

Australian Government

Australian Government response to the Productivity Commission Inquiry into the Economic Regulation of Airport Services

Announced 30 March 2012 by the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, and the Assistant Treasurer and Minister Assisting for Deregulation, the Hon David Bradbury MP.

Overview

The Productivity Commission's (PC's) Inquiry into the Economic Regulation of Airport Services supports the continuation of the current regulatory oversight of airport pricing and quality of service. The Inquiry found the regime has been effective and should continue to operate, with some enhancements, until 2020, with the next review by the PC in 2018.

The Inquiry noted a number of positive outcomes under the current price monitoring regime, including strong investment in new aeronautical assets, a generally good level of service provision, and reasonable aeronautical charges, revenues and profits compared to international benchmarks.

The major recommendations of the Inquiry are to continue the current Australian Competition and Consumer Commission (ACCC) monitoring of airport pricing and quality of service, with some enhancements to the monitoring approach, namely:

- publication by the ACCC of a draft monitoring report;
- a 'show cause' process that would see the ACCC, in the published draft airport monitoring report, having the option to nominate an airport to show cause why its conduct should not be subject to a price inquiry. Where the ACCC is not satisfied with an airport's response, the ACCC should make a recommendation to the relevant Minister that a price inquiry be held under Part VIIA of the *Competition and Consumer Act 2010* (CCA);
- a review of the objective criteria for quality of service monitoring by June 2013; and
- publication of airports' prices, terms and conditions for transport operators' access to airports.

The Government agrees in principle with the PC's recommendations to continue monitoring and improve the operation of the regime, noting that since the ACCC is an independent statutory authority, it is the responsibility of the ACCC to give effect to a number of the PC's proposed enhancements to the monitoring regime as it sees fit.

The Government believes that additional provisions for a formal 'show cause' process as recommended by the PC are not warranted, as the ACCC already has the ability under the current regulatory framework to seek additional information from airports if the ACCC considers this necessary. Where the ACCC has significant concerns as a result of its monitoring program, it can use its existing capacity to make a recommendation to the Minister responsible for competition policy for appropriate action under the CCA. The Minister will consider the information in the airport monitoring reports and any additional information provided by airports in deciding how to act on such a recommendation.

The access provisions under Part IIIA of the CCA also remain in place, and the Government reserves the right to reconsider the regulatory environment. The Council of Australian Governments (COAG) has agreed to a PC inquiry into the National Access Regime by December 2012.

The Inquiry also examined landside access to airports, concluding that transport planning had not been well coordinated and integrated across the levels of government. The PC recognised the Government's recent initiatives under the National Aviation Policy White Paper to better align the planning regimes would assist in this coordination task. It recommends that the improved planning and consultative arrangements be allowed to take their course before a review of their efficacy in three years' time.

The Government's response to each of the PC's recommendations is set out below.

Recommendation 9.1

The Australian Competition and Consumer Commission should publicly release a draft monitoring report and, following consultation with the monitored airports in response to that draft report, subsequently publicly release a final monitoring report.

- **Agreed in Principle.**

The Government agrees that the release of a draft report prior to the release of the final annual monitoring report would give airports an opportunity to provide further information to respond to ACCC preliminary findings, and allow the ACCC to assess the additional information before publishing its final monitoring report.

However, the ACCC is an independent statutory authority responsible for enforcing the CCA and other relevant legislation. One of the reasons for the ACCC's independence is to ensure that its decisions are, and are seen to be, separate from the political process. While the Government supports the release of a draft report in principle, ultimately the decision to publicly release a draft monitoring report is a matter for the ACCC.

Recommendation 9.2

As part of its monitoring report process, the Australian Competition and Consumer Commission (ACCC) should be able to nominate that an airport show cause why its conduct should not be subject to scrutiny under a Part VIIA price inquiry. Such a nomination should be contained in the draft monitoring report which should present, and set out the basis for, the ACCC's preliminary findings.

- **Noted.**

The PC found that the regulatory regime appears to be functioning well, with aeronautical charges, revenues, costs, profits and investment outcomes at Australian airports remaining within the performance range of their overseas counterparts and that the productivity of Australian airports has improved. As the ACCC already has the ability to seek additional information from airports and make a recommendation to the Minister, no additional provisions are required to allow the ACCC to seek further information from airports where the ACCC sees that as an appropriate course of action.

