![Sydney Airport logo]

Submission to the Productivity Commission
(excluding confidential information)

Economic Regulation of Airports

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List of Abbreviations and Glossary

List of Abbreviations

2006 PC Report	Productivity Commission Inquiry Report on 'Review of Price Regulation of Airport Services', dated 14 December 2006
2011 PC Report	Productivity Commission Inquiry Report on 'Economic Regulation of Airport Services', dated 14 December 2011
A-CDM	Airport Collaborative Decision Making
A4ANZ	Airlines for Australia and New Zealand
AAA	Australian Airports Association
ABF	Australian Border Force
ACA	Airport Co-ordination Australia Pty Limited
ACCC	Australian Competition and Consumer Commission
ACI	Airports Council International
ACICG	Aeronautical Capital Investment Consultative Group
AFP	Australian Federal Police
Airport Link	Airport Link Company Pty Ltd
Airports Act	*Airports Act 1996* (Cth)
AMS	Aviation Maritime Security
AOC	Airline Operators' Committee
ASA	air services agreement
BARA	Board of Airline Representatives of Australia Inc
BITRE	Bureau of Infrastructure, Transport and Regional Economics
CAPA	Centre for Asia Pacific Aviation
CASA	Civil Aviation Safety Authority
CBD	central business district
CCA	*Competition and Consumer Act 2010* (Cth)
CEO	Chief Executive Officer
COU	Conditions of Use
Commission	Productivity Commission
CPI	Consumer Price Index
CSIA	Customer Service Institute of Australia
Curfew Act	*Sydney Airport Curfew Act 1995* (Cth)
Curfew Regulations	*Sydney Airport Curfew Regulations 1995* (Cth)
DAWR	Department of Agriculture & Water Resources

Demand Management Act	*Sydney Airport Demand Management Act 1997* (Cth)
Demand Management Regulations	*Sydney Airport Demand Management Regulations 1998* (Cth)
DFAT	Department of Foreign Affairs and Trade
DHA	Department of Home Affairs
DIRDC	Department of Infrastructure, Regional Development and Cities
DNSW	Destination New South Wales
EBITA	earnings before interest, tax and amortisation
FAC	Federal Airports Corporation
GDP	Gross Domestic Product
GSP	Gross Statement Product
IATA	International Air Transport Association
ICF	Industry Consultative Forum
ICSS	International Customer Service Standard
IOC	Integrated Operations Centre
JUHI	joint user hydrant installation
KPI	key performance indicator
LCC	low-cost carrier
LTOP	Long Term Operating Plan
NCC	National Competition Council
NNI	necessary new investment
OTP	on-time performance
pax	passengers
PSC	Passenger Service Charge
QGCF	Qantas Group Consultative Forum
Rex	Regional Express
RRF	Regional Ring Fence
SLA	service level agreement
SLRM	Service Level Recovery Mechanism
T1	Terminal 1 (International terminal)
T2	Terminal 2 (Common user domestic terminal)
T3	Terminal 3 (Qantas domestic terminal)
UK	United Kingdom
WAC	Westralia Airports Corporation
WACC	weighted average cost of capital

| **WSG** | World Slot Guidelines |
| **WWACG** | World Wide Airport Co-ordinators Group |

Glossary

aeronautical services Services provided by infrastructure that facilitates aircraft movements (eg runways), and passenger processing facilities as defined under the Airports Regulations 1997 (Cth).

building block model A methodology, often used by regulators, to calculate a price for the services provided by a large infrastructure facility.

common use terminals Terminals and associated infrastructure managed by the airport operator and used (potentially) by a number of different airlines. All international terminals at core-regulated airports are common-user terminals as are some domestic terminals.

cross-piering Where an airline's check-in and baggage handling areas are not aligned increasing processing time and congestion in the baggage system.

domestic terminal lease An arrangement whereby an airline leases the entire terminal from an airport and provides terminal services such as check-in and baggage facilities directly to passengers.

full-service carrier An airline that provides ancillary services (such as the use of an aerobridge and in-flight catering) as part of the airfare paid.

general aviation Aircraft operations that are not regular public transport, such as private charter and aircraft training flights, and Royal Flying Doctor Services.

light-handed monitoring regime A regulatory regime whereby the ACCC is empowered to monitor price and quality of aeronautical and car parking services at the five monitored airports.

load factor The number of passengers carried expressed as a percentage of the number of seats available.

locational rents Payments to land above opportunity cost that derive from its locational advantages for a particular use.

low-cost carrier An airline that provides a more rudimentary low-cost service than a full-service carrier.

meeters and farewellers Visitors accompanying airline passengers to and from the airport.

National Access Regime A legal regime established by Part IIIA of the Competition and Consumer Act 2010 (Cth) to facilitate third party access to certain services provided by means of significant infrastructure facilities.

necessary new investment A regulatory system whereby core-regulated airport operators were permitted to recover the costs of necessary new infrastructure expenditure through price increases for aeronautical services.

objective criteria Observable, quantitative measures introduced as part of the quality of service monitoring such as 'the number of passengers per baggage trolley (during peak hour)' as an indicator for the overall quality of service for 'baggage trolleys'.

passenger movement A passenger arriving or departing on a regular public transport service.

regional ring fence	A feature of the Slot Management Scheme for Sydney Airport which effectively creates a separate pool for regional slots.
regular public transport	Scheduled aircraft operations provided to the general public on a commercial basis.
slot	A permission for an aircraft movement.

Part A:
Executive Summary

Chapter 1: Executive Summary

Introduction

The Commission has been asked to undertake a review to determine whether the economic regulatory oversight of major airports, including Sydney Airport, remains in line with community and industry expectations.

Aviation is vitally important to the Australian economy. Since the 2011 PC Report there has been sustained growth in Australia's air passenger traffic with passenger journeys initiated from Australia increasing by 24%.[1]

Sydney Airport is the largest airport in Australia, accounting for around 40% of international passenger movements, 47% of air freight, and 23% of domestic passenger movements.[2] Sydney Airport contributes 2.2% of Australian GDP and 6.8% of NSW GSP.[3]

The sustainable growth of Sydney Airport will be critical to achieving future local, state and national employment, tourism and development objectives.

Sydney Airport expects that the Commission will examine changes in the sector since its last review and ask whether airports continue to respond to the call of industry and the community to do more and do it better. This submission will demonstrate that Sydney Airport has done so.

At the heart of this Inquiry is the issue of market power, and whether airports exercise market power to the detriment of consumers.

Sydney Airport works with 47 unique airline customers which operate flights to 60 international and 45 domestic and regional destinations and has rightly been identified as one of Sydney's two nationally significant trade gateways. Sydney Airport considers all passengers of all these airlines leaving from or arriving at Sydney Airport to be its customers and works hard to provide a positive experience for them all.

The current regulatory regime was introduced to allow airports to provide aeronautical services on terms agreed through effective commercial negotiations, while retaining a constraint on the potential exercise of market power. The objective of the regime was to facilitate investment and innovation by airports that would drive competition for the overall benefit of passengers and the broader community.[4]

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[1] BITRE, *International Airline Activity* and *Domestic Airline Activity* publications.

[2] BITRE, *International Airline Activity*, June 2018, https://bitre.gov.au/publications/ongoing/files/International_airline_activity_1806.pdf, at p 21 and BITRE, *Domestic Aviation Activity*, 2017 Annual Report at p 11.

[3] Deloitte Access Economics, *Economic Contribution of Sydney Airport*, April 2018 at p ii.

[4] See: Treasurer, Minister for Transport & Regional Services, 'Productivity Commission Report on Airport Price Regulation', Media Release, 13 May 2002; and Productivity Commission, 'Review of Price Regulation of Airport Services', Inquiry Report, 14 December 2006, p XIII.

That objective has been and continues to be achieved. In particular, the current regulatory regime has facilitated:

- extensive and efficient investment in Sydney Airport, required to meet the dramatically increasing demand for air travel;

- increased competition between a growing number and diversity of airlines;

- increased efficiency of operations and improved service quality; and

- progressively mature and sophisticated commercial agreements between Sydney Airport and its airline customers, which reflect bespoke requirements of individual airlines and are the result of vigorous negotiation between equivalent parties and provide fair value for service for airlines.

Importantly, Sydney Airport is able to demonstrate that its investments and other initiatives have significantly improved outcomes for passengers. These improvements are reflected in:

- Sydney Airport's passenger satisfaction ratings;

- Sydney Airport's Key Performance Indicators as agreed with airlines; and

- ACCC Monitoring Report service ratings.

The evidence will also show that Sydney Airport does not exercise market power and that suggestions that it does are overstated by those who wish to increase regulation. It will also demonstrate the very real constraints on Sydney Airport's market power that exist in the current environment.

This submission presents both an objective collation of evidence relevant to the Commission's task and Sydney Airport's view that on a proper analysis it is apparent that the current regulatory regime remains appropriate and increased regulation is both unnecessary and undesirable.

Structure of this submission

This submission is structured as follows:

Part B describes the role of Sydney Airport as an infrastructure provider and service provider at the centre of a growing and dynamic ecosystem that must operate the airport as a cohesive whole.

1   **Chapter 2** discusses developments in the aviation industry since the Commission's review in 2011 and demonstrates the agility with which Sydney Airport has responded to these developments including unprecedented and sustained passenger growth, changed peak demand patterns as a result of changing airline alliances, increasing diversity of airline stakeholders and next generation aircraft among others.

2   **Chapter 3** explains the number and complexity of stakeholders that Sydney Airport must engage with to keep the airport operating efficiently. It also demonstrates that Sydney Airport adopts a 'total system' approach to its operations, treating all passengers as its customers, seeking to ensure a positive experience for them during their interactions with the airport whatever their airline, route or fare.

3   Sydney Airport's airline customers are diverse and do not always speak with one voice, as airlines have different needs and incentives. Sydney Airport must balance their often-conflicting demands, recognising that the same investment may be perceived as essential by

one airline but gold plating by another, and for example, the incentives of a recent entrant will differ from airlines who seek to entrench dominant positions.

4   These matters are relevant to the Commission's task to assess the current regulatory regime by reference to 'overall community welfare'.[5]

Part C addresses why Sydney Airport has neither the incentive nor the ability to exercise market power.

5   **Chapter 4** outlines the current regulatory regime and its objectives.

     (a)   The threat of the current regulatory regime is real and sufficient to constrain any exercise of market power. The regime comprises ACCC price and service monitoring, the threat of further regulatory action in the form of a price inquiry, the potential application of the price notification regime, and possible declaration under the access regime.

     (b)   A regime of regulated access and pricing would involve higher costs and carry an increased risk of regulatory error. Such errors could have profound unintended negative outcomes for consumers, and adversely affect airport investment, productivity, operational efficiency and service standards.

     (c)   Further, such a regime would be unlikely to encourage commercial negotiations. On the contrary, it would incite regulatory gaming, which could result in ACCC arbitrations becoming the default option, 'with negotiations increasingly centred in a narrow band around previously arbitrated outcomes'.[6] Innovative and bespoke commercial arrangements could become a thing of the past, and as recognised by the Commission, '[the] net effect would therefore be a return to 'institutionalised' determination of charges and conditions for airport services, with its attendant costs'.[7]

     (d)   The particularly concerning consequences of regulatory gaming are exacerbated by the competing commercial imperatives of airlines and airports. Airlines generally have short or medium term commercial incentives, and this is especially true of dominant airlines which seek to protect their competitive advantages and oppose airport investments that will increase airline competition. Airports, on the other hand, have much longer-term imperatives given the cost and life of airport assets, and are incentivised to promote airline competition which ultimately benefits passengers and the economy.

6   **Chapter 5** explains how Sydney Airport does not have the ability to exercise market power given the countervailing power of airlines.

     (a)   Airline countervailing power derives from many factors including the mutually dependant relationship between airports and airlines, highly concentrated airline markets and the ability of international airlines to negotiate collectively.

     (b)   A clear indication of airline countervailing power is their ability and practice of short-paying, refusing to pay or delaying payment of charges for aeronautical services,

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[5] PC Issues Paper p 5.

[6] 2011 PC Report, p XXV.

[7] 2011 PC Report, pp 201-202. See also, 2011 PC Report, pp xxxix, 203-204.

while continuing to use airport services. Airlines engage in such conduct as leverage in commercial negotiations.

(c)   The countervailing power of airlines is evidenced in the complex and vigorous commercial negotiations which occur between airports and airlines, and the favourable outcomes achieved by airlines in those negotiations. Those outcomes do not reflect an infrastructure owner capable of exercising market power and a 'take it or leave it' approach to its negotiations.

Part D demonstrates that there has been no exercise of market power by Sydney Airport.

7   **Chapter 6** describes the way Sydney Airport conducts commercial negotiations and the nature of the agreements achieved. It makes clear, with concrete examples, that the current regulatory regime has resulted in progressively mature and sophisticated commercial agreements with airlines. That is not to suggest that the negotiating experience is straightforward. Indeed, this is rarely the case; there is significant give and take on both sides and agreements cover many more factors than price, including investment, service levels, product and incentives.

8   **Chapter 7** describes Sydney Airport's investment since 2012 which has increased airport capacity, driven operational efficiency and enhanced the passenger experience. This investment is made following extensive consultation with airlines.

9   While Sydney Airport has been responsive to heightened industry and community expectations, it has not had free rein. Sydney Airport has contractual commitments to consult in relation to investment and clear service levels to achieve which are embedded in its current agreements with airlines.

10   **Chapter 8** explains the realities of aeronautical charges and returns and elaborates on the reasonableness of Sydney Airport's prices and the investment and other factors reflected in those prices.

Part E addresses the ACCC monitoring regime.

11   **Chapter 9** describes the centrality of ACCC price and service monitoring to the current regulatory regime. It serves to identify and deter any exercise of market power and adverse findings can give rise to regulatory action against an airport.

12   In addition, an airport does not wish its ratings to be seen as deteriorating overtime, or to fall below the ratings achieved by others as the report receives wide press coverage and subjects airports to the formidable court of public opinion with the potential to cause reputational damage in the general community, with investors and within government; its findings also provide leverage to commercial stakeholders in their negotiations with airports.

