

14 December 2022

Mr Gennady Kleiner
Director
Airports and Ports, Infrastructure Division
ACCC

Via email: airportsandports@accc.gov.au

Dear Mr Kleiner,

Thank you for the opportunity to comment on the '*Airport monitoring - more detailed information on airport performance*' consultation paper, which relates to implementation of Recommendation 9.4 of the Productivity Commission's (PC) 2019 final report of its inquiry into the economic regulation of airports. This consultation stems from the Government's in principle acceptance of the PC's Recommendation 9.4 and request that the ACCC identify amendments to the current record keeping and reporting requirements in Part 7 of the Airports Regulations to align them with the Government's response to the PC's recommendations.

Consistent with our previous submission to the ACCC concerning Recommendation 9.4 (dated 22 July 2022), Sydney Airport believes there is limited justification for seeking additional disaggregated revenue, cost, and operational information concerning aeronautical, car parking, and landside facilities and services. This is because there are several constraints on Sydney Airport's ability to exercise market power.

As recognised consistently by the PC over multiple successive inquiries, the light handed monitoring regime is effective in preventing airports from exercising market power. In the most recent PC inquiry in 2019, the PC found that the current monitoring regime, alongside the countervailing market power of airlines, acts as a deterrent and constraint (respectively) on airports exercising market power.¹ Indeed, the PC found that airports have not exercised their market power in their negotiations or conduct.² This is particularly true in the COVID and post-COVID environment.

During COVID-19, Sydney Airport:

- rolled over aeronautical agreements on largely the same terms as negotiated pre-COVID. This meant that Sydney Airport knowingly took on the substantial passenger risk during the pandemic and did not achieve a return on aeronautical costs in line with the risks involved in providing the relevant services (as it is entitled to under the Aeronautical Pricing Principles); and
- provided significant rental abatements to airlines and other tenants, including free aircraft parking among other support initiatives.

The post-COVID environment highlights that there is significant competition between airports for airlines and passengers. The NSW, Victorian, Queensland, and Western Australian governments all have dedicated funds (alongside complementary investment from airports) with the principal aim of attracting back aviation services, with a particular focus on international airlines. Having engaged and negotiated with airlines regarding these funds over the past year, it is clear to Sydney Airport that there is significant competition between major airports for airlines and passengers, which again challenges the notion that airports have the ability to exercise any market power.

¹ PC, *Economic Regulation of Airports, Productivity Commission Inquiry Report*, 21 June 2019, p14, p317

² PC, *Economic Regulation of Airports, Productivity Commission Inquiry Report*, 21 June 2019, p28.

Sydney Airport will face further competition to attract airlines and passengers in the Sydney basin given the impending entry of Western Sydney Airport (WSA) in 2026. This is evident with WSA already attending global events with airports and airlines in order to attract airlines and services. This activity is beginning to challenge the notion that Sydney Airport is, or will be, a 'regional natural monopoly,' as labelled by the ACCC.

For the reasons set out above, Sydney Airport believes that there is no need for additional monitoring requirements to be imposed at this time. As you know, the aviation industry was decimated during COVID. Now should be a time when airports are focused on capacity building (in competition with each other for airline capacity) and the recovery of the industry as opposed to dealing with increased compliance burdens which are costly and resource intensive.

As noted at **Appendix A**, if regulatory change is to happen (which Sydney Airport continues to maintain is unnecessary), Sydney Airport's preferred method would be a modified version of Option 1 (**Modified Option 1**), so that it reflects the recommendation made by the PC in 2019. Sydney Airport also considers that Modified Option 1 provides the ACCC with significantly more information with which to monitor airports in a manner that minimises (to the extent possible) the increased costs associated with establishment of, and ongoing compliance with, the enhanced reporting requirements. Options 2 and 3 go substantially further than the PC recommendation and will impose a significant, unwarranted and unjustified additional cost and compliance burden on Sydney Airport.

It is also important that airports be given sufficient lead time to implement any changes that arise from this process. Sydney Airport notes the consultation paper states at least 12 months lead time will be needed. Sydney Airport agrees that at least 12 months lead time would be necessary to implement Modified Option 1. This timeline may need to be extended depending on the timing of any changes stemming from the PC's Recommendation 9.5. If Option 1 (in its entirety), Option 2 or Option 3 are ultimately recommended, further consultation should take place to determine an appropriate timeframe for changes to be made considering:

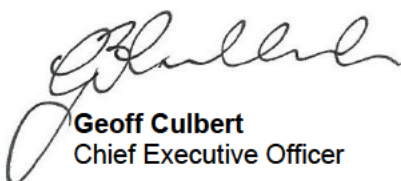
- the scale of the changes stemming from any additional reporting requirements; and
- resourcing challenges facing airports in the post-COVID environment.

