



22 July 2022

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

By email: airportsandports@accc.gov.au

Dear Mr Kleiner,

Re: Airport quality indicators – review

Thank you for your letter of 27 June 2022 inviting WSA Co Limited (WSA Co) to make a submission to the Australian Competition and Consumer Commission (ACCC) review of the indicators used in monitoring and evaluating the quality of services and facilities at Brisbane, Melbourne, Perth and Sydney airports.

About Western Sydney Airport

Western Sydney is Australia's third-largest economy. Currently home to two million people, it is forecast to grow by a further one million by the early 2030s, representing two-thirds of the total population increase predicted for greater Sydney over that period. Aviation demand in the greater Sydney region is forecast to double to approximately 87 million passengers by 2035 and double again by 2060. Sydney (Kingsford-Smith) Airport (KSA) cannot accommodate this demand alone.

In recognition of the importance of transport connections for productive economies, in 2014 the Australian Government designated Badgerys Creek as the site for the second airport in Sydney. Following Sydney Airport's decision not to exercise its right of first refusal to develop and operate the airport, in 2017 the Government announced it would invest up to \$5.3 billion in equity to deliver the facility.

Western Sydney International (Nancy-Bird Walton) Airport (WSI) will be a full service facility with 24-hour operational capability, catering for domestic and international passengers as well as freight. It will be developed in stages as demand grows, opening with a single runway and facilities to handle up to 10 million passengers, with a second runway to be added when required. By 2063, WSI is expected to accommodate up to approximately 82 million passengers annually.

Construction of the passenger terminal and runway at WSI has commenced, with development of the airfield and landside precincts occurring over the next three years, ahead of planned opening at the end of 2026.



Regulatory recognition and WSI

As the consultation paper notes, the ACCC is empowered by the *Airports Act 1996* to monitor the quality of services and facilities at the four major capital city airports and at WSI.

The inclusion of WSI in the airports' monitoring regime has its genesis in the process conducted by the Australian Government towards establishing WSI as the second airport in the Sydney basin.

As noted above, the terms of the 2002 Sydney (Kingsford-Smith) Airport Sale Agreement provided Sydney Airport with a right of first refusal to develop and operate a second major airport within 100 kilometres of Sydney CBD. In the event that Sydney Airport owned and operated both KSA and WSI, monitoring of prices and service quality would be vital in ensuring transparency and guarding against the potential exercise of market power. Accordingly, in advance of the Government issuing a Notice of Intention to Sydney Airport in 2016 setting out the offer to construct and operate WSI, "Sydney West Airport" was included in regulation 8.01 of the *Airports Regulations 1997*. The context for regulatory recognition of the airport at that time is reflected in the explanatory statement to the relevant legislative instrument (the *Airports Legislation Amendment (2015 Measures No.2) Regulation 2015*): "*While an airport is not expected to be operational for some time, the amendment provides regulatory certainty to the community and potential airport-operators.*"

Ultimately, Sydney Airport elected not to accept the Government's offer and the potential situation of common ownership did not eventuate. As a result, in August 2017 the Government established WSA Co to develop and operate the airport.

Recognition and consideration of WSI's treatment under applicable aviation policy and regulatory frameworks is still in the formative stages of development, in line with its 2026 opening date. For example, in April 2022 WSI was designated as an international airport, which will enable future regulatory recognition under security and border-related legislation. WSI expects to be recognised under the framework that enables the carrying out of retail activities on the site as part of the sunseting and remaking of regulations process that the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) is conducting in 2022-23.

Policy rationale for the quality of service monitoring regime

Monitoring of quality of service indicators is part of the light-handed regime governing the economic regulation of airports. Monitoring is currently conducted on the four major capital city airports (Sydney, Melbourne, Brisbane and Perth) because the Productivity Commission has found that those airports have significant market power in the provision of both domestic and international aeronautical services¹, a view that the Australian Government has accepted.

The Productivity Commission considers that this market power derives from a range of characteristics which are present to varying degrees in the competitive profiles of these four airports. Key features in this regard are geographic dominance, overall traffic volumes,

¹ Productivity Commission, Economic Regulation of Airports Inquiry Report 2019, p11



prevalence of business traffic, network connectivity and the substitutability of other modes of transport.