13   Sydney Airport supports the continuation of the ACCC monitoring regime and acknowledges that the regime and the monitoring report have improved since the 2011 PC Report. However, the regime needs to keep pace with developments in the dynamic aviation sector and Sydney Airport makes several recommendations as to how the reporting could be improved.

Part F addresses the Regulatory Environment specific to Sydney Airport.

14   **Chapter 10** discusses operating restrictions that impede Sydney Airport's efficiency.

(a)   Slots are the most scarce and valuable asset at Sydney Airport and are controlled by others. Specifically, the Federal Government is responsible for the total slots available and their management via the legislated operating restrictions; incumbent airlines control allocated slots via grandfathering rights; and a government-appointed independent body controls unallocated slots via contracts with airlines. The control of allocated slots by incumbent airlines, particularly domestic carriers, has afforded them an ongoing competitive advantage and enhanced their countervailing power.

(b)   Beyond control of slots, the interaction of various operating restrictions, unique to Sydney Airport, gives rise to an environment that impedes growth and the efficiency of operations, drives sub-optimal outcomes for the community and negatively affects the broader economy.

(c)   Sydney Airport urges the Commission to recommend a review of the operating restrictions to better incorporate and reflect modern aviation technology and noise management practices.

15   **Chapter 11** discusses regional pricing. Sydney Airport supports regional airlines and acknowledges the importance of the existing network of regional air services to communities across NSW. Sydney Airport recommends modifying the regime to enable parties to give effect to confidential commercial agreements while retaining the protections afforded by the regime to regional air services.

Part G deals with Airport accessibility.

16   **Chapter 12** describes the importance of ground access to Sydney Airport. Its interests are aligned with those of the community who want more options, better connectivity and less congestion.

17   Much has happened to improve ground access to and from the airport since the 2011 PC Report, although congestion remains a major challenge given that Sydney Airport is physically constrained by Botany Bay to the south, Alexandra Canal to the west, and the Port Botany freight line to the north and the arterial roads of General Holmes Drive and Southern Cross Drive to the east. This challenge is further compounded given its close proximity to the CBD and other large population centres, and its very 'peaky' operations.

18   Customers are switching from the once popular parking and taxi options to a broader range of services, including free pick-up and drop-off, rideshare operators, buses, rental cars, the train and off-airport parking facilities. The ability of customers to switch between services constrains Sydney Airport in its pricing, and it is therefore unable to exercise any market power.

19   Sydney Airport has facilitated new and improved ground access by encouraging increased use of the train, introducing new pick up zones for taxis and rideshare operators, and investing in road improvements in and around the airport. Sydney Airport continues to advocate for upgrades to the power supply and safety aspects of the airport train line, new rail links, additional and improved bus services and collaborates with state and federal governments to improve road access.

20   Sydney Airport's car parking facilities are only one option in a broad and competitive market of ground access and its market share has reduced materially since the 2011 PC Report. The range of options, many of which Sydney Airport derives no financial benefit from, mean that Sydney Airport has no market power in the provision of car parking services.

Part H Outlines Sydney Airport's support for improving competition in the supply of jet fuel.

21   Sydney Airport's primary concern is to ensure that there is a reliable and adequate supply of jet fuel to users of Sydney Airport. As a matter of principle, Sydney Airport agrees with other parties, including BARA, that competition in the jet fuel supply chain is to be encouraged

22   Sydney Airport does not have control of the supply of jet fuel but continues to seek to influence and support an increase in competition through future leasing and licensing arrangements.

Conclusion

Australian aviation is vitally important to the Australian economy, and increasingly so. As the country's largest transport and logistics hub, Sydney Airport makes a particularly significant contribution, facilitating the generation of $38 billion in economic activity each year. Increasingly, Sydney Airport must compete on a global stage to attract airlines and in doing so brings an ever-greater number of passengers from all over the world.

Additional regulation would be a backward step likely to threaten the trend of significant improvements that have been made to Sydney Airport's infrastructure, operating efficiency and passenger experience under the current regulatory regime. To stall the continuation of such progress would have negative consequences to passengers and beyond the airport, to the state and national economies.

Part B:
Sydney Airport: a complex and growing ecosystem

Chapter 2:   Developments in the aviation industry since the 2011 PC Report

Summary

•   Aviation is vitally important to the Australian economy. Sydney Airport makes a significant contribution as Australia's largest transport and logistics hub, facilitating the generation of $38 billion in economic activity.[8]

•   Since the 2011 Productivity Commission Report (***2011 PC Report***) there has been unprecedented and sustained passenger growth which is expected to continue.

•   Industry changes have intensified competition between major global airports to attract new airlines and necessitate continuing investment in capacity. As a consequence, Sydney Airport must be agile, flexible and responsive in its investment and operational decisions.

2.1   Importance of the aviation and airport industry

1   Aviation is vitally important to the Australian economy. Since the 2011 PC Report there has been unprecedented and sustained growth in Australia's air passenger traffic. Since the 2011 PC Report, passenger journeys initiated from around Australia have increased by 18%.[9]

2   The continued growth of Sydney Airport will be critical to achieving local, state and national employment, tourism and development objectives. Serving 47[10] unique airlines which operate flights to 60[11] international and 45[12] domestic and regional destinations,[13] Sydney Airport has been identified as one of Sydney's two nationally significant trade gateways.[14] Sydney Airport handled more flights, passengers and freight than any other airport in

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[8] Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p 11 <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqImQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_ contribution_2018_FINAL_-_2018.04.11.pdf >.

[9] In 2017 158.8 million passenger journeys were initiated from points around Australia to and from domestic and international destinations, an increase of 23.7 million (18%) since the 2011 PC Report, and 82.7 million (109%) since privatisation in 2002. See, Bureau of Infrastructure, Transport and Regional Economics (**BITRE**), *Airport Traffic Data (1985-2017)*(August 2018) <https://bitre.gov.au/publications/ongoing/airport_traffic_data.aspx>.

[10] OAG Analyser based on Northern Winter 2017 (January 2018).

[11] OAG Analyser based on Northern Winter 2017 (January 2018).

[12] OAG Analyser based on Northern Winter 2017 (January 2018).

[13] Including 11 international and eight regional destinations not served by any other Australian airport: Sydney Airport, *Master Plan 2039* (August 2018), p 24.

[14] The other being Port Botany which is located immediately to the east of the airport. See, Greater Sydney Commission, *Greater Sydney Region Plan, A Metropolis of Three Cities* (March 2018) <www.greater.sydney/metropolis-of-three-cities/productivity/well-connected-city/freight-and-logistics-network >.

Australia in 2017, making it Australia's largest transport and logistics hub.[15] Further information on the important economic contribution made by Sydney Airport is contained in Appendix 1.

3   As shown in Figure 1 below, Sydney Airport's economic contribution is expected to continue to grow to $45.8 billion by 2024, with consequential increases in total full-time equivalent employment.[16] By 2039, it is forecast that Sydney Airport will support 414,000 full-time equivalent jobs.[17] These forecasts assume that from late 2026, Sydney's aviation demand will be served by two international airports, the other being Western Sydney Airport.

Figure 1
Actual and Forecast Economic Benefits of Sydney Airport's Operations (2017)

Actual and estimated economic activity generated by Sydney Airport (2012-2024) ($A billions)

Actual and estimated FTE employment supported by Sydney Airport (2012-2039)
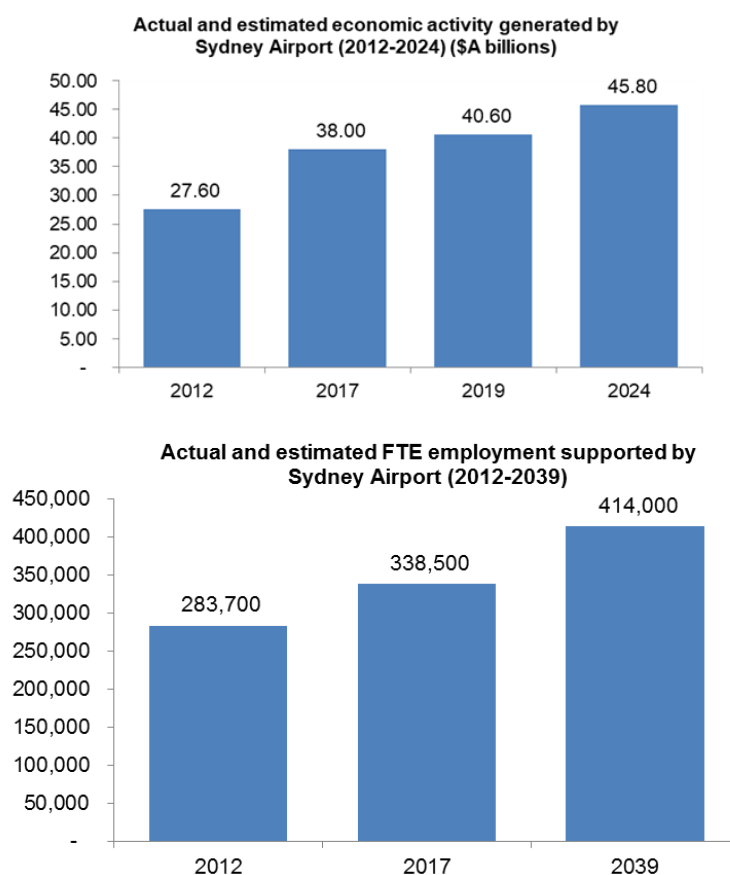
Source: Deloitte Access Economics 2018

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[15] In 2017, Sydney Airport was the starting or finishing point for more than 43.3 million passenger journeys, 27.3 million being domestic and 16.0 million international; Sydney Airport, *Master Plan 2039* (August 2018) p 62. Sydney Airport also accounted for 27% of all passenger journeys nationally, an increase of 21.5% since 2011. This meant more than 40% of total international flights arrived in or departed from Sydney Airport, with many international passengers also flying on to domestic routes from Sydney Airport: BITRE, *Airport Traffic Data (1985-2017)* (August 2018) https://bitre.gov.au/publications/ongoing/airport_traffic_data.aspx>.

[16] Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p 14 <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqlmQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf>.

[17] Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p 14 <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqlmQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >.

2.2   Changes in the aviation and airport industry

4   The aviation and airport industry has undergone significant change since the 2011 PC Report. The most significant change has been the continued growth in international passenger traffic[18] which is expected to be the main driver of future growth, outstripping domestic passenger growth, and growing at a much faster rate than aircraft movements.[19] This is depicted in Figure 2. Since 2011, Sydney Airport has seen a 42% increase in international passengers,[20] with that number forecast to nearly double from 16 million in 2017[21] to over 31 million in 2039.[22]

Figure 2
Actual and Forecast Passenger Growth at Sydney Airport (2007-2039)
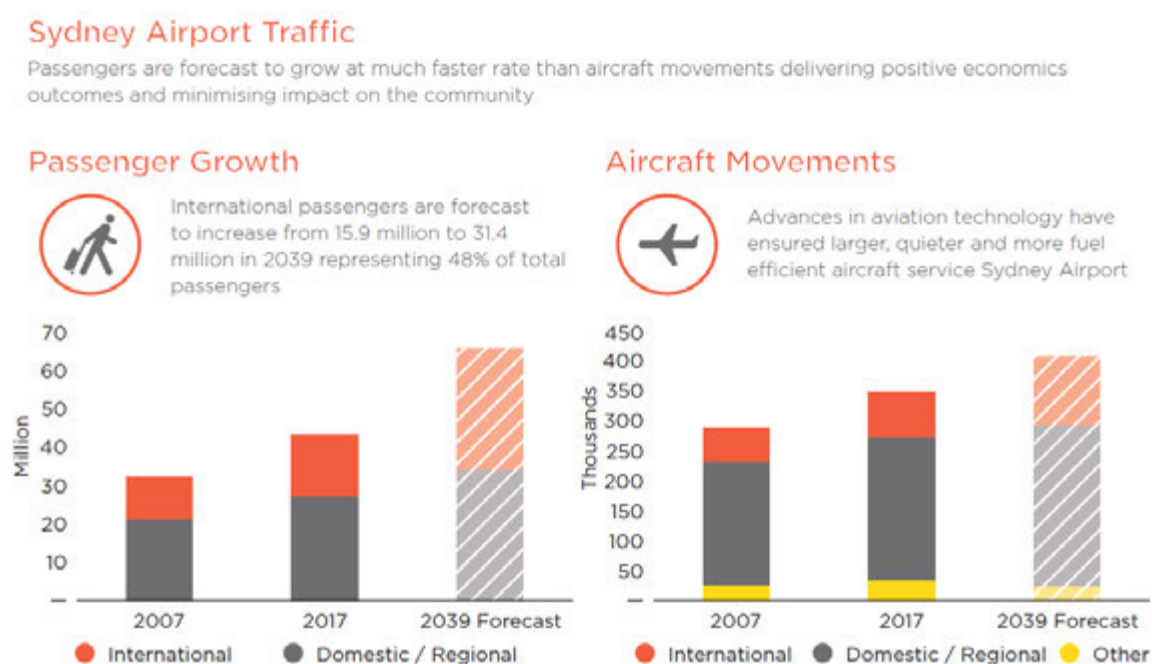
Source: Sydney Airport Master Plan 2039

5   Sydney Airport anticipates that, by 2039, the split between domestic and international passengers travelling through the airport will be 52% and 48% respectively, compared to 63% and 37% in 2017.[23] This is illustrated in Figure 3.

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[18] International traffic has grown nationally from 16.7 million in 2002, and 28.2 million in 2011, to 39.6 million in 2017. BITRE, *Airport Traffic Data (1985-2017)* (August 2018) <https://bitre.gov.au/publications/ongoing/airport_traffic_data.aspx>.

[19] Sydney Airport, *Master Plan 2039* (August 2018) p 56.

[20] Sydney Airport data.

[21] Sydney Airport, *Annual Report 2017* (21 February 2018) p 20.

[22] Sydney Airport, *Master Plan 2039* (August 2018)p 62.

[23] Sydney Airport, *Master Plan 2039* (August 2018) p 62.