Sydney Airport would welcome the opportunity to meet with the ACCC during the consideration of submissions to discuss the proposed changes and any aspect of our submission. Importantly, Sydney Airport would appreciate further engagement with the ACCC when a solidified position has been formed, prior to remitting the final advice back to the Federal Government.

Further, Sydney Airport notes that a number of the PC's recommendations have not yet been consulted on or implemented. While Sydney Airport accepts that is largely the domain of the Department of Infrastructure, it is worth noting that implementation of many of those other recommendations should occur a timely manner.

If you require any further information in the meantime, please do not hesitate to contact Sydney Airport's Head of Public Affairs, [REDACTED]

Yours sincerely,



Geoff Culbert
Chief Executive Officer

Option 1

Scope

While Sydney Airport considers that the provision of any additional information is unwarranted, costly and burdensome, Modified Option 1 (subject to the amendments set out below) strikes the most reasonable balance between:

- providing the additional information the ACCC is seeking;
- moderating increased compliance costs; and
- maintaining appropriate levels of flexibility with regards to cost allocation.

Subject to the comments set out below, Modified Option 1 also most closely reflects the recommendations made by the PC in 2019. The PC's recommendations were made following an extensive inquiry and careful consideration of the need for reform while balancing the increased costs of complying with enhanced reporting requirements, particularly where airports were found not to have exercised their market power in their negotiations or conduct.³

In terms of the provision of the specific information the ACCC is seeking under Option 1, if regulatory change is to happen, Sydney Airport is prepared to agree to provide the following information (i.e. Modified Option 1) as it most closely reflects the PC's Recommendation 9.4:

- Revenue, cost, and operational information in relation to aeronautical services split out into international, domestic and regional services. This will require a considerable amount of work, but is not overly onerous.
 - However, Sydney Airport notes that the breakdown of revenue and costs for aeronautical services will not provide meaningful information to the ACCC. This is because charges for regional aeronautical services and facilities have been subject to a price notification and price cap regime since July 2002. Since that time, Sydney Airport has notified the ACCC of proposed changes to its prices or services for regional aeronautical services on only three occasions. During that period, Sydney Airport's charges for regional aeronautical services have not increased, even by CPI. This means that the charges for regional aeronautical services and facilities do not reflect the actual cost of provision of those services, which are effectively cross-subsidised by domestic and international passengers.
- Revenue, cost, and operational information for at-terminal and at-distance car parking services and facilities. This will require detailed work and analysis to ensure robust allocative methods.
- Revenue, cost and operational information for each landside transportation mode. This will require extensive work to ensure robust allocative methods.
- An income statement split out into:
 - aeronautical services - international, domestic and regional aeronautical services; and

³ PC, *Economic Regulation of Airports*, Productivity Commission Inquiry Report, 21 June 2019, p28.

- non-aeronautical services - at-terminal and at-distance car parking services, each landside transportation mode, and other (being the remaining services provided by Sydney Airport).
- A description of the cost allocation methodology used by Sydney Airport to allocate common costs to the various services and facilities. This will, by its very nature, involve some level of arbitrariness, but Sydney Airport will describe the basis on which it has allocated those common costs, including any assumptions made in allocating those costs.

Given the shared nature of many infrastructure costs, the ACCC should indicate to airports how they would publicly report on any common costs attributed to aeronautical, car parking, and landside services and facilities.

However, Sydney Airport is not prepared to agree to the provision of balance sheets being broken down according to the various services provided by Sydney Airport, as is envisaged by paragraph 4.7 of the consultation paper.

This goes beyond the PC's Recommendation 9.4. As you know, the PC's recommendations related solely to provision of cost and revenue information, and broken down only in respect of certain listed services. The PC did not recommend provision of airports' assets and liabilities across those services. As noted above and below, the PC's recommendation followed an extensive inquiry and careful consideration of a recommendation that would not impose disproportionate additional compliance costs and burden on airports. Sydney Airport does not consider that departing from the PC's recommendations and imposing further regulatory burden (and cost) on airports is warranted or justified. This is important in the context of the consistent findings by the PC that airports do not exercise market power in their negotiations or conduct.

