



The Australian Competition & Consumer Commission (ACCC)

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IATA COMMENTS ON ACCC AIRPORT MONITORING – MORE DETAILED INFORMATION ON FINANCIAL PERFORMANCE OF AIRPORTS CONSULTATION PAPER

The International Air Transport Association (IATA) is the trade association for the world's airlines, representing some 290 airlines or 82% of total air traffic. Many of our member airlines including Qantas Airways and Virgin Australia operate at airports regulated by the ACCC. IATA supports many areas of aviation activity and helps formulate industry policy on critical aviation issues including the economic regulation of airports.

The Productivity Commission (PC) and the ACCC have correctly identified that the lack of meaningful detailed information and cost allocation are gaps that need to be addressed. It is necessary to do so as in order to understand whether these airports are abusing their dominant position.

Collection of disaggregated financial and operational data

Questions on the ACCC collecting disaggregated data

1) What are your views about the options we have identified for addressing the PC's recommendation 9.4? Are there other options that should be considered?

The options assessed appear to be the correct ones, within the limited scope of review given to the ACCC by the PC. IATA would have preferred a more effective regulatory regime with the necessary regulatory backstop in place to address existing gaps IATA identified in our previous submissions to the PC and the ACCC.

2) What are your views about the advantages and disadvantages for each of the options? Do you think there are further issues that should be considered, and if so, what are they and why are they relevant?

The options should be assessed against the objective of determining whether one (or more) of the monitored airports are abusing their dominant position in the provision of international services. This could manifest through the existence of excessive profits or through inefficiency being passed on to users.

There is an additional complexity to consider, which is related to setting a framework that eliminates/controls for any potential perverse incentives when carrying out cost allocation. For instance, a common one (in dual/hybrid till regimes) is to allocate as many costs as possible to the aeronautical costs in order to maximize profitability on unregulated non-aeronautical activities.

- Option 1 – Despite the availability of more data along with a description of cost allocation methodologies, we do not see this as an acceptable option as it will not adequately address the outcomes being sought by the PC and the ACCC. In particular, we note that 4.5 talks about airports providing their methodologies for allocating cost but in no detailed or structured manner. Cost allocation can be a very detailed exercise. If the ACCC does not have access to such



information it will not be able to determine whether the cost allocation has been done in an appropriate manner.

- Option 2 – IATA has previously highlighted the need for the ACCC to be accorded the power to regulate the airport sector, similar to the approach employed in other monopolistic environments such as the energy, water and telecommunication sectors. Option 2 does not address this aspect of the need to accord the ACCC the necessary power. This will limit the ability of the ACCC to effectively address the improvement objective recommended by the PC.

We agree that Option 2 is better than Option 1. This option envisages airports providing a much more detailed explanation of how they have allocated their costs and allows for, to an extent, data collection in a more systematic manner.

However, allowing airports to set their own cost allocation procedures would lead to airports that cannot be compared with each other to determine the required/expected level of efficiency. As mentioned previously, abuse could manifest through excessive profitability as well as through inefficiency. Having airports with potentially 4 different cost allocation methodologies would make it very difficult for the ACCC to compare costs across airports and would therefore constitute a missing opportunity to assess efficiency.

It would be sensible for the airports to accommodate the requirements of the ACCC rather than the ACCC having to accommodate the regulated entities which could limit the effectiveness of the ACCC in carrying out its monitoring functions.

We support the provision of audited accounts. However, extra care is needed that an audited account does not necessarily mean that the cost allocation methodology used is the most appropriate one. This is where regulatory guidance on how costs should be allocated is a must.

In terms of reporting costs, we don't believe that the airports would incur substantial additional costs from the additional reporting since they already have one in place due to the dual till regimes. Moreover, in most monitored airports, international and domestic facilities are clearly separated in different terminals, facilitating some of the reporting already.

- Option 3 – This is the only option that will provide the ACCC with the necessary detailed data to conduct informed assessments of airports' performance and to ensure costs are allocated in a fair and equitable manner including a greater understanding of how these are then recovered from the various user groups.

Once airports have established the mapping of data and set up their reporting, we do not foresee significant ongoing compliance costs to meet the requirements of the ACCC (e.g. airports already have detailed cost allocations systems in place). If the necessary expertise is not available within the ACCC in the near term of implementation, independent validators can be engaged to conduct such reviews or to help to develop the methodology. Whilst this option is more elaborate than the other two options and potentially could be more costly during the implementation phase, the comparison should be made instead with the scenario of where airports are able to exercise their market power in an unrestrained manner under the existing monitoring regime and what impact that may have to airport users and the wider economy.

If option 3 is considered not feasible in the medium term and Option 2 is selected for implementation, IATA recommends that an escalation mechanism be specified on how the ACCC



will deal with instances when airports are found to be not in compliance with its obligations and withholding information. The ACCC might also want to consider a longer-term plan to move towards implementing Option 3, with Option 2 viewed as the intermediate transition, once the ACCC has gained sufficient expertise on the matter.

In addition, this enhanced requirement would provide the necessary clarity on the costs allocatable to other service providers utilizing the airport facility such as government agencies which should be recovered from existing fees/taxes collected separately such as through the Passenger Movement Charge (PMC) to prevent double charging airport users. We continue to have a lack of transparency on the charge imposed, both on the services/components it is funding and how the level of the charge is determined.

3) Do you agree with the ACCC's preferred option (Option 2)? Please substantiate your response.

As detailed in our response to the previous question, whilst we understand the rationale of the ACCC's preference for this option, we do not believe that it is appropriate for the airports to use their own preferred cost allocation method as a regulated entity. The ACCC should be explicit in its requirements for it to effectively deliver on its mandate as a regulator. There would still be too much scope for regulatory gaming if the ACCC allowed the companies to set their own rules.