Figure 3
Actual and Forecast Change in Passenger Mix at Sydney Airport
(2007, 2017, 2039)

Source: Sydney Airport Master Plan 2039

6   The growth in international passenger air traffic is both a cause and effect of several ongoing and interrelated industry changes since the 2011 PC Report, including:

  •   the continued liberalisation of air rights between Australia and countries in Asia and the Middle East, resulting in a surge in airline and passenger growth to Australia from these regions;

  •   the rise of long-haul lost cost carrier (**LCC**) services; and

  •   the uptake of next generation aircraft, including both larger capacity, longer-range aircraft as well as smaller, more fuel-efficient aircraft, to capitalise on and serve passenger growth.

7   Each of these is explained in greater detail in Appendix 2.

2.3   Pressure on Sydney Airport to remain competitive

8   The changes seen in the aviation and airport industry since the 2011 PC report have increased the intensity of competition Sydney Airport faces at a global level:

  •   Middle Eastern and Asian carriers are able to reach practically any airport around the world due to the central location of their hubs (e.g. Dubai and Shanghai). As a result, they are able to choose to bring their business to any airport provided there is a long enough runway, Sydney Airport being one such airport; and

  •   LCCs are very cost-sensitive and are willing to move their services to alternative primary or secondary destinations if Sydney Airport's prices and services are not sufficiently competitive.

9   Accordingly, there is constant pressure on Sydney Airport to be responsive and flexible to retain existing, and attract new, airlines and routes. Within the current Australian regulatory regime, Sydney Airport has continued to adapt to balance the evolving needs (and often competing priorities) of the mix of airlines it services. Indeed, since the 2011 PC Report,

Sydney Airport has started working with 16 new airlines and has introduced 21 new routes.[24] Examples of agile responses by Sydney Airport are summarised in Figure 4 below and include:

(a) **responding to significantly changed peak demand patterns as a result of changing airline alliances**.

Sydney Airport needs to flexibly accommodate changes resulting from airlines entering and exiting alliances. Since 2011, the number and size of airline alliances has grown, including the three biggest global alliances (Star Alliance, SkyTeam and Oneworld) which continue to expand their airline bases. This has increased routes and connections between airlines, which has intensified the strain on peak periods and ultimately on Sydney Airport's infrastructure and services. For example, as a result of Qantas and Emirates forming a bilateral alliance in 2013, their combined total number of departures from Sydney Airport during the peak gate period more than doubled from four departures in 2012 to 10 departures in 2013.

Exits from alliances can also have drastic and unexpected consequences to which airports must respond. The dissolution of the alliance between Virgin Australia and Air New Zealand in early 2018 had the unanticipated effect of increasing the number of services on trans-Tasman routes by 19% compared to 2017, despite being mature and well-established routes. Given current restrictions on slot allocations, over which Sydney Airport has little control, Sydney Airport is required to turn to other means to reduce this strain, including investing in new, and optimising existing, infrastructure. Sydney Airport has also worked to encourage airlines to operate outside of its peaks. This has had some success for new services but it has proved more challenging for incumbent operators.

(b) **investing in additional and appropriate infrastructure to accommodate uptake of next-generation aircraft bodies and associated increase in passenger traffic**.

Much of Sydney Airport's international passenger traffic is coming from airlines that are investing in next generation aircraft to realise efficiencies and cost savings.[25] This has required Sydney Airport to invest in changes to infrastructure to accommodate such aircraft.

For example, Sydney Airport invested extensively in infrastructure to accommodate A380 aircraft based on airline advice of expected high uptake.[26] However, airlines soon found that A380s were too large for many of their routes and, with the exception of Gulf carriers such as Emirates, began to slow their demand for larger aircraft types. Instead, airlines have turned increasingly towards smaller widebody (or in some cases, narrowbody) aircraft, with a large number going to global long-haul

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[24] Sydney Airport data.

[25] Sydney Airport, *Master Plan 2039* (August 2018) p 56-57.

[26] For instance, Sydney Airport expected Qantas to acquire eight more A380s by 2025 on top of the 12 it already had in 2013; Sydney Airport, *Master Plan 2033* (17 February 2014) p 52. As a result, Sydney Airport provided for the development of new major international terminal infrastructure, including up to 18 A380 international contact gates in its Master Plan 2029 (released in 2009). Sydney Airport, *Master Plan 2033* (17 February 2014) p 10 <https://www.sydneyairport.com.au/corporate/planning-and-projects/master-plan>.

LCCs as they continue to grow.[27] Sydney Airport quickly adapted and reconsidered its original development plans and has now sought to invest in infrastructure which allows maximum flexibility to serve a wider variety of aircraft, e.g. gates with the ability to service both widebody and narrowbody aircraft.[28] Figure 4 below includes key infrastructure investment planned and carried out by Sydney Airport since 2011 in response to these aircraft trends.

(c) **tailoring commercial incentives to encourage growth in international services from both existing and prospective new airlines**.

Sydney Airport has been able to compete to attract new airline business by adapting its commercial offers to the needs of different airlines. Full service carriers appreciate the marketing support which Sydney Airport is able to provide with its local knowledge and strong existing relationships with advertising providers. In contrast, long-haul LCCs typically prefer support to be focused on aeronautical charge rebates in line with their cost minimisation business models.

Figure 4
Summary of responses by Sydney Airport to key industry changes since 2011

Key change since 2011	Impact or consequence	Response by Sydney Airport
Increased attractiveness of Australia as destination for Asian travellers **Liberalisation of air rights between Australia and the Middle East and Australia and Asian countries** **Expansion of Australian airlines' own presence in the Middle East and Asia**	Growth in passenger numbers (particularly international passengers) Growth in flights between Australia and the Middle East and Asia Changing airline alliances	▪ Automating check-in at Terminal 1 (*T1*) to provide extra capacity, streamline throughput and reduce queuing ▪ Adding eight new airside buses, three new departure gates and two new arrivals bussing lounges to improve bussing times and capacity at T1 ▪ Expansion and refurbishment of baggage reclaim areas for increased capacity, service levels and resilience ▪ Runway and taxiway works to increase asset life and aircraft capacity ▪ Expansion of parking and pick-up capacity, and ground transport linkages ▪ Offering tailored commercial incentives to attract new

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[27] As referred to in CAPA – Centre for Aviation, 'CAPA Commentary' (July 2018) p 6. Qantas recently announced that Jetstar would start taking delivery of new A320s from its existing order, beginning with 18 A321 NEOs from mid-2020. See, Qantas Group, *'Qantas Group CEO'S Address – 2018 Half Year Financial Results'* (Media Release, 22 February 2018) <https://www.qantasnewsroom.com.au/media-releases/qantas-group-ceos-address-2018-half-year-financial-results/?print=1>.

[28] See e.g., Sydney Airport, *Master Plan 2039* (August 2018) p 94.

Key change since 2011	Impact or consequence	Response by Sydney Airport
		airline business looking to expand to Sydney
Growth in LCCs **Increased use of smaller widebody and narrowbody aircraft**	Growth in number of aircraft movements Spreading of peak periods	▪ Planning to undertake terminal developments to accommodate multiple aircraft types on contact gates as required by airlines ▪ Planning to develop a new parallel taxiway to improve aircraft circulation[29]
Increased use of larger body, larger capacity aircraft (e.g., A380s, B787s)	Demand for new infrastructure to handle larger aircraft Growth in passenger numbers Increased demand during peak periods	▪ Enhancements to runways, taxiways, gates and aerobridges ▪ Asphalt re-sheeting, strengthening and widening of Taxiways A, B and C to increase capacity and accommodate larger aircraft[30] ▪ Adding two A380 capable baggage carousels to the Baggage Reclaim Hall at T1 to meet peak passenger flows associated with larger aircraft[31] ▪ Bay 8 expansion for A380 and other widebody aircraft and new dual boarding aerobridges[32] with plans for other bays to be similarly upgraded

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[29] Sydney Airport, *Master Plan 2039* (August 2018) p 108.

[30] Completed in 2015; Sydney Airport, *Master Plan 2039* (August 2018) p 80.

[31] Completed in 2015; Sydney Airport, *Master Plan 2039* (August 2018) p 80.

[32] Sydney Airport, *Master Plan 2033* (17 February 2014) p 39 <https://www.sydneyairport.com.au/corporate/planning-and-projects/master-plan>.

Chapter 3: Sydney Airport and its stakeholders

Summary

- Sydney Airport is both an infrastructure provider and a service provider that must consider and balance the diverse demands, expectations and incentives of a range of stakeholders.

- To do this Sydney Airport must manage the airport as a comprehensive and cohesive system adopting a 'total system' approach.

- Sydney Airport views all airline passengers, in all terminals, as its customers, and works to ensure a positive airport experience for all of them.

- The current regulatory regime facilitates the balancing of such diverse and sometimes conflicting interests.

3.1 Sydney Airport's customers and stakeholders

10   Under the current regulatory regime, Sydney Airport has evolved from an infrastructure provider to one that is also a service provider. Sydney Airport's operational decisions are therefore primarily informed by the often divergent needs of its various stakeholders[33] including passengers, airlines, industry and government stakeholders and the broader community. Figure 5 identifies many of the stakeholders whose diverse interests Sydney Airport takes into consideration when making its decisions.

Figure 5
Sydney Airport's stakeholders[34]

Group	Stakeholders
Passengers	International, domestic, regional, departing, connecting, arriving
Airlines	**Airlines** including full service carriers, LCCs, domestic, international, regional and freight **Board of Airline Representatives of Australia** (*BARA*) **Staff** including engineers, pilots and other airline support staff
Airline supply chain	**Ground handlers**, involving baggage handling, check-in, boarding and disembarking of passengers, loading and unloading of the aircraft, interior cleaning, toilet and water service, cargo and mail handling **Flight catering providers**

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[33] These stakeholders include 43.3 million passengers and 47 airlines in 2017. See Sydney Airport, *2017 Annual Report* (21 February 2018) p 20 https://www.sydneyairport.com.au/investor/investors-centre/reports/annual-reports>; OAG Analyser based on Northern Winter 2017 (January 2018).

[34] See also, Sydney Airport, *Sustainability Report* (2014) pp 1–13 <https://assets.ctfassets.net/v228i5y5k0x4/29gnmyphTi0uEUWGyMgiwl/2d340c30322e68e7d067e03be16f0f50/SYD_Sustainability _Report_2014__1_.pdf>.

Group	Stakeholders
	Fuel providers (Joint User Hydrant Installation (*JUHI*))
Airport service providers	Including Carbridge (Sydney Airport's airport **bus operator** transporting passengers to and from remote stands), SNP (Sydney Airport's **security provider**), Assetlink (Sydney Airport's **cleaning services provider**), Secom (Sydney Airport's **traffic and kerbside management provider**), maintenance and construction contractors
	Transport operators, including limousines, hire cars, ride share, taxis, shuttle buses, Airport Link, tour buses and car hire companies
	Retail tenants
Government	**Local councils** including Bayside, Inner West, City of Sydney, Randwick City and Sutherland Shire Councils
	State bodies including NSW Police, NSW Ambulance, Transport for NSW, Roads and Maritime Service, Department of Planning, Department of Industry and Department of Premier and Cabinet
	National bodies including Department of Agriculture & Water Resources (*DAWR*), Australian Border Force (*ABF*), Australian Federal Police (*AFP*), Civil Aviation Safety Authority (*CASA*), Department of Infrastructure, Regional Development and Cities (*DIRDC*), Aviation Maritime Security (*AMS*), Department of Home Affairs (*DHA*), Department of Foreign Affairs and Trade (*DFAT*), Airservices Australia (provides air traffic control management, aeronautical data, telecommunications, navigation services and aviation rescue and firefighting services)
General aviation	Including corporate/executive air services, air taxi operators, helicopters and private aviation
Community	**Tourism partners** including Tourism Australia, Destination New South Wales (*DNSW*), Business Events Sydney
	Sydney Airport Community Forum
	Australian public, including the local community
Other	Visitors picking up or dropping off family and friends, Airport Coordination Australia (*ACA*)

11   When making investment decisions, Sydney Airport must consider the benefits and implications for all members of the airport community and stakeholders beyond that community.

12   For example:

- in addition to considering the needs of airlines, retailers and customers in planning and delivering 'in terminal' developments, Sydney Airport must meet the requirements of government agencies for maintaining safe and secure operations

and border protection. Such government agencies include the ABF, AFP and DAWR; and

- in planning for on-airport road changes or peak period traffic impacts, Sydney Airport must consider the flow-on impacts to off-airport traffic and work collaboratively with state government agencies and the transport industry to deliver improved outcomes.

3.2   Sydney Airport adopts a 'total system' approach

13   Sydney Airport treats passengers of all airlines in all terminals as its customers, and seeks to ensure the safest, most secure and positive experience for passengers at all points of their journey through the airport. Individual airlines must focus on their own customers' interests, and those interests will be a reasonable but imperfect proxy for the needs of other airlines' passengers or the overall passenger mix. Airlines will advocate for specific product requirements that they believe will deliver them a competitive advantage and best meet the needs of their own passengers rather than passengers generally.

14   Sydney Airport operates largely on a common user principle whereby the airport allocates infrastructure such as gates, baggage carousels and check-in counters and kiosks on an as-required basis.[35] This maximises the efficient use of infrastructure and minimises costs to airlines. In this environment, to ensure the safe, secure and efficient operation of the airport and a smooth experience for all passengers, Sydney Airport manages the airport as a comprehensive system. There are often conflicting demands from multiple stakeholders, which only Sydney Airport has visibility of, that must be carefully balanced.

15   An example of this 'total system' approach is the way Sydney Airport transformed its international check-in process. When Sydney Airport initially proposed changes to the process of allocating check-in counters, it met resistance from many airlines. However, by adopting a total view of all check-in processes (including kerbside management, queuing, check-in processing, baggage management, etc.) across all airlines, Sydney Airport was able to consider the effect on all passengers and optimise the use of airport resources. Sydney Airport's approach to check-in processes is summarised in Figure 6. This demonstrates how taking a 'total system' approach enhances outcomes for all passengers and improves airline operational efficiency. The cumulative impact of the check-in initiatives increased available check-in hall capacity by up to 15%[36] while reducing queuing, improving baggage outcomes and delivering record high passenger satisfaction for check-in services.

