport. The rebuttal is but if the non-airline businesses were not present, airlines would pay full price and how is efficiency enhanced by airport charges being less than the cost of the provision of services. At the end of the day, this is a debate about largely about alleged historic rights and profits, not economic efficiency.

The Commonwealth Government has not required that charges at regulated airports be determined using a single till, although airports are free to price in this way if they chose. How a regulatory instrument could be constructed under the PS Act is not clear and how it would sit with the matters set out in s44X of the TP Act is also unclear.

The single till is expected to be a central issue raised by airlines in the forthcoming review of airport regulation.

Competition

Overtime, major airports have developed a strong sense of the different markets that they serve. Melbourne Airport sees it's market not just as Melbourne or Victoria but for international and long haul domestic services to encompass Tasmania, South Australia, the ACT and south New South Wales and potentially New Zealand and Sydney.

In 1998 almost 500,000 people whose principal origin or destination is in Victoria enter or leave Australia through other airports. Eighty percent of these were through Sydney. This is clear evidence of a market segment in which there are substitutes in terms of routes. Travellers going to and from Tasmania and Canberra can easily substitute Sydney and Melbourne as their point of departure or entry. Likewise, developing route networks through Melbourne provides South Australian travellers with options beyond those provided by services direct from Adelaide.

Although airline demand for airport use is unlikely to be price elastic in relation to aeronautical charges. Aggressive pricing action by airports may tip the balance in airline decisions whether to add an additional service in one location, especially if well developed domestic networks enable easy on-carriage. Through an innovative co-operative marketing program, Melbourne Airport has been able to grow its international business by 6% per annum since privatisation in an environment significantly constrained by the Asian currency crisis. Competitive advantage can also be found in relation to operational limitations (such as curfews) and terminal design.

Market Power

Most regulated industries, electricity, gas, water and telecommunications for example, are characterised by a small number of large providers servicing a large diverse range of customers in the provision of not only key business inputs but also basic consumer necessities. Regulation in these industries is to protect customers with little market power and indeed, one could form the view that the function of the regulator is to in part solve the collective action problem encountered by a diverse group of consumers.

The provision of airport services is very different. Airports provide intermediate industrial services that constitute a small part of the prices paid by the ultimate consumer, that is the travelling public. Even in those markets where an airport may actually be a monopoly, airlines possess significant countervailing market power. The consumers of these services are not a diverse group of individual consumers, to a large extent they are a group of highly organised corporations with multinational reach and significant political power.

The notion of market power of monopsonists is established in the economic literature. This literature also addresses situations where both the sellers and the buyers command considerable market power. The discussion suggests that the outcome is indeterminate and analysis requires game theory to see how the surpluses might be divided between the two parties. One thing is clear; the outcome must lie, for each of the parties, between its fall-back position or "bottom line" and the upper bound, which defines the maximum possible surplus.

In terms of this analysis, airlines can be expected to use all political and legal weapons to hand in order to limit the upper bound of the airport and therefore start from a position that is well above the bottom line of the airlines. In this context, economic regulation is another weapon the airlines can use to tilt the balance in their favour.

Approximately 80% of Melbourne Airport's aeronautical revenue comes from four customers. These same four customers account for 45% of the airports total revenue. At Launceston airport, Qantas and Ansett account for 98% of aeronautical revenue. By contrast, airport charges amount to about 4% of airline costs[7]. Domestic landing charges account for less than 1% of a full economy return fare between Sydney and Melbourne, a route that accounts for 43% of Melbourne Airport's domestic market and 20% of Australia's domestic market. This is not to say that airports do not possess market power but rather, it is a demonstration of the countervailing market power possessed by airlines.

The break-up of the FAC significantly reduced the bargaining power of Australia's airports as a group whilst at the same time enabling individual airports to compete with each other in ways described above. At the same time, airline ownership and operations have become more concentrated. In recent times, significant cross ownership arrangements have developed between major carriers. Coupled with these have been the development of joint services agreements (Qantas and British Airways and Singapore Airways, Ansett and Air New Zealand) which have required authorisation under s90 of the TP Act because of their potential anti-competitive impacts. The development of the Star and oneworld alliances further concentrates airline activity.