The Productivity Commission has identified that a 'second tier' of airports, including Adelaide, Gold Coast, Canberra, Hobart, Darwin, Cairns, do not have significant market power when considered against these criteria². These airports are generally less established, serve lower overall traffic volumes, have a greater concentration of leisure traffic, and/or experience greater competition from other airports or modes of transport.

When WSI opens in late 2026, demand is expected to be about five million users annually. This is equivalent to 75-80 per cent of passenger numbers at Gold Coast Airport in 2019.³ It is anticipated that leisure traffic will be the predominant source of demand in the initial years. As noted above, the first stage of WSI's development will be capable of serving around 10 million passengers in total, including up to two million international passengers. This level of demand is likely to be reached by the mid-2030s, and is comparable with passenger numbers and the domestic/international profile of traffic at Adelaide Airport in 2019.⁴

The volume and composition of traffic at WSI during this period is unlikely to provide it with market power, particularly with a strong and established competitor in KSA in close proximity. It is far more likely that WSI's profile will be more aligned with those airports currently identified as 'second tier'.

Against this background, the inclusion of WSI from the time the airport commences operations would appear inconsistent with the underlying purpose of the regime.

As the Productivity Commission has noted, competitive constraints and accordingly market power, can change over time⁵. WSA Co acknowledges that the Productivity Commission may in the future recommend to the Government that it is appropriate to extend the airports' monitoring regime to cover WSI.

Costs and benefits of monitoring in practice

In addition to the policy and regulatory context discussed above, it is worth exploring the practical considerations associated with application of the airports' monitoring framework to WSI from the time the facility opens.

WSA Co notes that there is a considerable compliance burden for airports associated with the ACCC airports' monitoring regime and that this is expected to increase, in line with new requirements to provide additional information⁶. While compliance costs are a feature of operating in a regulated environment, where there is little prospect of the exercise of market power, it is possible that the costs outweigh the benefits. WSA Co would suggest that in the developmental phase of WSI's operations, this is likely to be the case, and that directing those resources to alternative uses, such as business development and marketing activities to promote WSI to potential users, would on balance yield greater public benefits.

² Ibid, pp11-12

³ Bureau of Infrastructure and Transport Research Economics, Airport Traffic Data 1985-2019

⁴ Ibid

⁵ Productivity Commission, *op cit*, p12

⁶ Ibid pp312-313



Upon opening in 2026 as a greenfield secondary airport, WSI will be a brand new, uncongested, digitally-enabled, state-of-the art facility. It will be incentivised to attract passengers and airlines to build a customer base and well placed operationally to deliver high-quality service outcomes relative to more established airports.

WSA Co plans in the near term to explore with prospective airline users the principles that it anticipates will underpin constructive commercial agreements. Service Level Agreements (SLAs) covering a range of matters are expected to form an integral part of these arrangements with airlines, in accordance with international best practice⁷.

Once operational, WSA Co also intends to track quality of service outcomes on an ongoing, business-wide basis using appropriate metrics and benchmarks, as a key tool in supporting WSI's customer-centric focus. WSA Co would expect to publish relevant information on a voluntary basis, similar to the approach adopted by many other second tier airports.

Conclusion

The inclusion of WSI in the ACCC airports' monitoring framework is a legacy of legislative amendments made to mitigate against a potential outcome that did not eventuate.

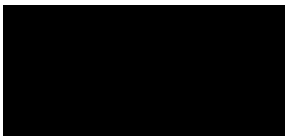
While wholly suitable for that purpose, WSA Co submits that the appropriate context in which to consider the application of the airports' monitoring regime to WSI is the broader regulatory approach and policy objectives underpinning the framework and the airport's contemporary operational and competitive profile.

From a practical perspective, inclusion of WSI in the monitoring regime at the time of opening is unlikely to result in enhanced benefits to users and will not impact the incentive or ability of the airport to compete vigorously on price and service.

Against this background, WSA Co will be seeking removal of the reference to "Sydney West Airport" in Regulation 8.01.as part of the consultation process concerning the sunseting and remaking of the *Airports Regulations 1997* which the Department will conduct later in 2022.

WSA Co would be pleased to provide further information in relation to the foregoing, should you have any queries or wish to discuss.

Yours sincerely,



Matthew Duffy
Chief Operating Officer
WSA Co Limited

⁷ [airport-service-level-agreement.pdf \(iata.org\)](#)