In addition, the provision of a breakdown of all assets and liabilities at a granular service level will necessitate Sydney Airport arbitrarily allocating common assets and liabilities to those services. Sydney Airport does not currently do this for common assets that are used for the provision of multiple services (e.g. runways and aprons are used for domestic, international and regional services; landside roads and certain other landside facilities are used for a variety of ground transport modes). Sydney Airport also does not currently allocate its liabilities across each of the services it supplies. For example, one tranche of debt could be raised to fund multiple capital projects, operating costs across the entire airport, to pay down other debt with an earlier maturity date, among many other things. As such, any breakdown of common assets and liabilities would be difficult to determine and be arbitrary.

For the reasons set out above, Sydney Airport considers that the ACCC should modify Option 1 to remove the requirement to provide balance sheets in the manner set out in paragraph 4.7 of the consultation paper, which will ensure consistency with the PC's recommendation.

Compliance costs

Sydney Airport anticipates that the initial set up costs to establish the appropriate models and methods to implement Modified Option 1 would be approx. \$250,000. There would be additional ongoing costs for maintenance of processes and annual reporting. This cost is based on staff time to establish the relevant processes, procedures, and reporting methods, particularly as it relates to cost allocation methods. Sydney Airport notes that software and system changes may be required if the ACCC goes beyond the parameters set out in the consultation paper, which would add additional cost to the figure listed above.

In arriving at Recommendation 9.4, the PC carefully considered the increased costs of compliance for airports and weighed this against the perceived benefits of the provision of additional information. In particular, the PC noted that:

...increasing the information requirements would be expected to increase airports' compliance costs by less than \$200 000 per airport each year. This is material, but not unreasonable given the potential effects on the community of airports exercising their market power.⁴

Given this, Sydney Airport considers that Modified Option 1 is not only the most consistent in terms of the additional information requirements recommended by the PC (which the Government has accepted), it is also the most consistent with the PC's commentary with respect to a reasonable and proportionate additional compliance cost and burden on airports.

Confidentiality

Sydney Airport maintains that Modified Option 1 still represents a significant change in reporting requirements and increases the reporting burden and compliance costs. Sydney Airport also has ongoing concerns that some of this information could put Sydney Airport at a competitive disadvantage, particularly with respect to at-distance car parking, and among airlines, in the future as WSA enters the market.

In relation to at-distance car parking, public disclosure of full cost, revenue, and operational information would put Sydney Airport at a competitive disadvantage compared to off-airport car park operators. This is because Sydney Airport only runs one off-airport car parking product and thus publication of all this information to this level of granularity would give off-airport operators full visibility of this business line and the ability to back solve pricing strategy, which is not available to Sydney Airport about their operations. This would have a distortionary effect on the market and create an unlevel playing field.

Given the impending entry of WSA in the Sydney basin (with an existing presence in the competitive landscape as noted above), more granular information on costs and revenues for aeronautical facilities and services, could lead to competitive disadvantage as our primary competitor will have a clear view on Sydney Airport's key cost inputs and may use this information in competing for airlines and engaging potential contractors and suppliers. Operating costs at airports are a key driver of airline route and network decisions and to share such costs would impact the competition between airports for airline services.

Timing of implementation

Any changes will need appropriate lead time. Sydney Airport notes the ACCC has stated at least 12 months would be required. Sydney Airport agrees at least this amount of time will be required. Regarding exact timeframes, the ACCC should have regard to any implementation arrangements stemming from Recommendation 9.5 to avoid a situation where both are being implemented at the same time.

Option 2

Compared to the additional reporting requirements in Option 1, Option 2 represents a fundamental change in reporting requirements which would add significant regulatory burden and compliance costs. Option 2 also departs from the PC's recommendations, which as noted above, were made following an extensive inquiry and careful consideration of the need for reform. The inquiry considered the additional information that would improve the monitoring regime while balancing the increased costs of complying with enhanced reporting requirements. Sydney Airport does not consider that departing from the PC's recommendations and imposing further regulatory burden (and cost) on airports is warranted or justified. This is important in the context of the consistent findings by the PC that the light-handed regulatory regime (including the existing monitoring regime) is achieving its intended purpose and airports do not exercise market power in their negotiations or conduct.

⁴ PC, *Economic Regulation of Airports, Productivity Commission Inquiry Report*, 21 June 2019, p313.

Option 2 represents a significant uplift in compliance costs compared to Option 1. The principal driver of this is the enhanced requirements to provide a 'full mapping of costs to all services', including retail and property, provided by monitored airports and potentially implementing prescribed cost allocation guidelines.

Sydney Airport notes this goes well beyond the PC's recommendation, which the Government accepted in line with Modified Option 1. Sydney Airport cannot see any justification for expanding the monitoring regime as proposed by Option 2, including to additional facilities and services not contemplated by the PC. Further, for the reasons set out below, the requirement to provide the underpinning data for every line item would be incredibly onerous and costly.