The Government encourages the ACCC to utilise the remedies available under the CCA.

Recommendation 9.3

To nominate an airport to show cause, the Australian Competition and Consumer Commission should form a view that there is prima facie evidence that the airport has, over time, demonstrated a consistent pattern of achieving aeronautical returns in excess of a reasonably expected band of outcomes, having regard to price paths, the quantum and timing of investment and how that bears on quality outcomes and market conditions. These criteria should be included in regulations.

- **Noted.**

See response to Recommendation 9.2.

Recommendation 9.4

An airport's response to the nomination in the draft monitoring report should be made public. Where the Australian Competition and Consumer Commission (ACCC) is satisfied with the airport's response, the final report shall reflect that and no further action will be taken. Where the ACCC is dissatisfied with that airport's response to a show cause request, it shall recommend that the relevant competition Minister invokes a Part VIIA inquiry. If the Minister initiates a Part VIIA price inquiry, the review body would draw on the monitoring reports and also take evidence and consult with the airport operator and its customers. In forming a view about an airport's exercise of market power, the review should examine:

- **whether charges for airport services have consistently been set at a level higher than would be justified on the basis of costs, investment requirements and changes to service quality**
- **how non-price terms and conditions are treated in agreements and how rights to vary such terms are set**
- **the extent to which consultation mechanisms allow for the reasonable provision of (two way) information.**
- **The review body must be guided by the 'Pricing Principles'.**

- **Noted.**

See responses to Recommendations 9.1 and 9.2.

As set out in Recommendation 9.1, the decision to publicly release a draft monitoring report is a matter for the ACCC.

Recommendation 9.5

Assessments of airport behaviour during the next period of price monitoring should continue to be governed by an overarching set of principles. All the current ‘Pricing Principles’ should be retained.

- **Agreed.**

The ‘Pricing Principles’ set an important framework for establishing prices, service delivery and the conduct of commercial negotiations at airports.

The Government expects all airports and current and potential service partners to consider the ‘Pricing Principles’ when negotiating future airport services.

Recommendation 9.6

Where an airport includes recourse to an approved binding independent dispute resolution mechanism as part of its contract formation process, it should not be subject to the show cause mechanism. To be eligible for this exception, the airport’s default binding dispute resolution mechanism must be approved by the Minister. The approved binding dispute resolution mechanism would not preclude the airport and its negotiating partner from subsequently agreeing to their own independent dispute resolution mechanism.

- **Noted.**

See response to Recommendation 9.2.

The Government is supportive of airports including binding dispute resolution procedures as part of the contract formation process.

Recommendation 9.7

An airport-specific arbitration regime activated by deemed declaration of airport services under Part IIIA should not be introduced. Similarly, mandatory codes of conduct and mandatory guidelines to specify matters such as, the allocation of costs to aeronautical and non-aeronautical purposes and building block parameters, should not be introduced.

- **Agreed.**

Deeming aeronautical services to be declared under Part IIIA of the CCA and thereby fast-tracking access to ACCC arbitration side-steps the checks and balances of the declaration process and could undermine the maturing commercial negotiation processes.

Recommendation 9.8

There should be a further period of price and quality of service monitoring at Australia's major airports when the current arrangements end in June 2013. The new arrangements should continue to apply to Brisbane, Melbourne, Perth and Sydney airports until June 2020 and be subject to a review in June 2018.

- **Agreed.**

Monitoring creates transparency and public confidence in the oversight of airports, and provides an evidence base for action if airports inappropriately use their market power.

The commitment to extend the monitoring of airport prices and the quality of services at the monitored airports for eight years affords the aviation industry an extended period of regulatory and investment certainty.

As a condition of removal from the current monitoring regime, Adelaide Airport will be required to join the 2nd tier price and quality of service reporting process established by the National Aviation Policy White Paper (December 2009).