4) Is there a significant difference in reporting requirements between Options 1 and 2? If so, please explain why.

Based on our understanding, Option 2 would constitute a big difference from Option 1, as the former would entail the provision of detailed cost allocation data (including drivers, etc) whereas Option 1 would not.

5) Do you have any concerns about the ACCC collecting commercially sensitive information under our preferred approach (Option 2)? If so, what are they? How do you think these concerns can be mitigated?

This is a non-issue and something that all regulators will have to deal with. If we draw a parallel to an investigation, the investigator must have access to all available information rather than being restricted by confidentiality or sensitivity concerns. The ACCC has proven experience in managing commercially sensitive information as it has been doing so for other regulated sectors. An airport should not be treated as an exception to the case.

Questions on the ACCC publishing disaggregated data

6) What do you consider to be the benefits of publishing the disaggregated financial information recommended by the PC in recommendation 9.4?

Transparency is key for several reasons. One of the main ones, which relates to the objective of this exercise, is that it would allow interested parties to identify whether airports have abused their dominant position/market power. The PC has pointed out areas in which potential issues exist, and it would be logical to be able to see that additional information.

Transparency is also critical to establish the necessary confidence in the ACCC. It could, as well, improve the airlines negotiating position on an uneven level playing field. Information is the only tool that airlines have in a "monitoring" regime. The more it is available, the better.



Furthermore, local anti-trust requirement is in place and will provide the layer of protection/assurance needed by airports.

7) Do you believe that the benefits you have identified outweigh the costs? Please explain your response.

Option 3 should not be compared to the other two options from the cost perspective or the level of intrusiveness. It should first be seen as the option that will allow the ACCC to deliver on its mandate in curtailing the exercise of market power by airport operators (either through the excessive profits or through inefficiency). As noted earlier, airports already allocate their costs due to the dual till regime, and further reporting requirements are unlikely to increase airports' costs significantly.

8) The ACCC invites the monitored airports to publicly substantiate their claims on why publishing specific information in recommendation 9.4 would damage their competitive position. As part of this, the ACCC requests:

- **specific examples to illustrate your concerns**
- **suggestions on how this could be mitigated.**

The ACCC has the ability to withhold sensitive information, and this can be applied to information that might be deemed sensitive. However, we must also recognize that the four monitored airports are not in competition with each other and hence there would be limited information that could jeopardize their competitiveness, if any.

9) Do you believe that the existing provisions in respect of confidentiality under the Airports Act and the CCA are insufficient to protect the confidential information of the types identified in recommendation 9.4? If so, please explain why.

IATA will defer our response to this question to the airlines with access to legal advice locally.

10) The ACCC invites the monitored airports, airlines or other interested parties, to comment on the extent to which publication of specific information in recommendation 9.4 is likely to adversely impact on competition between airlines in Australia. As part of this, the ACCC requests:

- **specific examples to illustrate how the publication of data recommended by the PC would allow airlines to back solve aeronautical (or other) charges paid by their competitors or passenger numbers transported by their competitors**
- **suggestions on how this could be mitigated.**

The four monitored airports in Australia are considered major airports given the number of airline customers these airports serve and the high passenger numbers. IATA does not consider the concerns posed by airport operators acceptable as the justification to withhold the required detailed information from the ACCC. As highlighted in our response to Question 8 and Question 11, the ACCC must be provided access to the required information to allow it to make the necessary assessment, including at the sub-airport levels (e.g. terminal, different facilities).

IATA will refer the ACCC to the comments received directly from the airlines and their recommendations to mitigate their concerns if any.



11) Do you have any concerns about the ACCC publishing the information in recommendation 9.4, particularly under Option 2 (as discussed in the previous section), which have not been covered in the questions above? If so, please explain your concerns, including by providing:

- **specific examples to illustrate your concerns**
- **suggestions on how your concerns could be mitigated.**

It is acceptable for the ACCC to withhold data it deems sensitive for public publication. This should not otherwise be a reason to limit the access of the ACCC to this type of airport information required for its assessment. The key would be to maintain the independence of the ACCC in making decisions that align with its mandate and would deliver the best outcomes for consumers.

Question on the ACCC's monitoring of landside access services

12) What do you consider to be the costs and benefits of aligning the ACCC's monitoring of landside access services with its monitoring of aeronautical and car parking services by:

- **amending the Airport Regulations to require each of the monitored airports to collect and provide to the ACCC baseline information on the use, costs/assets and revenues of landside access services each year**
- **Treasury issuing a direction to the ACCC under section 95ZF to monitor landside access services?**

Despite the dual till approach, the ACCC ought to be accorded full visibility of all the activities of an airport operator in order to obtain a holistic understanding that will be necessary to allow it to assess the entire airport ecosystem. Segmenting non-aeronautical activities and data and excluding them from the purview because these activities are not regulated will essentially create regulatory blind spots for the ACCC.

13) Do you believe that the benefits you have identified outweigh the costs? Please explain your response.

We understand that the ACCC has expressed concern regarding the monitored airports exercising their market power on landside access, an opinion that was also supported by the PC. Based on the monitoring report, there are tens of millions of revenues from landside access. The benefits of preventing airports from abusing their dominant position should exceed the marginal additional costs of enhancing an existing cost allocation system.

IATA appreciates the opportunity to provide our comments to the ACCC, to complement the other submissions from the airlines' community. We would welcome discussing our response in more detail as well as understanding the ACCC's views on IATA's submission. Further details can be provided via a conference call with our subject matter experts if needed.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Matteo', with a horizontal line underneath.

Matteo
Area Manager – South West Pacific

cc Richard Tan, Regional Manager Operations, Safety and Security – Asia Pacific