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[35] T3 which is dedicated Qantas use until 30 June 2019; Qantas negotiated this as part of the Qantas Agreements in 2015.

[36] Sydney Airport data.

Figure 6
Sydney Airport takes a 'total system' approach in its operations and planning in relation to check-in operations

Objective	Sydney Airport's approach
Check-in planning and counter allocation to consider the effect on all passengers	• Queue length and wait time for all passengers is considered and factored into the check-in counter allocation to ensure the most efficient use of infrastructure. • The planning process also reflects International Air Transport Association (*IATA*) guidelines and factors in the level of congestion in the terminal and safety concerns that can arise from such congestion.
Ensuring coordinated and efficient management of ground handlers resources	• Check-in allocation planning coordinates those airlines that are managed by the same ground handler. • Where possible, Sydney Airport will allocate check-in locations to airlines that use the same ground handler close to one another to: (a) allow ground handlers to better utilise their resources; and (b) better manage passenger queuing space.
Improving the baggage flows and minimising operational risks on the day of operation	• The check-in allocation process considers baggage flow within the baggage system to minimise or eliminate the need for cross-piering (where an airline's check-in and baggage handling areas are not aligned). Eliminating cross-piering reduces the number of missed/delayed bags, reduces the time that bags spend in circulation and minimises baggage disruptions.
Dynamic use of check-in counters (profiling)	• Dynamic allocation and use of check-in counters allows airlines to use a flexible number of counters to better reflect passenger demand at different times of the day. • This allows Sydney Airport to better manage the peak demand by responding to airlines' demand and allocating assets efficiently while maintaining appropriate levels of services.
Review of open/close time for check-in operations	• Sydney Airport reviews check-in operating periods for each airline, based on the studies of passenger behaviours, estimated passenger volumes, and 'turn-up' profiles. • This information is used to work collaboratively with airlines to better facilitate bags and passengers reaching the aircraft on time. • For example, during peak times, if it is considered to be in the best interest of the overall check-in operation, airlines whose passengers tend to present early for check-in have been offered additional check-in time, at no extra cost.

Figure 7 below shows the improvement in check-in quality of service as the new check-in allocation was implemented in 2016. This improvement continued in 2017 despite heavy construction with a further improvement post construction in 2018.[37]

Figure 7
Improvements in check-in quality of service as new check-in allocation was implemented from 2016

Source: Sydney Airport

16   Managing airport assets efficiently by taking a 'total system' view also delivers operational cost savings to airlines. By reducing queuing times, making check-in more efficient and positioning airlines together that use the same ground handlers, airlines are able to optimise resourcing and reduce overall check-in time. This reduces the airlines' costs. The overall passenger experience is enhanced by reduced queuing and the smooth operation of passenger and baggage flow through the airport.

17   In 2016, Sydney Airport introduced an 'early close out' initiative with some airlines, which simply shifted forward counter allocation periods for those airlines by 15 minutes. This reduced the number of rushed bags (bags checked-in close to scheduled departures). This initiative helps to support improved 'on time performance' for the airlines involved, since flights are less likely to be delayed by waiting for rushed bags.

18   Overall, check-in improvements introduced by Sydney Airport to support the 'total system' have also helped to defer the need for investment in infrastructure (and potentially an

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[37] Sydney Airport data.

increase in airline charges), which would otherwise have been required to address these operational difficulties.

19   This demonstrates that individual airlines, in some cases representing large volumes of passengers, may not support the most efficient use of airport assets. By taking a 'total system' approach and improving the overall passenger proposition through efficient reform, the airport can best represent overall passenger needs.

20   In the complex, common use airport environment, the airport has primary responsibility to make investment and operational decisions in the best interests of the airport community including passengers. The airport is executing this responsibility appropriately by being transparent to customers and other stakeholders regarding how it arrives at its decisions and the outcomes that are achieved. Sydney Airport has embedded the requirement for transparency in its current agreements with international airlines which include agreed key performance metrics and reporting processes, and is moving towards a similar approach in its domestic agreements. This is discussed in more detail in Chapter 7.

3.3   Sydney Airport is best placed to balance competing stakeholder product needs

21   Sydney Airport must also balance a diverse range of demands from stakeholders regarding product outcomes.

22   The profile, product requirements and commercial imperatives of airlines vary: from strong domestic carriers that enjoy local incumbency advantages to large, long-term international carriers with extensive operations, to smaller international carriers that are new entrants to Australia. Airlines can even have diverse product offerings from full service to low-cost within their own corporate groups (e.g. Qantas and Jetstar; Virgin Australia and Tigerair). Airlines also differ in their mix of aircraft types, ranging from large widebody to narrowbody models, which have different airport service requirements.

23   There is a significant difference between LCCs and full service carriers: full service carriers often call for premium airport facilities to accommodate their product offerings while LCCs do not. For example, in 2012, Sydney Airport undertook the Terminal 2 Pier A redevelopment for Virgin Australia in a common use terminal, after agreeing to build additional capacity and deliver upgrades and new products in order to support Virgin Australia's changed business model from an LCC to a full service carrier.

24   Figure 8 below indicates the breadth of views held by stakeholders. The current regulatory regime enables Sydney Airport to balance those interests while achieving broader airport objectives.

Figure 8
Examples of competing interests of stakeholders

Investment or regulatory position	Stakeholder against	Stakeholder in favour
Invest to build additional capacity at the airport	**Incumbent airlines** do not benefit from entry of a new airline or expansion by a competing airline	**Passengers** will benefit from improved service choice and lower costs from better competition **New entrant** may benefit from additional space to enter the market and service new or expand existing routes
Invest in enhancing airport amenities	**LCC** with different business model and service level may resist enhancement of airport amenities **Full service carrier** may resist enhancement of airport amenities if these reduce uniqueness of amenities developed by the airline itself which it feels give it an advantage over other premium competitors **Other airlines** may oppose investment if they believe improvements offer them relatively less than their competitors	**Passenger** service levels benefit from enhanced amenities available at the airport **Local businesses** and the **economy** may benefit from capital works associated with investment (especially if this creates long-term employment opportunities)
Increased liberalisation of air rights	**Incumbent airline** or **national carrier** may oppose liberalisation (even though they may support such liberalisation in overseas markets) as this may increase competition and jeopardise market share and revenues	**Passengers** are likely to benefit from increased choice and reduced prices as a result of improved competition between airlines **New entrants** may favour increased liberalisation (even though they may oppose such liberalisation in their own nations)

Part C:
The Regulatory Regime

Chapter 4:   Current regulatory regime: objectives

Summary

- The current regulatory regime, often described as 'light-handed', has three principal components:

    - The ACCC monitoring regime including the annual publication of airport prices, costs, profits and quality of service in the ACCC's airport monitoring report.

    - The threat of increased regulation through:

        - the price inquiry and notification provisions of Part VIIA of the *Competition and Consumer Act 2010* (**CCA**); and

        - the National Access Regime under Part IIIA of the *CCA*.

    - The constraining effect of s46 of the CCA, which has recently broadened in scope following the Harper reforms.

- The interlocking components of the current regime provide airports with a strong incentive to act reasonably in their interactions with airlines, land transport operators and passengers.

- Sydney Airport considers that the current regime is achieving its objectives. This is evidenced by three matters in particular:

    - Sydney Airport has negotiated and agreed with airlines a number of increasingly mature and sophisticated mutually beneficial commercial agreements that also benefit passengers.

    - Sydney Airport has been able to confidently continue investing in its airport infrastructure, implementing operational improvements and quality of service.

    - The ACCC's monitoring reports do not provide any evidence of Sydney Airport exercising market power by earning excess returns, reducing quality of service, or investing inappropriately.

- As there is no market failure, a different regulatory approach is not justified.

4.1   Background - Rationale for the current regulatory regime

25   The current regulatory regime was intended to allow airports to more readily and flexibly respond to changes in the aviation and airline industry, while simultaneously providing airports with a sufficient disincentive to exercise market power.

The ACCC Monitoring Regime

26   The ACCC monitors airport pricing and quality of service, with a view to increasing the transparency and accountability of airports, and to act as an 'early warning system' for any monopolistic behaviour. The ACCC monitors:

- Sydney Airport's prices, costs and profits in aeronautical services and car parking services pursuant to a ministerial direction under the prices surveillance provisions in Part VIIA of the CCA;[38]

- Sydney Airport's financial accounts, which involves Sydney Airport providing the ACCC with its annual regulatory accounting statements and financial reports;[39] and

- Sydney Airport's quality of service in aeronautical and other services pursuant to the requirements under the *Airports Act 1996* (Cth) (**Airports Act**) and the *Airports Regulations 1997* (Cth).[40]

27   Although the information that the ACCC collects through its monitoring role may not enable the ACCC to assess definitively whether an airport has exercised any market power,[41] it provides the ACCC with an opportunity to identify any need for further investigation. The ACCC could recommend to the Minister that a pricing inquiry be conducted under Part VIIA of the CCA. A pricing inquiry could cause the Minister to subject an airport to the price notification regime in Part VIIA (see further below),or recommend to the Government that other forms of increased economic regulation be imposed.

4.2   Evidence that the current regulatory regime is working

28   Key evidence of the effectiveness of the current regulatory regime includes that:

- Sydney Airport and airlines have been able to negotiate and agree a number of increasingly mature and sophisticated, mutually beneficial commercial agreements that encompass mechanisms for resolving disputes for the supply of aeronautical services;

- Sydney Airport has been able to confidently continue to meet the needs of the airlines and passengers by investing in its airport infrastructure and quality of service;

- passenger satisfaction scores across key metrics have been improving; and

- the ACCC's monitoring reports do not provide any evidence of Sydney Airport earning excessive returns, investing inappropriately or reducing quality of service.

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[38] Direction under CCA s 95ZF issued by the Assistant Treasurer, 12 June 2012.

[39] *Airports Act 1996* (Cth) Part 7; *Airports Regulations 1997* (Cth) Part 7.

[40] *Airports Act 1996* (Cth) Part 8; *Airports Regulations 1997* (Cth) Part 8.

[41] See ACCC, *Airport Monitoring Report 2016-17* (April 2018) Appendix A 4.3 <https://www.accc.gov.au/system/files/Airport%20Monitoring%20Report%202016-17.pdf>.

The regime has brought commercially negotiated outcomes with increased investment and improved service

29   One positive indicator of the effectiveness of the current regulatory regime is that it continues to facilitate mutually beneficial commercial agreements between Sydney Airport and airlines for the supply of aeronautical services which have also benefitted passengers.

30   Although some of the commercial negotiations have been complex and lengthy, this does not evidence that Sydney Airport has exercised market power. There is an inherent tension between airlines, which generally have much shorter term commercial imperatives, and airports, which must undertake long-term infrastructure investment.[42] Accordingly, the complexities of investment in long-term infrastructure mean that negotiations between parties with balanced bargaining power (particularly airlines with a dominant market position, or those with the ability to create a dominant market position by negotiating collectively) will be lengthy and hard fought. As the Commission observed in the 2011 PC Report, despite negotiating tactics, there is typically a negotiated outcome agreed upon by both parties.[43] The regime has facilitated increased and efficient investment and increased service quality.

31   A second positive indicator of the effectiveness of the current regime is the fact that Sydney Airport has continued to invest with confidence and commercial certainty in its infrastructure and quality of service since 2002.

32   Further detail regarding these investments in infrastructure, operational efficiency and service quality is set out in Chapter 7.

The ACCC's monitoring reports do not evidence any exercise of market power

33   In releasing its monitoring report for 2016-17, the ACCC expressed its concern that 'the current regulatory regime which is limited to monitoring the covered airports, doesn't constrain the market power of four of Australia's major airports'.[44] The ACCC also appeared to criticise the operations of major airports, stating that '[i]t is not surprising that the airports are so profitable, given that they face little competitive pressure and no price regulation', and '[u]nconstrained monopolies often have an incentive and ability to charge excessive prices while lacking strong incentives to improve services'.

34   Behind the headlines, the evidence contained in the ACCC's monitoring reports does not indicate the exercise of market power by Sydney Airport, or provide any justification for further economic regulation. Rather, the KPIs against which Sydney Airport's performance is measured, such as the investments and improvements made by Sydney Airport (described in more detail in Chapter 7) demonstrate that airport pricing is reasonable. Indeed, the data in the ACCC monitoring reports shows improvements in service levels, continuing investment and reasonable but not excessive returns.

35   Despite the ACCC's articulated concerns about airports exercising their market power, it has never recommended an airport pricing inquiry to the Minister. The evidence shows that under the current regime increasingly sophisticated commercial agreements are being negotiated

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[42] 2011 PC Report, p 171.

[43] 2011 PC Report, p 169.

[44] ACCC, 'Airport Profits Continue to Grow' (Media Release, MR 69/18, 26 April 2018) <https://www.accc.gov.au/media-release/airport-profits-continue-to-grow>.

between Sydney Airport and airlines and Sydney Airport is continuing to invest in its airport infrastructure, increase its operational efficiency and quality of service. Indeed, the ACCC reported in its Airport Monitoring Report 2015-16 that 'The 2015 commercial agreement struck by Sydney Airport provides a step forward regarding service assurance at that airport and is an encouraging sign for where SLAs are heading more generally.'[45]

4.3 Airports are constrained under the current regulatory regime

The constraint posed by pricing inquiries

36 One feature of the current regulatory regime is that airports operate under the constant threat of further regulatory scrutiny in the form of a pricing inquiry under Part VIIA of the CCA.

37 Sydney Airport is acutely aware that this threat is genuine - the ACCC has demonstrated its willingness to investigate various industries if it perceives a need. In particular, the ACCC has conducted several pricing inquiries in recent years under Part VIIA, including into the dairy industry, digital platforms (which is ongoing), electricity supply, wholesale gas, the supply of certain types of insurance in Northern Australia and residential mortgage products. The ACCC has also recently conducted several market studies of its own volition, including studies into the communications sector, cattle and beef industries, and the new car retailing industry.