In addition to these arrangements, when considering the question of airline countervailing power, one should consider the bargaining conduct of airlines. The International Air Transport Association (IATA) has long been authorised under the TP Act to act on behalf of its members who are competitors. In practical negotiations, Ansett, Qantas and the Board of Airline Representatives (BARA), representing international carriers (including Qantas and Ansett), are encountered together. APAC has no difficulty with this, indeed it probably reduces transactions costs, however it is clearly the preference of airlines to negotiate together. The starkest example of this is the actions currently in the Federal Court being brought against Sydney Airport by the airlines. There are two identical actions being brought by 20 and 2 airlines respectively.

The political power of airlines is also a relevant consideration. Airlines as a group have global political reach. They employ hundreds of thousands of people and provide both essential and discretionary services (that is tourists) to nations and regional communities alike. Airlines maintain significant government relations teams to influence national policy and to enlist the support of sub-national governments and have an effective international organisation in the form of IATA. Airlines are prepared to threaten service reductions

[7] IATA, *International Airport Review, 1998*.

publicly if they do not get the policy outcomes they desire and through their networks have a capacity to target such action in the areas of greatest political sensitivity.

Airports, on the other hand, have a relatively weak position. They tend to be much smaller organisations with much less capital and their capacity to threaten action without destroying their business is very limited. Indeed in Australia, given the obligations under the Airports Act to operate the airport and the provisions of Part IIIA of the TP Act, there really is no credible political threat available to airports. This disparity in political power must be seen as part of the countervailing market power of airlines.

Problems Encountered with Airport Regulation under the PS Act

Regulatory Uncertainty

Scope of Charges in the Cap

Whilst not being directly involved, APAC is concerned with the general approach adopted by the ACCC in relation to what charges are to be included within the scope of the cap, especially in relation to ground access charges at Perth, Brisbane, Canberra, Darwin and Alice Springs. In its 1998/99 regulatory reports the ACCC appears to have taken a unilateral decision to include charges levied on ground transport operators (predominantly taxis) in the price cap.

The ACCC has reasoned that these are charges for "passenger processing facilities and activities" and therefore within the services declared by the Treasurer. The charges are in fact a licence fee to operate a business on the airport operators' property and it was represented to bidders for both Phase 1 and Phase 2 airports that such charges would not be within the cap, a fact well known to the ACCC.

The effect of this is to place downward pressure on aeronautical charges and further increase the gap between the cost of provision of aeronautical services and the prices paid for those services. Imposing a charge on the user of a scarce asset improves economic efficiency, reducing the level of cost recovery associated with the provision of another detracts from efficiency. This was known to the ACCC in May 1996 when it wrote in relation to the single till.

The residual approach to aeronautical pricing under the operation of the single till discourages efficiency in the provision of aeronautical services and distorts investment decisions relating to their provision since prices are maintained at levels significantly below attributable costs[8]

What the ACCC has done here is merely affect a transfer from the taxi industry to the airlines and destroy economic efficiency in the process.

Necessary New Investment

The main problem that has been encountered with the regulation of the price cap has been the treatment on new investment pass through. The central issue has been what investment should be allowed as necessary new investment. It has taken more than two and a half years, half the life of the regulatory period, for airports to gain a clear understanding as to what is allowable new investment.

When the ACCC considers a pass-through application it is determining the maximum allowable price of a marginal new service (or service enhancement) in a bundle in accordance with section 22 of the PS Act. In doing so, the ACCC considers all costs associated with the provision of the service given the configuration of inputs selected by the supplier having a mind for the most efficient form of production available and allows prices to be increased accordingly.

[8] ACCC, *Inclusion of Non-Aeronautical Contributions and their Impact on the Level of the Price Cap – Options for Consideration*, May 1996

A copy of Melbourne Airport's submission to the ACCC's review of the Necessary New Investment Criteria is included in this submission as Appendix 1 and it is not proposed to revisit those issues here. APAC was largely comfortable with the outcome of that process. However it does believe that the definition of investment remains unnecessarily restrictive. We also remain opposed to the ACCC's view that prices should be reduced when an asset reaches the end of its declared life for the reasons set out in Appendix 1 and we note that the ACCC did not address that issue in its final position paper.