Under Modified Option 1, which is most consistent with the PC's recommendation, airports are required to provide detailed revenue, cost, and operational information at the service level. Doing this under 'basic' cost allocation principles as outlined in the consultation paper ensures:

- the ACCC is provided with all data consistent with the PC's recommendation;
- information is provided to the ACCC on the cost allocation methodologies used by airports; and
- allows airports to maintain the appropriate level of flexibility in determining cost allocations (noting the ACCC will have visibility of this given they will be provided with the methodologies).

The costs of implementation and ongoing compliance for Option 2 would be highly dependent on the scope of the ACCC's recommendations. If the ACCC recommends proceeding with Option 2 in requiring the full mapping of costs and revenues for all airport services but did not prescribe cost allocation guidance, Sydney Airport estimates implementation costs of approx. \$500,000. These costs would comprise staff resourcing and new systems to establish the necessary processes, procedures, and reporting methods as it relates to cost allocation methods and the ability to report on an extended list of services (i.e. all services). This would also incur ongoing compliance costs, which are likely to be higher than the ongoing costs associated with Modified Option 1. The costs of implementing Option 2 (without cost allocation guidance) would be up to two-and-a-half times the sum that the PC considered was reasonable and proportionate, and this excludes ongoing compliance costs which are in addition to this.

If the ACCC recommended a maximalist approach and prescribed cost allocation guidance as it noted it may, Sydney Airport estimates that the establishment costs would be significantly higher. Costs could be in the millions of dollars depending on the nature of the cost allocation guidelines prescribed by the ACCC. There would likely also be significant ongoing compliance costs, potentially up to \$1m per year depending on the approach taken by the ACCC. The costs would be driven by the likely need to renegotiate service contracts with more granular key performance indicators to collect the data to the required level of reporting the ACCC appears to envisage (e.g. cost allocation based on time). This would also incur legal costs and require reasonably significant software and system upgrades to facilitate methodological changes alongside the need to collect, store and report on the relevant data on an ongoing basis. This would of course be dependent on how prescriptive the cost allocation guidance is.

If the ACCC is minded to recommend the Government proceed with Option 2 with prescriptive cost allocation guidance, it is critically important that a proper Regulatory Impact Statement process be undertaken given the significance of the compliance costs involved. This would allow for a robust, independent analysis of the costs involved and whether the stated benefits reasonably outweigh the additional burden placed on airports compared to Modified Option 1.

Further, the ACCC's assertion that a "key benefit" of Option 2 is that "monitored airports cannot game the cost allocations over time" is misconceived. This language implies Sydney Airport and other airports do not take their regulatory obligations seriously. The ACCC has no basis to make this claim. As noted above, and in the consultation paper, the ACCC would still receive cost allocation methodologies under Modified Option 1 whereby it could make further inquiries if it had any concerns.

Option 3

Sydney Airport contends that Option 3 is unnecessary given the consistent findings by the PC over multiple inquiries that the light handed monitoring regime is effective in preventing airports from exercising market power.

Option 3 goes further than Option 2 in requiring the implementation of record keeping rules and an approach consistent with the New Zealand Commerce Commission's approach to monitoring airports. This is well beyond what the PC recommended. In fact, the PC expressly considered and rejected oversight of this nature, determining that:

- implementing record keeping rules would not be a proportionate response;⁵ and
- in relation to an approach consistent with the New Zealand Commerce Commission's approach, the PC noted:

*The current monitoring regime has been effective as part of a regulatory regime to prevent airports from exercising their market power to the detriment of the community. As the ACCC observed, moving to a system similar to the New Zealand regime would be costly. (Further noting that) the balance of benefits and costs does not favour implementing a totally new approach to monitoring.*⁶

Given this, Sydney Airport considers that Option 3 does not present an appropriate path forward. As the ACCC notes in the consultation paper, developing a standardised cost allocation method using record keeping rules would require extensive consultation alongside detailed design, development, and implementation. As the paper states, it would also be "significantly more time consuming to set up" and "more information intrusive and costly to maintain." Regarding these points, Sydney Airport notes this applies to all options canvassed, but particularly in relation to Option 1 in its entirety, Option 2, and Option 3.

⁵ PC, *Economic Regulation of Airports, Productivity Commission Inquiry Report*, 21 June 2019, p316.

⁶ PC, *Economic Regulation of Airports, Productivity Commission Inquiry Report*, 21 June 2019, p317.