38 The threat of these kinds of public pricing inquiries being conducted in relation to airports provides a significant measure of constraint on airport market behaviour. Not only is the cost of complying with such inquiries something which airports would want to avoid, the risk of further regulation being recommended by these inquiries, and ultimately imposed, serves to discipline airport market behaviour.

The threat of further regulation through the price notification regime

39 Another feature of the current regulatory regime is the threat of further regulation via the price notification regime under Part VIIA of the CCA.

40 Sydney Airport experiences the reality of this threat through the price notification regime which currently applies to its regional air services and certain services of Airservices Australia and Australia Post.

The threat posed by the National Access Regime

Introduction

41 Under the current regulatory regime the threat of additional economic regulation via the National Access Regime under Part IIIA of the CCA is ever-present.

42 Part IIIA of the CCA provides a process under which an airport user can seek access to a declared airport service, and if it cannot reach a negotiated outcome with the airport, it can then refer an access dispute to the ACCC for arbitration. If the National Competition Council (**NCC**) makes the recommendation to the Minister, the Minister may declare the service.

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[45] ACCC, *Airport Monitoring Report 2015-16* (6 March 2017) p 12. <https://www.accc.gov.au/system/files/2015-16%20AMR%20revised%206%20March_0.pdf>.

43   Airlines have demonstrated their willingness to apply for declaration if they are unhappy with negotiated outcomes. Airlines have made applications for declaration of services at Sydney Airport on multiple occasions including:

- In 2005, Virgin Blue obtained declaration of Sydney Airport's domestic airside services under Part IIIA of the CCA. The declaration lasted for five years, and no airline sought to renew the declaration at the end of this period.

- In 2014, Tiger Airways sought declaration of domestic terminal services at Sydney Airport - later withdrawing its application after reaching a commercial agreement with Sydney Airport.

- Qantas has also stated that 'the possibility of seeking declaration of a particular airport's facilities is something that Qantas looks at with reasonable regularity'.[46]

44   Criticisms of the National Access Regime, to the effect that declaration processes can be lengthy, do not detract from its deterrence value in the context of airports. Although there have been protracted declaration processes in a few high-profile declaration applications in the past, the NCC has previously stated that those matters are not representative of declaration applications in general.[47] The NCC has argued:

- if timeliness in making declaration decisions is an issue, it requires a general response, not ad hoc measures to bypass the process in particular cases;[48] and

- the incidence of disputes regarding declaration decisions should diminish as the interpretation of the provisions of Part IIIA become more settled.[49]

45   Likewise, in its inquiry into the National Access Regime in 2013, the Commission considered views from the NCC, Qantas, Virgin and others, and concluded that the National Access Regime poses a credible threat of further economic regulation.[50]

46   The primary objective of Part IIIA is to promote economically efficient operation of, use of and investment in the relevant infrastructure in order to promote competition in upstream and downstream markets.[51] However, Part IIIA can also have a direct impact on monopoly pricing issues in the context of the current regulatory regime. In that respect, the Commission has previously observed:

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[46] Qantas Group, Submission DR66 to Productivity Commission, *Review of the National Access Regime*, July 2013, p 3 <https://www.pc.gov.au/inquiries/completed/access-regime/submissions/submissions-test2/submission-counter/subdr066-access-regime.pdf>.

[47] National Competition Council, Submission 009 to Productivity Commission, *National Access Regime (2013)*, 8 February 2013 p 14-15 <https://www.pc.gov.au/inquiries/completed/access-regime/submissions/submissions-test/submission-counter/sub009-access-regime.pdf>; Productivity Commission, *National Access Regime Inquiry*, Report No 66 (2013) p 226 <https://www.pc.gov.au/inquiries/completed/access-regime/report/access-regime.pdf>.

[48] See National Competition Council, Submission DR048 to Productivity Commission, *National Access Regime (2013)*, 3 July 2013, p 8 <https://www.pc.gov.au/inquiries/completed/access-regime/submissions/submissions-test2/submission-counter/subdr048-access-regime.pdf>; National Competition Council, Submission DR87 to Productivity Commission, *Economic Regulation of Airport Services (2012)*, 20 September 2011, p 3 <https://www.pc.gov.au/inquiries/completed/airport-regulation/submissions/subdr087.pdf>.

[49] National Competition Council, Submission 021 to Productivity Commission, *Economic Regulation of Airport Services (2012)*, 8 April 2011, p 11 <https://www.pc.gov.au/inquiries/completed/airport-regulation/submissions/subdr087.pdf>.

[50] Productivity Commission, *National Access Regime Inquiry*, Report No 66 (2013) p 227 <https://www.pc.gov.au/inquiries/completed/access-regime/report/access-regime.pdf>.

[51] CCA s 44AA.

The Commission considers that it is appropriate that criterion (a) — reframed to consider the effect of declaration rather than access — allows for declaration where the prevailing terms and conditions of access are so poor that they disrupt competition in another market.[52]

The threat provides airports with a powerful incentive to act reasonably

47   As between any commercial counterparties there are strong incentives for airports to reach mutually beneficial, commercially negotiated agreements with their customers - gaining certainty in relation to ongoing operations and investment, as well as increased investor confidence. The threat of declaration under the National Access Regime, provides airports with increased pressure when negotiating agreements with airlines or land transport providers to negotiate on terms acceptable to its counterparty. An application for declaration carries attendant costs, distraction and business uncertainty.

The threat continues following Harper changes

48   Airlines for Australia and New Zealand (**A4ANZ**) has argued that that the National Access Regime is no longer a credible threat, following recent legislative amendments to the declaration criteria.[53] This claim is incorrect. As discussed further in Chapter 5, the National Access Regime continues to pose a credible threat under the regulatory regime, which in turn imposes a significant constraint on Sydney Airport's commercial conduct.

49   The claims of A4ANZ are assumed to be based on the amendments to the declaration criterion concerning the promotion of competition. That criterion now focuses on whether declaration will promote competition in dependent markets, in contrast to the previous criterion, which had been interpreted as focusing on whether any level of access to an infrastructure service would promote competition.

50   The changes to the competition criterion were implemented on the recommendations of the Commission and the Harper review panel, which considered that the previous criterion had been interpreted by the courts in a manner which set the bar for declaration too low. As a result of this legislative change, the amended competition criterion is now consistent with the approach taken by the Australian Competition Tribunal in its decision to declare the airside services of Sydney Airport in 2005.[54] Accordingly, as it did in 2005, the National Access Regime continues to pose a credible threat of increased airport regulation.

The threat posed by s46 of the CCA

51   The legislative prohibition on the misuse of market power in s46 of the CCA is a significant constraint on Sydney Airport particularly given recent legislative amendments, which expand the provision in two respects. First, to consider both the purpose and effect of conduct by a firm with substantial market power, and second, by removing the requirement that a

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[52] Productivity Commission, *National Access Regime Inquiry*, Report No 66 (2013) p 173 <https://www.pc.gov.au/inquiries/completed/access-regime/report/access-regime.pdf>.

[53] A4ANZ, 'The Performance & Impact Of Australia's Airports Since Privatisation: A preliminary report prepared by Airlines for Australia & New Zealand' (May 2018) p 16 <https://www.a4anz.com/documents/A4ANZ_Report-The_Performance_and_Impact_of_Australias_Airports.pdf>.

[54] *RE Virgin Blue Airlines Pty Limited* [2005] ACompT 5.

complaining party prove that the firm used or 'took advantage' of its market power when engaging in contravening conduct.

52   Section 46 ensures that Sydney Airport must consider the impact of all its conduct on competition in downstream markets.

53   The ACCC has extensive powers to investigate and enforce contraventions of s46, which ensures that s46 is a significant component of the economic regulatory environment for airports.[55]

4.4   Proposals for further economic regulation of airports should not be adopted

Deemed declaration would be a backwards step

54   In the past it has been contended by some that there should be a mandatory role for the ACCC to arbitrate disputes between airports and airlines – that is, 'deemed declaration' of airport services under Part IIIA. This was proposed by the ACCC and airlines during the Commission's 2011 inquiry into airport regulation.

55   In 2011, the Commission rejected the proposal for an airport specific arbitration regime activated by deemed declaration of airport services under Part IIIA, and it affirmed its position in 2013.[56] It observed that:

> [h]aving moved to commercially-focused negotiations with at least some form of constructive engagement, it would seem retrograde to allow a reintroduction of heavy-handed regulation that could displace commercial negotiations and encourage gaming.[57]

56   The NCC expressed a similar view in its submissions to the 2011 inquiry, stating:

> By removing the public consultation process and independent assessment against the declaration criteria, deemed declaration undermines Part IIIA's built-in protections against the advancement of private interests over the public interest. … those criteria and review rights exist for good reason. They are the means by which the National Access Regime pursues the objects of Part IIIA.[58]

57   Sydney Airport considers that the reasons for having quite appropriately rejected the notion of deemed declaration in the past continue to apply. There are four key reasons for this.

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[55] See eg, comments made by Rod Sims in November 2017: '…we have formed an SLC Unit to investigate claims of a substantial lessening of competition. That unit of ten dedicated competition investigators is focused solely on substantial lessening of competition work. It will initially be directed to investigate cases under the reformed section 46 and the concerted practices provisions. … We expect the SLC Unit will be a catalyst for the reinvigoration of our competition investigations and enforcement work.' Rod Sims, 'Populism and the CCA' (Speech delivered at the RBB Economics Conference, 30 November 2017) <https://www.accc.gov.au/speech/populism-and-the-cca>.

[56] Productivity Commission, *National Access Regime Inquiry*, Report No 66 (2013) p 276 <https://www.pc.gov.au/inquiries/completed/access-regime/report/access-regime.pdf>. See also the views of the Harper Competition Policy Review, *Final Report* (March 2015) p 206 <http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf> that '*The price monitoring and 'light-handed' regulatory approach in aviation appears to be working well overall.*'

[57] 2011 PC Report, p 203.

[58] National Competition Council, Submission 21 to Productivity Commission, *Economic Regulation of Airport Services (2012)*, 8 April 2011, p 15–17 <https://www.pc.gov.au/inquiries/completed/airport-regulation/submissions/sub021.pdf>.

Deemed declaration is likely to discourage commercial negotiations

58   A system of deemed declaration of airport services would be unlikely to promote fruitful commercial negotiations. On the contrary, it would likely encourage regulatory gaming, and could result in ACCC arbitration becoming the default option. If so, this would reduce the efficiencies and innovations that have been delivered to date through commercial negotiation. This prospect was recognised by the Commission in its 2011 PC Report:

> …expedited access to arbitration by the ACCC at the contract formation stage could fundamentally undermine light-handed regulation. It is difficult to conceive how provision for ACCC arbitration would provide both airports and airlines with strong incentives to engage in genuine commercial negotiations…. during this inquiry the ACCC's public comments on airports' behaviour suggest that one party — the airlines — would have an incentive to expeditiously seek arbitration by the ACCC. … it seems likely that arbitration would come to be viewed by airlines as the default option, with negotiations increasingly centred in a narrow band around previously arbitrated outcomes. The net effect would therefore be a return to 'institutionalised' determination of charges and conditions for airport services, with its attendant costs.[59]

59   Further, the risk of deemed declaration causing ACCC arbitration to become the 'default option' is confirmed by the experience in the context of the previous telecommunications access regime (in Part XIC of the CCA). The 'deemed declaration' model bears similarity to the access regime which previously applied to telecommunications services under which 182 access disputes were referred to the ACCC for arbitration between 2005 and 2011. The volume of disputes was a clear indication that the regime was not seen by parties as an effective incentive to negotiate and, as a result, the regime was repealed from 1 January 2011. The Government referred to the extensive criticism of the regime in repealing the regime, stating that:

> Stakeholders' main areas of concern have been that the negotiate-arbitrate model is very slow, cumbersome and open to gaming (if not outright obstruction) and that Part XIC does not provide sufficient regulatory certainty for investment. [60]

Deemed declaration carries the risk of regulatory error

60   Inherent in a regime of regulated access and pricing is the risk of regulatory error in determining the applicable combination of prices and conditions. This can have profound impacts on the industry. For instance, if a regulator sets prices below the optimal level, this can delay investment, with clear consequences for operational efficiency and service standards. Conversely, if a regulator sets prices too high, it may disincentivise airlines from commencing or maintaining services or alternatively result in transfer of profit from airline to airport.

61   This risk is particularly pronounced in the airports context given the complex considerations that underpin access and pricing of airport services. For example, airports and airlines have competing commercial imperatives which must be weighed up. Airlines generally have short or medium term commercial incentives, and this is especially true of dominant airlines which may seek to protect their competitive advantages and oppose airport investments that will

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[59] 2011 PC Report, pp 201–202. See also, 2011 PC Report, pp xxxix, 203–204.

[60] Explanatory Memorandum, Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (Cth).

increase airline competition. Airports, on the other hand, have longer-term imperatives given the cost and life of airport assets. This means that airports are incentivised to promote competition between airlines and expand the aviation and airline industry.

62   Airports also must consider and balance the interests of the various airline customers it services which, as discussed in Chapter 3, can be radically different from one airline to another. For example, an entrenched incumbent airline generally has less incentive to agree to capacity expansion investments that increase opportunities for new entrant airlines.

Deemed declaration would impede airport investment

63   A deemed declaration regime would almost certainly adversely affect investment by Sydney Airport. Under-investment in airport infrastructure, particularly investment in capacity and efficiency would have the long-term impact of inhibiting the growth of Sydney Airport, impairing its ability to capture the continuing growth in airline passenger traffic discussed in Chapter 2. This, in turn, would adversely affect competition between airlines, enabling dominant airlines to entrench further their positions leading to reduced competition and potentially increased prices for consumers. This would have flow on consequences for the economy.