ACCC Processes

The other matter that deserves some comment is how the structure of the ACCC impacts on the regulatory process. APAC has worked hard at establishing a constructive dialogue with officers of the ACCC. There is no difficulty in gaining access to officers of the ACCC and they are keen to hear APAC's, and we believe others, views. However, this information flow is a one-way process. This is not necessary the fault of officers but more that they are unable to commit on behalf of the Commissioners and gaining access to Commissioners is very difficult. This has led to a number of "surprises" from the ACCC, which tend to create the impression that the ACCC is less than transparent and unpredictable. This is particularly a problem in relation to airport regulation because the regulatory policy instruments themselves are quite vague.

A particular case in point was the treatment of rates of return for mandated security projects. Melbourne Airport had approved a rate of return methodology for passenger screening which it the sought to apply in a consistent way to checked bag screening. Melbourne Airport had formed the view from ACCC officers that such an approach was acceptable. The ACCC refused this rate and set a rate equal to Melbourne Airport's cost of debt, almost 4% below that proposed by Melbourne Airport. Melbourne Airport's board was not prepared to invest at a rate almost 5% below its cost of capital and pursued a leasing option which would have ultimately led to higher charges to airlines than under the original Melbourne Airport proposal. The ACCC then conducted a lengthy consultation process around a draft position paper, the ultimate outcome being a cost of capital about 0.5% below that originally proposed by Melbourne Airport.

The issue here is not so much the merits of the matter or the financial outcome but rather this whole process effectively delayed pricing approval by at least four months and has seen Melbourne Airport have to invest over $4 million in order to meet Department of Transport and Regional Services (DoTRS) security requirements without certainty about pricing outcomes.

Institutional Issues

The directions given to regulators in Australia about the regulation of electricity, gas, water and telecommunications run to hundreds of pages, many take statutory form or are intergovernmental agreements. Direction 13 is three and a half pages long and is included as Appendix 2. It is not surprising therefore that there has been significant uncertainty about the rules of the game. This is not the fault of the ACCC. However, one must question why it has taken so long to resolve this issue of necessary new investment and also mandated security.

Airports are probably the most significant industry subject to regulation under the PS Act. The Treasurer presumably on the basis of advice from the Treasury issues the major instruments of economic regulation. At the same time, it is clear from the origins of the Pricing Policy Paper and subsequent experience, airports policy largely resides in the hands of DoTRS. Airports and aviation policy in general is being poorly served by this arrangement, especially when it is clear that the instruments of regulation need to be updated as a result of changing circumstances. This can be illustrated by some examples.

The ABS ceased publishing Treasury underlying inflation in late 1999. The effect of this is to make the price cap inoperable as the measure of inflation the ACCC is directed to use no longer exists. APAC was not consulted on this decision and to the best of APAC's knowledge, neither was any other airport, DoTRS or the ACCC. The matter was discussed with Treasury officials in October along with how Direction 13 was to be altered to allow for the introduction of the New Tax System. Whilst some private indications have been given on these matters, the Treasurer is yet to issue a redraft of Direction 13.

Similarly, there has been significant discussions between airports and DoTRS regarding the uncertainty associated with the coverage of the cap, especially in relation to ground access fees (as discussed above) and fuel through-put levies over the last year or so. However, DoTRS and its Minister are not in control of the necessary instruments and to date these matters remain unresolved and a source of tension between airports, airlines, regulators, policy makers and others.

Successive Commonwealth Governments have seen no merit is establishing industry-based regulators, as is the case in the UK. APAC sees no problem with regulation being administered by a single body, namely the ACCC. Where the problem arises is that those who are responsible for overall aviation industry policy have no control over the airport regulatory instruments. This problem is magnified by the fact that airport policy is not a central issue for those responsible for the instruments. This has led to significant uncertainty that ultimately impacts on industry performance. Whilst airport regulation remains under the PS Act and the Treasury administers the PS Act, this problem will remain.

The solution to the problem is to place the instruments of airport pricing regulation in the hands of those actually involved with the policy and the industry in general. This would ensure that the regulatory structure is more able to adapt not only in response to problems that develop within it, but also in response to general developments in the aviation industry and policy.

