

23 December 2022

Mr. Gennady Kleiner
Director, Ports and Airports
Australian Competition and Consumer Commission
GPO Box 520 MELBOURNE Vic 3001

Via Email: airportsandports@acc.gov.au

Dear Mr. Kleiner,

Airport monitoring – more detailed information on financial performance of airports

I am writing to you to today to respond to the Australian Competition and Consumer Commission's (ACCC's) *Airport monitoring – more detailed information on financial performance of airports* consultation paper (the Paper) at the four airports (Brisbane, Melbourne, Perth and Sydney) monitored by the ACCC.

This letter from the Australian Airport Association (AAA) supports the submissions provided by the four monitored airports and adds additional views from a whole-of-industry perspective on the Review and the consultation paper (the Paper).

The AAA makes the following comments on the Paper:

Potential for regulatory overreach by the ACCC:

The AAA is concerned that the ACCC has interpreted the Australian Government 'support in principle' response to Recommendation 9.4 from the Productivity Commission (PC) 2019 *Inquiry into the Economic Regulation of Airports* as support from Government to engage in greater regulation of the monitored airports. This is despite the findings by the PC in previous Inquiries dating back to 2002 that any market power exercised by the monitored airports is well and truly balanced by the countervailing market power of airlines.

While the AAA recognises the ACCC's intent to implement the PC's recommendations, it is important the ACCC does not exceed the Government's qualified, in principle remit for change to the system.

The proposed monitoring regime could undermine competition in the aviation industry:

Concerns raised by monitored airports in the Paper on the collection and publication of additional information the ACCC proposes to collect are valid, particularly for the ability of other industry participants to reverse engineer commercial agreements between airlines and airports and undertake comparative analysis between airlines. The ability to do this under the proposed regime, along with some of the proposed new measures in the Airport Quality Indicators (AQI) paper could provide a negative economic and customer outcome at airports by inhibiting investment in terminal infrastructure and facilities valued by customers. These outcomes were noted as being raised by monitored airports in the Paper (p. 12).

The ACCC has not considered the costs of implementation for the new regime:

The changes to the current monitoring regime foreshadowed in the Paper (and the parallel AQI paper) represents a step change in the quality and quantity of data provided by airports. Proposed changes

entail complex financial, statistical and regulatory analysis. The view of the AAA in its discussions with monitored airports does not suggest the ACCC considered this aspect when developing its proposals.

The AAA also brings to the ACCC's attention the comments from PC Commissioner Paul Lindwall at the recent AAA National Conference, where he stated the ACCC's views were divergent to those of the PC and National Competition Council on the economic regulation of airports:

"While the National Competition Council supported the Commission's views, the ACCC had a different take... I would characterise the ACCC's view as the mere possession of market power being a sufficient reason for additional regulation. But that neglects the cost of regulation – direct and indirect – and the impact that it can have on investment and competition."

Should the proposed regime be put into place, monitored airports will need to fully understand how to best resource their organisations to implement frameworks that integrate the new requirements for qualitative and quantitative datasets into existing business systems. Achieving these new requirements will be both resource intensive and time consuming, particularly to balance the objectives of the efficient collection of data and the protection of sensitive commercial information.

The consultation process was rushed:

The AAA notes the speed in which the ACCC has attempted to conduct consultation on the Paper, which contains the potential for a step change in the amount of commercially sensitive data provided to the ACCC by airports. This has eroded the confidence of airports in the ACCC's ability to conduct constructive and meaningful consultations with industry.

Given the significance of the Paper, the three-week period for consultation (from 28 October 2022 to 18 November 2022) was rushed and insufficient, particularly when this process ran in parallel with the second round of consultation on the AQI paper. The ability of the AAA and the monitored airports to provide detailed feedback on the ACCC proposals across the two papers was a significant call on the finite resources of these organisations.

It is noteworthy that consultation on the two stages of the AQI discussion paper ran for over three months from July 2022 to November 2022. While the AAA has been able to negotiate a longer response time (approximately seven weeks) for itself and the monitored airports, an initial decision by the ACCC to undertake a lengthier consultation period for the high impact/ high consequence proposals contained in the Paper would have been better received by industry.

General Comments:

The AAA and the monitored airports support a transparent monitoring regime that is reflective of the outcomes valued by airport users. Attempts towards increased transparency, however, should not become an attempt to introduce a monitoring regime that potentially distorts assessment of airport performance by the competition regulator or industry participants.

The AAA continues to remain concerned by the high probability of overlap between the ACCC's efforts to step up its economic regulation at designated airports with the forthcoming and parallel efforts taking place in 2023 through the next PC *Inquiry into the Economic Regulation of Airports* and the economic aspects of the *Aviation White Paper* being conducted by the Department of Infrastructure, Transport, Communications, Regional Development and the Arts (DITCRDA). A better understanding of how the ACCC will work through Treasury and DITCRDA to find an appropriate solution to reduce the repetition

of inquiry will be important in dealing with perceptions that Federally leased airports, particularly the four monitored airports, are over-regulated compared to other participants in the aviation industry.

Should your office require further information from the AAA on this submission, please contact Scott Martin, Director Policy and Advocacy via email at [REDACTED] or via telephone on [REDACTED]

Yours sincerely,

A handwritten signature in blue ink, appearing to read "James Goodwin", with a long horizontal flourish extending to the right.

James Goodwin
Chief Executive