Deemed declaration would undermine the National Access Regime

64   Deemed declaration would be likely to substantially undermine the National Access Regime itself. This view was stated by the NCC in 2011 in the following terms:

> …if aeronautical services would not satisfy the declaration criteria, then it is hard to see how a deemed declaration would not amount to the promotion of particular interests rather than the promotion of effective competition which is, after all, the fundamental object of Part IIIA as explicitly stated in s 44AA. If a service would not satisfy the declaration criteria, then it should not be regulated under Part IIIA. To so impose regulation by legislative fiat is inconsistent with s 44AA and reduces confidence in the integrity of the National Access Regime…[61]

65   The NCC also stated that:

> …rather than increasing regulatory certainty, deeming declaration may indicate that regulation of third party access can more readily be achieved through lobbying and ad hoc interventions than through the mechanisms set out in Part IIIA. In the Council's view this is likely to reduce the transparency and predictability of such regulation, not enhance it.[62]

Final offer arbitration

66   In addition to deemed declaration, A4ANZ recently proposed that the ACCC should adopt a policy of 'final offer arbitration', to address the concerns expressed about potential gaming by parties in access disputes which would arise if airport services were deemed to be declared

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[61] National Competition Council, Submission 21 to Productivity Commission, *Economic Regulation of Airport Services (2012)*, 8 April 2011, p 16 <https://www.pc.gov.au/inquiries/completed/airport-regulation/submissions/sub021.pdf>.

[62] National Competition Council, Submission DR87 to Productivity Commission, *Economic Regulation of Airport Services (2012)*, 20 September 2011, p 3 <https://www.pc.gov.au/inquiries/completed/airport-regulation/submissions/subdr087.pdf>.

under Part IIIA.[63] The proposal of final offer arbitration involves the ACCC being required to choose between the final commercial positions of each party, in whole or by choosing components of each, to resolve an access dispute, without being able to decide on a middle ground or compromise on any issue. A4ANZ suggest that this would increase the commercial risk of arbitration and therefore the incentives for the parties to bargain.

67   Such a proposal is commercially and legally flawed. At the outset, Sydney Airport does not agree that this would reduce the risk of gaming – indeed, such a proposal would likely increase regulatory gaming, and incentivise parties to focus more on manipulating the other party and the ACCC.

68   Further, the inflexibility of final offer arbitration is not suitable for the complex and long-term nature of decisions relating to access and pricing of airport services. For instance, in pricing decisions airports consider service levels, other stakeholder interests and the varying need for infrastructure investment to accommodate increasing demand at a given point in time. Final offer arbitration has a high risk of resulting in inefficient outcomes and consequential under-investment in airport infrastructure. An example of the difficulty of relying on arbitration is set out in Confidential Appendix 10.

69   In addition, Sydney Airport negotiates with multiple different customers, each with different objectives, regarding infrastructure and investment decisions. Final offer arbitration between Sydney Airport and an airline could deliver an outcome that was unacceptable to other airline customers. This could result in Sydney Airport being unable to deliver on its primary role of providing infrastructure and services for passengers and freight and limit the ability of Sydney Airport to support the growth of aviation and the economy.

70   There is also the risk that final offer arbitration would incentivise parties to appeal ACCC decisions more frequently, given that the available appeal bodies would not be bound by any such policy of final offer arbitration. Parties would seek merits review by the Australian Competition Tribunal, bound only by the same statutory considerations as the ACCC and not its policies,[64] and judicial review in the Federal Court for a potential failure to follow rules of procedural fairness.[65] This would result in increased costs, time and uncertainty for airports, airlines and other stakeholders.

71   A4ANZ has proposed that the ACCC arbitrate access disputes between airports and airlines, which could require the ACCC to make decisions which are inconsistent with its legislative role and obligations under the CCA. For example, choosing between the final offers of parties may require the ACCC to make an arbitration decision which is inconsistent with the mandatory factors it takes into account when determining access disputes, including:

(a)   the objects of Part IIIA, which include to promote the economically efficient operation of, use of and investment in the relevant infrastructure (thereby promoting effective competition in upstream and downstream markets);[66]

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[63] A4ANZ, 'The Performance & Impact Of Australia's Airports Since Privatisation: A preliminary report prepared by Airlines for Australia & New Zealand' (May 2018) p 17–18 <https://www.a4anz.com/documents/A4ANZ_Report-The_Performance_and_Impact_of_Australias_Airports.pdf>.

[64] *CCA* (Cth) s44ZZBF.

[65] See eg, *Administrative Decisions (Judicial Review)Act* (Cth) ss 5(2)(f), 6(2)(f) which provide for judicial review in respect of improperly exercising its discretionary power in accordance with a rule of policy without regard to the merits of the particular case.

[66] *CCA* (Cth) s44AA.

(b)   the legitimate business interests of the service provider and the interests of all persons who have rights to access the service;

(c)   the economically efficient operation of the facility; and

(d)   the statutory pricing principles, including that regulated access prices should allow revenue that is at least sufficient to meet the efficient costs of providing access to the regulated service, and should include a return on investment commensurate with the regulatory and commercial risks involved.[67]

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[67] CCA (Cth) s44ZZCA(a)(i).

Chapter 5: Countervailing power of airlines

Summary

The market power of major airports is constrained by the significant countervailing power of airlines.

The countervailing power of airlines is derived from a variety of factors, including:

• the mutually dependent relationship between airports and airlines;

• the commercial size, sophistication and concentration among airlines;

• the ability of international airlines to negotiate collectively;

• the need for airline approval of major airport infrastructure;

• the inability of Sydney Airport to deny access to airlines (except in limited circumstances);

• the fact that airports compete to attract traffic (particularly in relation to international airlines and LCCs);

• the potential for airlines to reduce or withdraw services; and

• the potential for airlines to seek increased airport regulation, including through invoking existing regulatory mechanisms (or threatening to do so).

An indication of airline countervailing power is the practice of airlines, upon the expiry of a negotiated agreement or lease (and at times during the term of an agreement), to continue using the airport while short-paying or refusing to pay for airport services until they have reached a new commercial agreement. In such circumstances, airports cannot in practice deny access to an airline, and must continue to negotiate and compromise until an agreement is reached. This shifts the pressure of reaching a timely agreement from airlines to the airport.

The countervailing power of airlines is evidenced in the complex and vigorous commercial negotiations which occur between airports and airlines, and the favourable outcomes achieved by airlines in those negotiations. Those outcomes do not reflect an infrastructure owner capable of exercising market power and a 'take it or leave it' approach to its negotiations. This is described in Chapter 6.

Airline countervailing power can also be used in a manner that adversely impacts the efficient operation of airports, where for example incumbent airlines seek to entrench their dominant positions by resisting airport investment and controlling the slot allocation regime.

The contention that an airline has no countervailing power because it cannot 'bypass' the airport is untenable. Sydney Airport has no ability to 'bypass' its major customers. While this fact ensures Sydney Airport does not exercise its market power, it does not suggest that Sydney Airport has no market power – equally it cannot be said that major airlines have no market power.

The reality is both Sydney Airport and major airlines have market power and the issue before the Commission is whether the parties improperly exercise their power. That is a matter of evidence.

5.1   Introduction

72   The Commission's Issues Paper notes that airlines may have countervailing power, in the form of an ability to withdraw, or threaten to withdraw, from a particular route.

73   In the context of acquiring services from an infrastructure provider, countervailing power is a broad concept. The contention that an airline has no countervailing power because it cannot 'bypass' the airport is untenable. Airports regularly compete to attract the services of particular airlines, and airlines are constantly assessing where they deploy their aircraft based on a range of factors. Sydney Airport, equally, cannot bypass its major airline customers who account for the significant majority of the airport's passenger traffic. It follows that this 'bypass' test is not applicable in the context of the relationship between an infrastructure provider and a major customer.

74   The Commission has previously noted that it is 'unreasonable to treat airlines as powerless' in commercial negotiations with airports.[68] Sydney Airport agrees with this finding. Indeed, taking into account the factors listed above, it is clear that airlines wield a significant degree of countervailing power. This power is evidenced in the complex and vigorous commercial negotiations which occur between airports and airlines, and the mutually beneficial, balanced commercial agreements which result from those negotiations. The existence of such agreements is irreconcilable with claims that airports make 'take it or leave it' commercial offers or otherwise exercise market power in negotiations with airlines.

75   The significant countervailing power of airlines in commercial negotiations derives from several sources, which are detailed below.

76   Airlines use their countervailing power in commercial negotiations to ensure that airports charge fair prices, earn reasonable rates of return, make efficient investments in necessary infrastructure and provide an appropriate quality of service. However, airlines' use of their countervailing power in commercial negotiations can also be adverse to the efficient operation of airports, including because:

- the commercial objectives of airlines are more narrowly focused than an airport's, and may be inconsistent with Sydney Airport's 'total system' approach to airport planning and operations (discussed further in Chapter 3); and

- incumbent airlines have a strong incentive to entrench their dominant positions, which may result in those airlines resisting developments which would facilitate competition, such as airport investment or changes to the slot allocation regime (discussed further in Chapter 10).

5.2   The mutually dependent relationship between airports and airlines

77   Airlines' significant countervailing power arises from their mutually dependent relationship with airports, which in turn arises from the relatively few and sizeable airline groups operating in Australia and airlines' ability to bargain collectively.

78   In other regulated infrastructure industries, infrastructure owners may be vertically integrated, and face a large number of potential users or customers with limited negotiating power. In contrast, airports in Australia are not vertically integrated, meaning that the success of their

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[68] 2011 PC Report, p169.

business depends on that of their airline customers. In particular, the business of major airports is dependent on an aviation industry which is characterised by the dominance of two major airline groups:

(a)   the Qantas Group, which includes its low cost airline, Jetstar; and

(b)   Virgin Australia, which includes its low cost airline Tigerair, which was acquired by Virgin Australia over 2013 – 2014.[69]

This airline duopoly accounted for almost all domestic passengers, and more than one-third of international passengers, at the Airport in 2017.

79   The concentration in the domestic air travel market was acknowledged by the Commission in its Issues paper, as it states 'over 95% of all passenger movements …are provided by three airline groups'.[70]

80   The fact that airports are not vertically integrated, and the high market share of the major airlines in Australia, means that the relationship between major airports and airlines is mutually dependent. Sydney Airport is beholden to its customers as much as its customers are beholden to Sydney Airport. This is not a transitory proposition as vertical integration is not permitted under the Airports Act.

5.3   The ability of airlines to bargain collectively

81   International airlines also have significant countervailing power through their ability to bargain collectively with major airports, through the BARA. The ACCC has authorised BARA to negotiate on behalf of its members with international airports, Airservices Australia and other providers of essential aviation-related services to improve the experience, efficiency and safety outcomes for international passengers.[71] BARA represents 32 international airlines (including Qantas and Virgin), which account for 90% of all international passenger flights to and from Australia,[72] and approximately 84% of all international passengers passing through Sydney Airport.

82   The countervailing power of airlines through associations such as BARA has been acknowledged by BARA and the ACCC:

> In its 2010 determination, the ACCC accepted that authorisation for BARA to continue to collectively bargain would result in public benefits including improved bargaining power and input into contracts, transaction cost savings and a small benefit through more efficient infrastructure investment.[73]

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[69] Virgin Australia acquired 60% of Tiger Airways Australia in 2013 (following approval by the ACCC), and acquired the remaining 40% in 2014. See Tiger Air, 'About Tigerair' <https://tigerair.com.au/tigerair-info/about-tigerair>; and ACCC, 'ACCC to not oppose Virgin Australia's proposed acquisition of 60% of Tiger Australia' (Media Release, MR 90/13, 23 April 2013) <https://www.accc.gov.au/media-release/accc-to-not-oppose-virgin-australia%E2%80%99s-proposed-acquisition-of-60-of-tiger-australia>.

[70] PC Issues Paper p 6.

[71] BARA, 'About Us', <https://bara.org.au/about-us/>.

[72] BARA, 'Our Members', <http://bara.org.au/our-memebrs/>.

[73] ACCC, 'Determination: Application for revocation of A91200 and substitution authorisation A91466' (Authorisation, A91466, 25 March 2015) paragraph 34.

83   The countervailing power of international airlines acting through BARA is evidenced by Sydney Airport and BARA's most recent commercial negotiations, which resulted in a commercial agreement which delivered price path certainty, commitments to improved service quality and a collaborative approach to solutions for shared problems. More information on these negotiations and the outcome is provided in Chapter 6 and Appendix 3.

5.4   The commercial size and sophistication of airlines

84   Airlines also derive countervailing power from their commercial size and sophistication – they are largely well-resourced organisations with extensive experience in negotiating with airports. While Sydney Airport generally engages in major commercial negotiations with any given airline every five years or so (being the typical length of airline agreements), airlines are conducting major commercial negotiations with numerous airports on a regular and progressive basis. This allows airlines to take their experience and information from negotiations with one airport and apply it to the next, leveraging one negotiated outcome as a comparison and benchmark for its next negotiation with a different airport. For example, Sydney Airport understands that BARA has relied on the outcomes reached in its Aeronautical Services Agreement (*ASA*) negotiated with Sydney Airport as leverage in other commercial negotiations with airports around Australia.

85   As explained in Chapter 10, landing rights (slots) at constrained airports can be very valuable. Slots at times that maximise passenger connectivity and network benefits are particularly valuable and give the slot holder a competitive advantage over other airlines with less desirable slot times. More significantly, a dominant airline may hold a sufficiently large volume of slots at a constrained airport, such that a new carrier cannot obtain the critical volume of slots needed to compete effectively. This situation applies at Sydney Airport, where it would be extremely difficult for a new domestic airline to compete effectively against the incumbents. Therefore airlines, or groups of airlines, with an entrenched slot position may have significant market power.

86   For context, the airport has no control over the allocation or use of slots. This is controlled by slot users (airlines), the slot allocator (ACA) and the Commonwealth Government which is responsible for operating restriction policies.

5.5   The commercial need for airline approval of major airport infrastructure

87   A key rationale for implementing the current regulatory regime was to allow and incentivise airports to invest in airport infrastructure in order to meet forecast demand. This has been achieved, with Sydney Airport having implemented numerous projects necessary to increase capacity and improve service quality, in consultation and agreement with airlines. Further information on this investment is contained in Chapter 7.