The Airports Act could be amended to allow the Minister responsible for that Act to make regulations in relation to pricing and for those regulations to be administered by the ACCC. This approach is adopted in Parts 7 and 8 of the Airports Act in relation to accounts and quality of service monitoring and there appears to no legal impediment for a similar approach being adopted for pricing. Consultation with Treasury and the ACCC would ensure consistency with general microeconomic and regulatory policy. Such an approach would also solve many of the problems encountered to date which arise out of the particular structure of the PS Act.

Regulatory Burden

The PS Act is designed to deal with individual pricing actions. As a result, the ACCC is required to scrutinise each and every pricing action of airports, no matter how trivial. The process that has evolved is for airports to put a proposal to airlines, for those responses to be considered by the airport, a formal proposal to be made to the ACCC, the ACCC then to consult with users, the ACCC then issue a draft decision and seek formal comment and then make a decision.

In consideration of a recent price increase for Perth Airport, this process took 4 months from the time of lodgement with the ACCC to the final decision being issued. The draft and final decisions both run to approximately 50 pages in length. All this achieved was a price increase of 0.5% for domestic aircraft movement charges and 0.7% for international movement charges. Melbourne Airport has just submitted a proposal to increase landing charges by 0.9% and international passenger charges by 1.2% - it will be interesting to see how that matter proceeds.

It is unlikely that this is the process that the Parliament had in mind when it set a period of 21 days to be the required period of notice that declared person under the PS Act must give the ACCC before increasing prices. It is not possible for APAC to estimate the compliance costs that others have encountered in these matters although we note that Perth Airport did retain highly respected consultants to assist them in this matter and that the ACCC also used consultants. Many airports have chosen to rely on external advice on regulatory management. APAC, because of its size, is able and has chosen to retain much of this expertise in house but also draws on the resources of BAA plc and pays for that assistance.

Regulatory Gaming and Beneficiaries

As seen in the introduction, there is no evidence that real reductions in airport charges have been passed onto the end consumer, the travelling public. Qantas recently reported a record after tax profit of $338 million for the half year ended 31 December 1999, an increase of 52% over the previous corresponding period. On April 20, Qantas announced a 3.5% domestic fare increase. Whilst not as pronounced, there has also been a significant improvement in Ansett's profitability since airport privatisation. If it is actually the case that reductions in airport charges are not being transmitted through to fares, then we are only left to assume that the effect of the regulation of airport charges is to support the interests of airline shareholders.

The current regime is clearly desirable from the point of view of the airlines. The ACCC has a brief only to deal with the market power of airports, and not the countervailing market power of the airlines, and in the case of domestic travel, the market power of airlines in downstream markets. Thus, it is to be expected that the ACCC's decisions will ultimately favour the airlines.

The ACCC's services are essentially free from the point of view of the airlines – the burden of proof is always put on airports to respond to airline claims no matter their merits and the ACCC has indicated it places great store on airline support for pricing proposals. This creates a clear incentive for airlines to indulge in regulatory gaming which is not ultimately about benefits to consumers but rather about the division of rents to be found in the aviation industry as a whole.

Unnecessary regulation

The question that needs to be asked why the Government needs to intervene in these commercial processes? Given the existence of countervailing market power and no consumer benefit, the only answer is that regulation provides a cheap mechanism to the parties for dispute resolution than could be found in the courts or through other procedures such as commercial arbitration. Airport experience to date has been one of a costly and time-consuming process.

In Part IIIA of the TP Act there are provisions to ensure that airlines can get access to facilities at an arbitrated price if a commercial outcome cannot be reached. Airports cannot withdraw from the business as this places them in fundamental breach of their lease, which fundamentally means they are dependent on the airlines – no planes no income. The question must be asked given Part IIIA of the TP Act and the provisions of Part IV of the TP Act restraining anti-competitive conduct and abuse of market power, is the use of the PS Act regulatory overkill?

Airports control land and facilities, which because of their location, airlines and other businesses need to use. In areas such as office space, terminal lounges, freight facilities and car parks, airport owners would seem to possess market power of a similar degree to that possessed in relation to currently declared services. To date Melbourne Airport has concluded a number of successful negotiations in relation to international lounges and freight facilities with no charges of abuse of market power. Office rents have not been increase since privatisation despite a capacity to do so. The question is why should it be assumed that market power in relation to aeronautical services will be abused when the same organisation, possessed with similar power, has not abused it in other areas.