Recommendation 10.1

Quality of service monitoring should continue to apply to the price monitored airports until June 2020. However, specific improvements are warranted:

- **the objective criteria should be reviewed and updated by June 2013**
- **the Australian Competition and Consumer Commission should work with the industry to explore means of standardising the passenger survey across airports, while maintaining low compliance costs**
- **where an airport has submitted itself to independent dispute resolution, and has service level agreements with airlines covering the majority of its passengers, 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**
- **government agencies should no longer be surveyed as part of the program. Any relevant variables that were previously in the government agencies survey can be obtained through objective measures and passenger surveys.**

- **Agreed.**

Quality of service monitoring should continue to 2020.

- **Agreed.**

The ACCC will be asked to review and update objective criteria by June 2013.

- **Agreed in Principle.**

The ACCC should work with industry to consider standardising passenger surveys.

As indicated in Recommendation 9.1, the ACCC is an independent statutory authority responsible for enforcing the CCA and other relevant legislation. Ultimately any decision to work with industry to consider standardising passenger surveys is a matter for the ACCC.

- **Agreed in Principle.**

Government agencies should no longer be surveyed, **but** the coverage of surveys, including surveys of airlines and government border agencies, and the circumstances in which they may or may not be conducted, should be considered alongside the review of the objective criteria.

Recommendation 10.2

In administering the monitoring regime, the Australian Competition and Consumer Commission should:

- **take steps to make as much of its methodology publicly available as possible (subject to a review of statutory requirements)**
- **focus its conclusions on trends over time at a given airport, rather than comparisons across the five monitored airports. Such attempts at benchmarking are better suited to less frequent, broader reviews that can examine the airports in a wider international context.**

- **Agreed in Principle.**

The Government supports in principle changes to the monitoring regime which increase the transparency of the underlying methodology, and promote the consideration of airports' market behaviour over time.

However, as indicated in Recommendation 9.1, the ACCC is an independent statutory authority responsible for enforcing the CCA and other relevant legislation. Ultimately the degree to which the ACCC discloses information relating to its monitoring is a matter for the ACCC.

Recommendation 11.1

For Brisbane, Melbourne, Perth and Sydney airports, the Australian Competition and Consumer Commission should monitor and publish:

- **prices, costs and profits relating to the supply of car parking**
- **car parking capacity, annual throughput and the schedule of landside assets**
- **ground transport access charges and the associated revenues for ground transport operators**
- **qualitative indicators of service provision drawn from passenger surveys.**

- **Agreed in Principle.**

The Government agrees that extending the monitoring parameters for car parking will provide more comprehensive information about competition and demand for alternative means of accessing airports.

However, under the CCA, the ACCC is only required to monitor the prices, costs and profits relating to the supply of car parking by a specified person. As an independent statutory authority, any decision to monitor other aspects, such as ground transport access charges and associated revenues, is a matter for the ACCC.

Recommendation 11.2

Mandatory Part IIIA access undertakings setting out prices, terms and conditions for surface transport operators to access airports should not be introduced.

- **Agreed.**

The PC found the access charges do not appear excessive and remedies are available should the ACCC consider potentially anti-competitive behaviour by airports.

The enhanced monitoring and publishing of access charges for airports (Recommendations 11.1 and 11.3) will provide more information on the competitive arrangements for passengers' access to terminals.

Recommendation 11.3

The price monitored airports should be required to publish on their websites the general prices and terms and conditions of access for transport operators and provide this material to the Australian Competition and Consumer Commission as part of their reporting obligations for monitoring. This should not preclude airports and their customers from being able to agree to vary these general conditions to suit their particular circumstances.

- **Agreed.**

Requiring airports to report charges and terms and conditions of access to the ACCC is compatible with the level of current regulatory oversight and will provide ground transport operators with greater certainty and improve transparency without increasing regulatory costs. Airports will be requested to publish the information on their websites.

Recommendation 12.1

The recent changes to master plan requirements and the introduction of the consultative forums should be allowed to take their course before other policy options are considered. A review into the efficacy of these measures should commence in 2015.

- **Agreed.**

In strengthening the consultative arrangements required for airport Master Plans and introducing Planning Coordination Forums and Community Aviation Consultation Groups, the Government signalled its intent to more closely engage with local and state communities. As these arrangements only commenced in 2010-11 it is appropriate they be given time to mature.