88   In undertaking such investment, the input of airlines is crucial. Sydney Airport could theoretically commit to major capital investment without airline approval. However, doing so may affect Sydney Airport's ability to achieve appropriate equity or debt funding for the investment, and would run the risk of disputes with airlines regarding pricing, non-payment by airlines of airport charges. It could also act as a catalyst for airlines to invoke existing

regulatory mechanisms or otherwise seek increased airport regulation. In practice, Sydney Airport engages in extensive consultation with airlines regarding major capital investment, and seeks approval for such investment as part of negotiating and reaching commercial agreements (given that such investment is linked to the prices of airline services). In turn, the prudency of obtaining airline approval for major capital works is a source of countervailing power for airlines in contract negotiations. Major airlines are able to oppose proposed infrastructure projects (in whole or in part), which directly impacts the price under negotiation. Incumbent airlines may be incentivised to block such infrastructure in order to limit airport capacity and entrench their dominant position. An example is set out in Confidential Appendix 10.

5.6   Airlines can and do refuse to pay

89   An indication of airline countervailing power is the ability and practice of airlines, upon the expiry of a negotiated contract or lease, to continue using the airport while short-paying or refusing to pay for airport services. Under the terms of its Head Lease with the Commonwealth Government, Sydney Airport has the right to deny access to airlines for non-payment in limited circumstances. Practically however Sydney Airport cannot do so due to the likely negative impact on passengers, the community and on the relationship between Sydney Airport and the airline.

90   As a result, an airline may continue to use an airport and short-pay (i.e. paying less than their obligation) for airport services until it has reached a commercial agreement with the relevant airport, or until the resolution of any legal proceedings brought by the airport for recovery of the debt owed. This demonstrates significant countervailing power in the context of negotiating new contractual agreements with an infrastructure service provider.

91   The ability and practice of airlines to engage in such conduct has previously been noted by the Commission:

> Moreover, several airports reported that where airlines do not agree to increased charges, it is not uncommon for airlines to refuse to pay the increased charges and to continue to pay the 'old' rates... the non-payment of additional charges can go on for some time (box 8.5)…Airlines can and do refuse to pay…[74]

92   Where this occurs, airlines may be incentivised to delay commercial negotiations, so that they may continue to pay old charge rates for a period. This also puts timing pressure on Sydney Airport to reach an agreement.

93   The power of incumbent airlines is also seen in their practice of short-paying, refusing to pay or delaying payment of charges due under existing negotiated agreements. Airlines engage in such conduct regularly, often with a view to renegotiating existing agreements, or to create leverage in commercial negotiations regarding other facilities and services. Refer to Confidential Appendix 10 for examples.

94   This market concentration means that short or non-payments can have a material impact on the financial performance of Sydney Airport.

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[74] PC 2011 Report, p 170.

5.7   Competition between airports: airlines' ability to switch, withdraw or reduce services

95   Airlines also derive countervailing power from:

- the competition which exists between airports to attract airlines and passengers; and

- airlines' ability to reduce or withdraw services and deploy their assets elsewhere.

96   However, this is not the case for all services of all airlines. Other domestic airports are not a substitute for passengers wishing to fly directly into Sydney, and in that sense, major domestic airlines in Australia need to fly to Sydney Airport, in the same way that Sydney Airport needs those airlines to do so. It is a mutually dependent relationship, as discussed above.

97   Beyond that however, airports compete with each other for traffic. Airports compete with each other on several metrics, including aeronautical charges, quality of service and slot availability. Airlines have an ability to redeploy their fleet to other routes, making use of their mobile assets and the availability of common-use terminals. Airlines can also decide to reduce the size of their aircraft and the frequency of their service at short notice which in turn can affect an airport's ability to plan for future investment with appropriate certainty. This is particularly the case for LCCs, which seek the most profitable routes, and international airlines, which may switch between Sydney Airport and other international airports within Australia or globally. This is a competitive constraint on Sydney Airport. To attract and retain airlines or routes or to encourage an increase in services, Sydney Airport offers commercial incentives, which airlines respond to. If no competition existed between airports, such incentives would not be necessary.

Competition for international airlines

98   There has been considerable growth in international passenger traffic to and from Australia over the past decade, with international airlines generally being able to choose between at least Sydney, Melbourne and Brisbane airports as a route destination and base for their operations in Australia. As a result, international airlines play off airports against each other to achieve the best terms and conditions for access.

99   The Commission has previously acknowledged such competition, stating that:

> A further development has been the apparent emergence of increased competition between major airports in different states (and even different countries) to attract airlines and flights. International visitors often have some discretion over the state from which they enter or depart Australia, and indeed over whether they come to Australia at all….
>
> … Airports often offer incentives to attract new airlines, and the Commission understands that the major capital city airports (sometimes with backing from state governments) have at times effectively been engaged in bidding wars to secure business from new airlines….[75]

100   Sydney Airport regularly competes with other airports to attract airlines and passengers. Examples are set out in Confidential Appendix 10.

101   Airlines can also withdraw or threaten to withdraw services from particular airports. An example is set out in Confidential Appendix 10.

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[75] 2011 PC Report, p 79.

Competition for low cost airlines

102   LCCs have mobile fleets and seek to optimise their route networks across multiple bases within geographic regions – defined by aircraft range rather than national borders. For example, Jetstar may choose to deploy new aircraft across a wide range of airports across Australia or Asia.

103   The Commission also acknowledged this in its 2011 PC Report, noting that the market power of even large airports had been tempered through the growth in LCCs:

> LCCs typically have more choice in using particular airports than full service airlines, which must fly to airports at the major population centres with good access to the associated business districts. In this respect, the growth in LCCs may reduce the market power of airports, particularly as other airports in the same region may prove more feasible substitutes. The Commission has heard that LCCs in some instances have bypassed, or offered limited services to, major city airports and used nearby regional airports instead….
>
> …
>
> Another facet of the growth in LCC air travel is that the elasticity of demand is higher, as they cater mainly for leisure travellers. Airport charges represent a greater proportion of ticket prices for LCCs than for full service carriers, and leisure travellers are typically considered more price sensitive than business travellers.[76]

104   LCCs are expected to continue to grow and so airports will continue to need to adapt to the requirements of LCCs and price to retain their business.

5.8   Airlines' ability to threaten, seek and lobby for increased airport regulation

105   As discussed in Chapter 4, the current regulatory regime poses a credible threat of increased airport regulation, which constrains the exercise of any market power held by major airports.

106   The potential for Sydney Airport's services to be declared under the National Access Regime is a significant constraint on Sydney Airport's commercial conduct. In commercial negotiations, airlines threaten to seek declaration of Sydney Airport services. Such threats are not idle, nor are they without teeth – Sydney Airport has been subject to a number of applications for declaration under the Regime, two of which were successful, and one of which was withdrawn a month after being filed, after the applicant airline reached commercial agreement with Sydney Airport. Sydney Airport is incentivised to reduce the risk of the potential application of the National Access Regime – as the regime creates uncertainty, involves time and expense, runs the risk of regulatory error, and would adversely impact on Sydney Airport's incentives to invest, commercial flexibility, efficiency and innovation.

107   The negative consequences of declaration were evident in the airside services application brought by Virgin Blue Airlines in 2002, which took a number of years to resolve. Virgin Blue applied for declaration in October 2002, the Treasurer decided not to declare Sydney Airport's airside services in January 2004, and the Australian Competition Tribunal overturned that decision and declared the service for five years from December 2005. Sydney Airport's appeals to the Full Federal Court and the High Court were unsuccessful, in October 2006 and March 2007 respectively. Virgin notified the ACCC of an access dispute in

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[76] 2011 PC Report, p 77.

relation to the declared service in January 2007 and withdrew its notification in May 2007 after negotiating a commercial agreement.

108   The power of the National Access Regime was experienced again in 2014, when Tigerair Australia sought declaration of Sydney Airport's Terminal 2 (**T2**) domestic terminal services. Tigerair applied for declaration on 3 July 2014, and withdrew its application a month later after reaching a commercial agreement with Sydney Airport. The CEO of Tigerair, Mr Rob Sharp, said that since the declaration application, the parties had engaged in 'in-depth commercial discussions', which achieved a successful resolution offering 'good outcomes for all parties involved'.[77]

109   Examples of airlines threating to apply to have services declared are set out in Confidential Appendix 10.

5.9   The impact of airlines' countervailing power

110   In Sydney Airport's experience, the countervailing power of airlines ensures they are able to protect their interests in commercial negotiations. Airlines have material resources dedicated to prosecuting their strong views on commercial matters.

111   As a result, commercial negotiations with airlines can be complex, lengthy, and involve a degree of commercial tension. Disagreement on certain matters is occasionally escalated from commercial negotiating teams to one-on-one negotiations between CEOs. Negotiating parties sometimes resort to conciliation or arbitration to resolve differences in positions. An example is set out in Confidential Appendix 10. However, as the Commission noted in the 2011 PC Report, these factors do not necessarily reflect any systemic failure in the current regulatory regime – and indeed, given the differences in interests of airports and airlines, 'it would be remarkable if commercial negotiation was conducted smoothly'.[78] A degree of commercial tension is to be expected between parties to significant commercial negotiations with differing interests – particularly in circumstances where airports are required to balance the interests of all airport users, while airlines typically focus on short term commercial incentives and their own passenger base.

112   What matters, ultimately, is the outcome of such negotiations – which in Sydney Airport's experience, is the reaching of mutually beneficial, balanced commercial agreements, which are increasingly sophisticated to which Sydney Airport holds itself accountable through reporting to airline customers and the community. Such agreements provide for:

•   improved service quality and accountability (as described in Chapter 7);

•   efficient and timely investment in the airport (as described in Chapters 6 and 7);

•   fair prices, at levels expected to generate a return for Sydney Airport within a reasonable range (as detailed further in Chapter 8);

•   good service outcomes for the airline and the airport's shared customers, the passengers.

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[77] Andrew McLaughlin, 'Tigerair, Sydney Airport Resolve Dispute', *Australian Aviation*, 11 August 2014 <http://australianaviation.com.au/2014/08/tigerair-sydney-airport-resolve-dispute/>.

[78] 2011 PC Report, p 172.

113   Accordingly, Sydney Airport rejects the comments made by A4ANZ in the lead up to the Commission's inquiry that major airports make 'take it or leave it' offers. Similarly, it is incorrect for A4ANZ to cast doubt on the genuineness of airport 'negotiations', insofar as such comments are intended to include Sydney Airport.

114   Sydney Airport further notes the statements made by A4ANZ to the effect that airline countervailing power is not 'a relevant consideration', because airlines have limited ability to switch to other airports. A4ANZ presumably makes these comments on behalf of its members: the Qantas Group, Virgin Australia, Air New Zealand, and REX, which account for 99.9% of all domestic and a material percentage of all international passengers at Sydney Airport. In making such comments, it appears that A4ANZ seeks to confine the sources of airline market power to an ability to reduce or withdraw services, in order to dismiss airline countervailing power altogether. By this narrow definition, nor would Sydney Airport have market power, since it has no ability to switch its services between customers and is dependent on the duopoly which characterises domestic aviation in Australia. Similarly, in international aviation, Sydney Airport is dependent on BARA members.

115   In reality, as evidenced above, airlines' ability to reduce or withdraw services is just one source of countervailing power, and in sum, that power is substantial. This countervailing power is evidenced in the complex and vigorous commercial negotiations which occur between airports and airlines, and the mutually beneficial, balanced commercial agreements which result from those negotiations. The existence of such agreements is irreconcilable with claims that airports make 'take it or leave it' commercial offers or otherwise exercise market power in negotiations with airlines.

Part D:
No evidence of Sydney Airport exercising market power

Chapter 6: Consultation and negotiation of commercial agreements with airlines

Summary

• Since the 2011 PC Report, consultation and negotiation between Sydney Airport and the airlines has been conducted on an 'open book' basis with greater transparency. This has facilitated more sophisticated and bespoke contractual arrangements.

• Sydney Airport's recent ASAs are increasingly innovative, reflecting commercial compromise and including frameworks that impose clear performance criteria on Sydney Airport.

• Investment Strategies contained in the ASAs provide airlines with price certainty while enabling Sydney Airport to invest including, for example, in response to unforeseen changes in airlines' preferred aircraft.

• The manner in which Sydney Airport engaged in consultation and negotiation and the terms of the agreements reached indicate that Sydney Airport did not exercise any market power in the process. Such a process may not have been possible under a more heavy-handed regulatory regime.

6.1 Introduction

116 The Commission has sought evidence on how airports exercise market power in their approach to consultation and negotiations with airlines and whether the airport's conduct facilities commercial outcomes. This Chapter describes:

(a) the process by which Sydney Airport and the airlines have reached commercial agreements in the period since the 2011 PC Report;

(b) the contractual provisions that constrain Sydney Airport from exercising any market power in respect of price, investment and operational decisions, and service quality; and

(c) the complexity of the commercial agreements reached and the manner in which they reflect the bespoke requirements of individual airlines.

117 Reaching agreement with airlines requires extensive consultation and negotiation. At times the process is both protracted and difficult. In the experience of Sydney Airport, one challenge in reaching agreements with airlines has been their different requirements and incentives.

118   Since 2011 Sydney Airport has agreed an international aeronautical agreement with BARA
       (*2015 BARA ASA*), entered into international ASAs with all but one of its international
       airlines and executed a number of agreements with Qantas that cover almost the entirety of
       Qantas' operations at Sydney Airport. The extensive airline consultation undertaken to
       develop Sydney Airport's Master Plan, approved in 2014, facilitated effective and transparent
       discussions with BARA leading to the 2015 BARA ASA. In turn, the 2015 BARA ASA
       informed the agreements with Qantas later in the same year.

Master Plan SYD consulted extensively with airlines to develop Sydney Airport's master plan.	**BARA ASA** Agreement with BARA on an ASA endorsed by it to airline members.	**Qantas Agreements** Agreements covering almost entirety of Qantas' operations at SYD
Approved February 2014	**Agreed June 2015**	**Agreed August 2015** (additional agreement in December 2016)

119   Sydney Airport is currently consulting with its domestic airlines in preparation for the next
       generation of aero-services agreements for use of the T2 domestic terminal.