The PS Act is designed to deal with individual abuses of market power. The current regime assumes that there is a potential abuse of market power every time airports seek to increase their prices.

APPENDIX 1

28 January 2000

Mr Margaret Arblaster
General Manager – Transport and Prices Oversight
Australian Competition and Consumer Commission
Level 35 The Tower
Melbourne Central
360 Elizabeth Street
MELBOURNE VIC 3000

Dear Margaret

Melbourne Airport (MA) welcomes the opportunity to comment on the Commission's Draft Position Paper on New Investment Costs Pass-through.

We understand the Commission's purpose in consulting on this paper is to arrive at a definition, or perhaps a series of tests, to be applied when it considers allowing an increase in the prices subject to the cap constructed under Direction 13. As you are aware, it is currently the policy of the Government that the current pricing arrangements at Phase 1 airports will end on 30 June 2002 and be replaced by negotiated agreements between individual airports and their airline customers. You will also be aware of general conduct in the industry that can at times be highly precedential. We would urge the Commission to be mindful of the forthcoming negotiations between airports and airlines and to ensure nothing that arises from the discussion surrounding this Position Paper in any way constrains or directs the development of outcomes for the post 2002 period. The Commission should in its final Position paper make a clear and unambiguous statement that its conclusions relate only to the administration of Direction 13 and in no way should be seen as dealing with issues relating to pricing of Phase 1 airports beyond June 2002 and Phase 2 airports beyond June 2003 which may or may not be the subject of further directions from the Treasurer.

The structure of the cap – what is the real issue?

When reading the Pricing Policy Paper, one forms the view that it was the intention of the Government that the cap should be "a genuine constraint on prices". The cap, both by it's stated intention and clearly from its design, is not a device for regulating airport profits. Indeed, given the information provided in the Commission's monitoring reports, nor is it a device for ensuring airport shareholders received normal returns on their regulated businesses. The purpose and effect of the cap is to ensure airlines enjoy the benefits of real productivity gains through prices for services that decline in real terms.

Melbourne Airport believes that the most sensible way to view the cap is regulating the prices that airlines pay for various bundles of services. In the case of Melbourne airport, there are two bundles corresponding to two separate aeronautical charges. The first covers services provided through the international terminal and the second can be broadly seem as "airfield" services provided by taxiways, runways, aprons and so on. The cap provides scope for airports to adjust relative prices subject to the requirements of the *Prices Surveillance Act 1983* (the PS Act) and indeed there appears to be no impediment to a total restructuring of charges involving abolishing existing charges and replacing them with new ones.

The cap also provides for charges to be increased when an airport operator undertakes "necessary new investment". Given the above, Melbourne Airport believes the purposes of the pass-through arrangements are in effect to enable the prices of bundles of services to be increased because either the quality of a service is being improved or a new service is being provided.

When the Commission considers a pass-through application it is determining the maximum allowable price of the marginal new service (or service enhancement) in a bundle in accordance with section 22 of the PS Act. In doing so, the Commission considers all costs associated with the provision of the service given the configuration of inputs selected by the supplier having a mind for the most efficient form of production available and allows prices to be increased accordingly.

A popular intermediate microeconomics text describes investment as "the actual creation of new sources of productive services"[9]. This definition is far more in keeping with the economic effect of the Commission's decision than the definition proposed, "an increase in fixed durable inputs", while effectively internalizing the issue of "new" into the definition of investment (old investment is not possible).

If a more restrictive definition based on physical assets, such as proposed by the Commission, is adopted an incentive is created to distort production processes towards those with a stronger emphasis on durable fixed inputs. It is possible to conceive of situations where a more expensive solution is provided simply because the airport operator is unable get a price approved where only labour is involved. Whilst it is conceded that such situations are not likely to be in the majority, there appears to be no reason to adopt a more restrictive definition.

An important point needs to be made about future changes in prices. Once a service is introduced and its price is set, it is up to the airport to provide it. It is assumed the efficiency of its provision will improve at the airport average and so its real price is reduced by X% per annum. However that price, adjusted for productivity improvements through the CPI-X mechanism, is maintained for as long as the service is provided. In particular, it is not reduced (or perhaps eliminated) once the assets providing the service reach their useful life assumed in the pricing proposal. Similarly, the price should not be increased if the asset providing the service is replaced at any time before or after the end of its expected useful life. These are the same conditions that apply in competitive markets. They clearly place the risks of ownership and operation of assets and the provision of services on the airport owner. They provide clear incentives for owners to innovate in the production of services and in particular in achieving the right mix of maintenance and asset replacement whilst the CPI-X mechanism ensures users get their share of the benefits of such innovation. Consider the alternative. If prices fall once an asset reaches the end on an arbitrary assumed useful life and a price increase is allowed for its replacement, there is little incentive for airport operators to extend effective asset lives irrespective of the overall economic benefits of doing so. Statutory QSM reporting and possibly voluntary service level agreements should be designed to ensure services is provided at an appropriate level on an ongoing basis

[9] Hirschleifer, J. (1984) *Price Theory and Applications*, 3rd ed, Prentice Hall, New Jersey, p443.

The nub of the problem – “maintenance capex” and/or “replacement assets”

From the Commission’s paper, it appears the real issue at question is whether recovery is allowable for major infrequent but planned expenditures that may immediately and significantly improve the physical quality of the asset in question.

If the approach set out in the Draft Determination on Electricity Transmission Revenues applied, the problem would not be whether the expenditure is allowed or not. Rather, the question would be should it be taken into account in the year it is made (effectively treated as operating and maintenance expenditure) or whether it is written off over the life of the asset. In any event, the impact would be smoothed in the process that seeks to levelize charges over the regulatory period. However, the airports cap does not in any explicit way make allowance for the actual costs (including capital) associated with services but rather simply seeks to pass productivity gains onto users from what, frankly, is a fairly arbitrary starting point.

The advice provided by the now Deputy Secretary of DoTRS in April 1999 makes it clear new investment must be “demonstrably not part of on-going maintenance of existing capital stock”. This is entirely consistent MA’s view of the pass-through provisions as set out above which implies the fundamental test should be is a new or enhanced service being provided.

The question with overlays (and other similar expenditures such as terminal refurbishments) may be what is going on is not so much maintenance but rather asset replacement. MA’s view is that under the current arrangements, runway works that improve capacity or enable access to new aircraft types clearly involve the provision of new services. Grooving of runways that were previously ungrooved similarly should be seen as investment. Overlay, to the extent they maintain existing services, would not be allowed. It should be noted that in a situation where a new runway was built or a major extension was put in place, an allowance for on-going maintenance and infrequent maintenance (such as overlays) should be build into the allowable price for the new service with the ongoing risks of asset management and service provision residing with the airport operator.

As discussed above, what must be avoided is a situation where incentives are created for airport operators to have a preference between maintenance and asset replacement. A precondition for this is that the necessary financial resources must be available for both types of activity.

The current returns on aeronautical assets are so low as to prevent any real incentive for many airports to undertake expenditure either to prolong asset lives or replace assets. It is therefore to be expected that given a situation where pass-through is available for replacement assets, airports will prefer to replace assets rather than maintain them so as not to divert scarce resources from other areas of their business. Conversely, if returns on aeronautical assets were to approach those available from alternative investments, greater incentives would exist for airports to innovate and invest in their aeronautical businesses.

The long-term solution to this problem does not lie in simply denying pass-through of replacement capital expenditure but rather ensuring adequate returns are generated within aeronautical businesses to provide internal ongoing resources for both maintenance and asset replacement. This would remove the potential for regulatory distortion by effectively removing the need to go to the regulator to get funding.

What's necessary?

It is noted that the Commission's paper does not discuss the question of what constitutes necessary. Melbourne Airport believes this is an important issue that the Commission should also consider and provide guidance on. The interaction of joint-product and natural monopoly characteristics of airport services basically means there may be some capacity for airport owners to effectively force some or all of their customers to consume services they do not wish to consume. The comparison is with a competitive market where consumers can simply elect not to purchase if the terms and conditions are not acceptable although the problem of product bundling is well known in a range of consumer goods markets.

This problem presumably is why airline support for new investment is one of the issues Direction 13 directs the Commission to consider. As a general principle, it can be safely assumed that agreement from users will effectively see the investment classed as necessary. Similarly, the provisions in Direction 13 relating to new entrants would seem to seek to give the Commission scope to approve price increases associated with services to facilitate new entrants even if existing users did not support such price increases. We would assume that this extends to situations where an existing user seeks to lead the market with the introduction of a new aircraft type that requires significant expenditure on the part of the airport to facilitate operations.

There are also cases where airports are required to supply services and airlines are required to consume them. Investment in these services is clearly necessary and mandated security is one of these and is explicitly allowed for in Direction 13. A less obvious case is expenditure needed to comply with new regulations involved in reducing the impact of airport operations on the surrounding community. Melbourne Airport believes reducing externalities created by airport operations effectively reduces the use of common-property community resources, hence improving the overall efficiency of airport operations, and the regulatory compliance can always be seen as necessary. The community service of environmental amenity is clearly improved. Although it is difficult to identify a service being provided to those who are paying for it, it is easily argued that the special environmental issues at airports arise from aircraft operations and as such aircraft operators should meet these costs. As a general principle Melbourne Airport believes that where an airport can demonstrate it is require to undertake expenditure in order to meet new regulatory requirements of any type associated with the operation of its regulated business, such expenditures should be considered necessary and allowed for pass-through.

It is possible to conceive of situations where an airport operator seeks to improve the general amenity or operations of a terminal for the benefit of the traveling public, say as a result in general international trends in airport quality, but is not supported by the airlines because they derive no direct commercial benefit from these improvements. As there are no mechanisms available to charge for such service improvements, the airport would either have to provide them free of charge or seek pass-through in the face of airline opposition. Direction 13 at 6(g) and (h) seems to contemplate this although clarification on this issue would be helpful.

Conclusion

It is not surprising that arrangements developed to govern conduct in what is effectively a new industry will have teething problems and will need to be adapted in the light of experience. However in doing so it is important to keep one eye on the principles and intent of those arrangements. Melbourne Airport is strongly of the view that the purpose of the pass-through provisions is effectively to allow for the pricing of new or improved services. If such a view is adopted then we believe a path forward is clear. However, it must be kept in mind that the circumstances of the cap, and in particular starting prices and their effect on aeronautical returns, necessarily influence conduct and if not handled carefully, can create significant distortions in the regulatory system. That issue must be addressed in the medium term if there is to be truly lighted handed regulation.

Notwithstanding, Melbourne Airport believes it is vitally important that whatever arrangements arise from the development of this position paper should clearly and unambiguously be seen to apply only to the price caps currently administered under Direction 13 and not any other arrangements that may be reached through discussions between airports and their customers or that might arise from the forthcoming regulatory review.

If you wish to discuss this matter further, please feel free to call me on 9297 1368.

Yours sincerely

Dr Warren Mundy

MANAGER ECONOMIC REGULATION

cc. Mr Peter Harris, Deputy Secretary, Department of Transport and Regional Services

APPENDIX 2

COMMONWEALTH OF AUSTRALIA

Prices Surveillance Act 1983

DIRECTION NO 13

I, Peter Costello, Treasurer, pursuant to section 20 of the *Prices Surveillance Act 1983,* hereby direct the ACCC, in exercising its powers and perform its functions under the Act in relation to the pricing of aeronautical services at Adelaide, Alice Springs, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville airports, to give special consideration to the following matters:

(1) Services that have been declared for the purposes of sub-section 21 (1) of the *Prices Surveillance Act 1983* (declared services) are to be subject to a price cap. The price cap will be a CPI-X price cap. The CPI measure used will be the Treasury Underlying Rate of National Consumer Price Inflation, recorded in the year to the previous March quarter, as published by the Australian Bureau of Statistics (ABS cat. 6401.0).

The value of 'X' in each airport's price cap reflects productivity improvements that the Government considers can be made in the provision of aeronautical services at each airport. The Government has determined the following 'X' values to apply in each year of the price cap:

(a) 4.0 per cent for Adelaide airport;

(b) 3.0 per cent for Alice Springs airport;

(c) 4.5 per cent for Brisbane airport;

(d) 1.0 per cent for Canberra airport;

(e) 4.5 per cent for Coolangatta airport;

(f) 3.0 per cent for Darwin airport;

(g) 3.0 per cent for Hobart airport;

(h) 2.5 per cent for Launceston airport;

(i) 4.0 per cent for Melbourne airport;

0) 5.5 per cent for Perth airport; and

(k) 1.0 per cent for Townsville airport.

The starting point prices for the price cap arrangements are the Federal Airports Corporation prices introduced on I January 1997.

The price equation to be subject to the cap is a modified revenue-weighted average price.

Aeronautical services are to be divided into a number of components, each based on a charging category. A revenue yield analysis (revenue as a proportion of an output proxy, for example landed tonnes) will be carried out for each charging component. Changes in charges for each component will then be calculated as a percentage of their previous period value. The result will then be weighted by each component's share of total aeronautical revenue in the previous period, and the components summed.

The price cap formula to be used is a modified weighted average price (MWP) and in its general form is:

$$MWP^t = \Sigma S_i^{t-1} \Delta P_i^t$$

$$S_i^{t-1} = \frac{R_i^{t-1}}{\Sigma R_i^{t-1}} = \frac{P_i^{t-1} Q_i^{t-1}}{\Sigma P_i^{t-l} Q_i^{t-1}} \quad \text{and} \quad \Delta P_i^t = \frac{P_i^t - P_i^{t-1}}{P_i^{t-1}} * 100$$

The main variables in the price equation are:

- revenue shares (S), which represents component's share of total aeronautical revenue;
- prices (P), which are average prices over the relevant time period;
- the percentage change in price from period to period, *AP,-*
- quantities (Q); and
- revenue (R).

Superscripts denote the time or period reference, while subscripts denote the service or charging component. Thus:

- t denotes the current year (the year under consideration);
- t- I denotes the previous year (the year prior to that under consideration); and
- and i and j denote particular services (charging components).

(2) The ACCC is to allow any under-recoveries to be carried over between years within the five year duration of the price cap. The ACCC is to require over-recoveries to be passed back to customers within the following two years from the period of over-recovery (except in the case of year 4, where the over-recovery is to be passed back in year 5).

(3) The ACCC is to allow a I 00 per cent pass-through of those direct costs related to Government mandated airport security requirements. Congestion charges employed as part of a demand management scheme under the *Airports Act 1996* are also to be passed through the price cap.

(4) Quality of service information obtained under Part 8 of the *Airports Act 1996* may be taken into account by the ACCC in assessing compliance with price cap arrangements. In undertaking this function, the ACCC will be expected to take into account the degree of control which the airport operator has over the particular quality measures.

(5) New or v ried charges on existing services and charges on new or varied services, are to be factored into the price cap arrangements if the services are declared services.

(6) The ACCC is to use the following criteria to guide its assessment of proposals to increase charges for declared aeronautical services at a rate in excess of the CPI-X cap as a result of necessary new investment:

(a) the operator's plans for new investment or service innovation and the associated costs;

(b) the relationship between the proposed increases in aeronautical charges and the costs (including the level of rate of return) of the new investment or service;

(c) support from airport users with a significant interest in the investment for the operator's proposals, including in relation to charging changes;

(d) contribution of the new investment/service to productivity improvements at the airport;

(e) overall efficiency of the airport's operation;

(f) the particular demand management characteristics of individual airports, including any demand management schemes in place, capacity constraints and any underutilisation of airport infrastructure;

(g) airport performance against quality of service measures, including services under the control of the airport operator;

(h) airport performance *vis a vis* other Australian airports and any comparable international airports; and

(i) the extent to which the proposed investment will facilitate the operations of new entrants to domestic or international aviation.

While the ACCC must take the above into account in deciding whether to approve a proposal to increase charges outside the cap, each proposal will be considered on its merits having regard to the information available to the ACCC. The weight provided by the ACCC to each of the criteria
(a) to (i) may vary on a case by case basis.

Where the ACCC does not approve a proposal to increase charges outside the price cap, it will provide a statement of reasons for its determination.

(7) This direction replaces Direction No 12 dated 17 June 1997.