6.2   Experience under the current regulatory regime

Evolution of Sydney Airport's Agreements from 2001 to 2011

120   The agreements Sydney Airport reaches with airlines have evolved in their sophistication
       since privatisation and continue to evolve, as illustrated below:

(a)   when privatised: Sydney Airport enforced a Conditions of Use (*COU*) developed from
       the former Federal Airports Corporation (*FAC*) by-laws. The COU included both price
       and non-price terms. Use of the airport constituted contractually binding acceptance
       of the terms and conditions.

(b)   after privatisation: Sydney Airport negotiated COUs, the form of which was endorsed
       by BARA, with a number of airlines including bespoke COUs with Qantas and the
       Virgin Group. Each COU was typically focused on pricing and capex delivery.

(c)   2002: Sydney Airport acquired T2 from Ansett Australia and negotiated commercial
       agreements with all domestic operators. Agreements reached with the Virgin Group
       and the Qantas Group for the use of T2 extend to 2019.

(d)   2004: once the Government accepted Sydney Airport's 2003/4 Master Plan,
       negotiations began on the prices and terms to apply to domestic and international
       use of the airfield and to the international passenger terminal (T1).

(e)   2006: following the 2006 PC Report, Sydney Airport settled a new commercial
       agreement endorsed by BARA.

(f)   2007: Sydney Airport reached an agreement with Jetstar on domestic charges. Examples of the agreement are set out in Confidential Appendix 10.

(g)   2009: Sydney Airport reached agreement with Tigerair on domestic charges. Examples of the agreement are set out in Confidential Appendix 10.

(h)   During the economic downturn: Sydney Airport reviewed its costs and undertook a comprehensive review of capital investments in consultation with all airport users.

121   The 2011 PC Report concluded that, as the current regulatory regime had only been in place since 2002, there had been limited opportunity for more comprehensive agreements. The report noted specifically that:

> 'With airports and airlines entering their second or third round of commercial agreements, their 'learning' to date might be expected to lead to greater maturity and sophistication in future negotiations (and reduce the time taken), unless of course, the framework is inherently dysfunctional.'[79]

Evolution of major Sydney Airport Agreements since the 2011 PC Report

122   Sydney Airport's commercial agreements and its relationship with its airlines have become increasingly mature and sophisticated as illustrated below:

(a)   2011: Sydney Airport began consulting with the airlines on its *New Vision* strategy that was released in December 2011.

(b)   2012 and 2013: extensive consultations continued to develop Sydney Airport's Master Plan 2033, which was approved in February 2014.

(c)   2012: Sydney Airport agreed with Virgin Australia to deliver a bespoke redevelopment of T2 Pier A to increase capacity, improve service quality and enable Virgin to create a premium product and brand.

(d)   June 2015: Sydney Airport agreed a new air services agreement, the 2015 BARA ASA, that was supported by BARA. This agreement was a significant evolution and included detailed investment plans, performance frameworks to track service delivery, rebates for infrastructure failures which caused delays to flights, and mechanisms for ongoing consultation between Sydney Airport and the airlines.

(e)   August 2015: Sydney Airport agreed to a suite of agreements with Qantas that encompassed the airline's international and domestic operations at Sydney Airport including the 2015 ASA and the Terminal 3 (*T3*) agreement. In December 2016, Sydney Airport and Qantas executed another agreement on some specific additional terms relating to Qantas' international operations.

(f)   August 2018: Sydney Airport has agreed BARA ASA style agreements with all but one of its international airlines.

123   Figure 9, below, illustrates how the airlines and Sydney Airport have over time designed more comprehensive commercial arrangements.

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[79] 2011 PC Report, p 161.

Figure 9
Major Agreements

Year agreed	Agreement[A]	Long term[B]	Capex envelope	Price path certainty on new capex	Strategic consultation on investment program	Service quality commitments	Enhanced dispute resolution procedure
Open dated	Conditions of Use for use by any airline	-	-	-	-	-	-
2002	**Virgin Australia**: Terminal 2 (Domestic) Agreement	✓	-	-	-	-	-
2007	**BARA and various International Airlines:** Commercial Agreement for international passenger services endorsed by **BARA**	-	-	-	-	-	-
2011	**International Holdover** (Extension of commercial agreements from 2012 to 2015)	-	-	-	✓	-	-
2012	**Virgin Australia:** Bespoke redevelopment of T2 Pier A	✓	✓	✓	✓	–	–
2015	**BARA ASA**	-	✓	✓	✓	✓	✓
2015/16	**Qantas Agreements**	✓	✓	✓	✓	✓	✓

A - Agreements typically include airline consultation on individual capex projects, dispute resolution processes including escalation to CEO's and price certainty except as adjusted for inflation and new investment.

B – Long Term means a term of greater than five years (most major agreements have a term of five years).

Sydney Airport is now working on the next generation of ASAs

124   Sydney Airport is working to facilitate the next generation of ASAs. The next ASAs due for renewal are those involving T2 Domestic airlines. These agreements are due to expire in June and December 2019. Specifically, Sydney Airport has:

(a)   prepared and presented to the Virgin Group and Jetstar a medium-term investment strategy. The draft strategy addresses T2's key infrastructure needs and accommodates the airport's forecast growth in airline passenger numbers;

(b)   held follow-up consultations with the Virgin Group and Jetstar to gather feedback on the investment strategy and to ascertain any specific product or other requirements they have. Sydney Airport has gained insights relevant to the various operating models used by these airlines which will ensure better informed solutions for the final agreement;

(c)   conducted high level discussions with each of Virgin Group and Jetstar on key terms for future agreements. Discussions have focused on continuing the evolution of the current ASA; and

(d)   started to develop an aeronautical agreement that, like the 2015 ASA endorsed by BARA, is outcomes focused and includes:

    (i)   service level based agreements that can be used with each T2 Airline; and

    (ii)   a medium-term investment strategy.

6.3   Sydney Airport's approach to commercial negotiations

125   Sydney Airport's approach to consultation and negotiation follows a three-stage process that can be characterised as:

- pre-negotiation consultation and relationship investment;

- contractual negotiation; and

- on-going engagement.

Pre-negotiation consultation and relationship investment

126   Sydney Airport's most recent commercial agreements were agreed following years of extensive consultation leading to the 2033 Master Plan that was approved in 2014. Further details are set out in *Case Study 1*, below.

127   Generally, Sydney Airport adopts the following process to pre-negotiation consultation:

(a)   develops models to forecast passenger demand;

(b)   consults with airlines about their future requirements, including their forecast passenger demand, when preparing its five yearly Master Plans;

(c)   consults with airlines to understand their key objectives and operational, financial and product related priorities;

(d)   undertakes detailed planning and demand modelling for various Sydney Airport services, including by identifying areas of significant congestion that might limit service performance; and

(e)   identifies potential solutions that will inform Sydney Airport's ongoing investment strategy.

Case Study 1
The Master Plan 2033

In early 2011, Sydney Airport began consulting with airlines and other stakeholders to discuss how to improve, among other things:

(a)   airline products, for example improvements in the passenger transfer experience and on-time performance;

(b)   airline efficiency, for example facilitation of staff sharing between domestic and international operations; and

(c)   aircraft productivity, for example by use of swing gates that can be configured for domestic or international use.

In December 2011, building on these consultations, Sydney Airport announced its '*New Vision*' plan for the airport.

Sydney Airport continued to consult with airlines on developing its *Master Plan 2033* that would be approved on 17 February 2014.[80] To facilitate this consultation Sydney Airport agreed to extend to June 2015 domestic runway and international agreements that were due to expire in June 2012. This extension allowed the aviation community to work together to further the Master Plan proposals.

Between 2011 and 2014 Sydney Airport conducted more than 300 stakeholder meetings with airlines, airport users and the broader community.

This extensive engagement formed the foundation for Sydney Airport's subsequent agreements:

- in 2013 with the NSW Government on its $500 million joint investment in roads and landside access on and around the airport;

- in 2015, the 2015 BARA ASA; and

- in 2015 and 2016 the Qantas Agreements.

Sydney Airport's consultative approach to negotiations with airlines

128   Sydney Airport negotiates the ASAs on an 'open book' basis. This approach allows Sydney Airport and airlines to understand each other's commercial position.

129   For example, during negotiations with BARA, Sydney Airport facilitated an independent consultant retained by BARA to undertake an audit of Sydney Airport's operating expenditure (see Appendix 3). In particular, Sydney Airport:

(a)   shared the calculation of its weighted average cost of capital including calculations made in accordance with methodologies recently used by regulatory tribunals such as the Independent Pricing and Regulatory Tribunal and the Australian Energy Regulator;

(b)   discussed issues related to Sydney Airport's upcoming investments including with respect to:

(i)   Sydney Airport's total capital expenditure;

(ii)   the scope and rationale for that capital expenditure; and

(iii)   the identification of specific congestion points that currently limit Sydney Airport's services; and

(c)   discussed the operating expenditures that Sydney Airport would make during the contractual term including with respect to:

(i)   the allocation of resources to operational activities;

(ii)   the total level of resources allocated; and

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[80] Sydney Airport, *Master Plan 2033* (17 February 2014) <https://www.sydneyairport.com.au/corporate/planning-and-projects/master-plan>.

(iii)   the service levels that Sydney Airport would commit to delivering.

130   Further details relating to the 2015 BARA ASA including the form of the final agreement are set out in *Case Study 2* below.

Case Study 2
The 2015 BARA ASA

In 2014 and 2015, Sydney Airport and BARA negotiated and agreed a new BARA endorsed international air services agreement.

Given that BARA collectively represents airlines (including Qantas and the Virgin Group) carrying approximately 84% of all international passengers who pass through Sydney Airport, the negotiations were complex. The relatively short duration, however, was facilitated by Sydney Airport having completed extensive consultation with the airlines over the preceding years. The ASA's key features include:

(a)   improved pricing over the five year term including an immediate discount compared with charges under the previous commercial terms that were agreed in 2007 and extended in 2012;

(b)   an agreed target spend for Sydney Airport's aeronautical investment and an indicative *Investment Strategy*;

(c)   an agreement to develop service level agreements (**SLAs**) specifying specific service levels for Sydney Airport;

(d)   a KPI framework that includes a *Resolution Procedure* through which Sydney Airport is required to address poor performance;

(e)   a service level recovery mechanism that provides a rebate to airlines if they are delayed as a result of Sydney Airport service failures; and

(f)   creation of an Industry Consultative Forum (the **ICF**), a quarterly forum for reporting KPI performance, ongoing developments and the implementation of Sydney Airport's *Investment Strategy*.

Further detail on the 2015 BARA ASA is set out in Appendix 3. In combination, these features:

(a)   set up mechanisms that transparently monitor Sydney Airport's ongoing performance, specify performance targets and provide for financial rebates in the event of performance failures;

(b)   facilitate ongoing consultation between Sydney Airport and airlines on various operational and investment matters; and

(c)   constrain Sydney Airport's ability to alter its pricing over the term of

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> the agreement.
>
> Notably, BARA has proposed that the SLA framework developed under the ASA be used as a model for other Australian airports[81] and the ACCC has noted that:
>
> > 'The 2015 commercial agreement struck by Sydney Airport provides a step forward regarding service assurance at that airport and is an encouraging sign for where SLAs are heading more generally.'[82]

Ongoing engagement with airlines after reaching agreement

131   Following agreement of the ASA, Sydney Airport has engaged with airlines on the quality of its service delivery and with respect to amendments that may improve future agreements. Sydney Airport's engagement includes:

(a)   seeking and obtaining airline buy-in before committing to significant capital expenditures. For example by providing airlines with quarterly updates of capital expenditure activities;

(b)   discussing Sydney Airport's capital expenditure activities with reference to future commercial agreements between Sydney Airport and the airlines after the expiry of the current agreement period;

(c)   reporting quarterly on key performance indicator outcomes; and

(d)   conducting a joint airline/airport annual review of the agreed service level framework including specific key performance indicators to ensure that the framework and performance indicators remain relevant.

By engaging with airlines about the delivery of its services, Sydney Airport has been better able to ensure that:

(a)   airlines are treated fairly;

(b)   it can respond to the needs of particular airlines as and when they arise; and

(c)   it maintains an appropriate level of operational and investment spending that does not over or under resource the services that Sydney Airport provides.

Bespoke arrangements to suit airline needs

132   In Sydney Airport's experience, the process of negotiating commercial agreements with airlines is complex in part because each airline's commercial and operational needs can be materially different. By way of example, airline requirements may differ in respect of:

(a)   **term:** airlines require different length agreements. Full service carriers will generally negotiate for longer agreements (for example, T3 access arrangements under the 2015 Qantas Agreements will expire in 2025);

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[81] BARA, *Airline Views: A service quality culture* (December 2015) <http://www.bara.org.au/wp-content/uploads/2015/12/Airline-Views-December-2015.pdf>.

[82] ACCC, *Airport Monitoring Report 2015-16* (6 March 2017) p 12 <https://www.accc.gov.au/system/files/2015-16%20AMR%20revised%206%20March_0.pdf>.

(b)   **branding:** full service carriers are more likely to take up opportunities to associate their brand with premium passenger-facing airport infrastructure;

(c)   **timing of capital charges:** airlines take different views as to whether the cost of new infrastructure should be included in airport charges:

   (i)   from the time that infrastructure is completed (as was the case for the Necessary New Investment (**NNI**) charge that applied under Sydney Airport's pre-2015 commercial terms); or

   (ii)   as part of a continuous price path over the term of the agreement.

   The airline's position on this point is material as incorporating capital charges into the agreement's price path allows flexible aeronautical investments within an agreed 'envelope'. Generally, Qantas has advocated for the NNI model whereas BARA has advocated for the 'envelope' approach;

(d)   **service level agreements:** LCCs generally require lower cleaning and maintenance standards to save on operating costs. Full service carriers generally require higher service levels; and

(e)   **infrastructure quality:** LCCs are generally comfortable with lower cost, functional infrastructure. Full service carriers generally require higher quality facilities and premium service offerings. For example, within T2, Sydney Airport has worked with the Virgin Group and Jetstar to deliver brand appropriate levels of investment at Pier A and Pier B, respectively.

133   Examples of agreements incorporating the arrangements agreed in 2015 BARA ASA are set out in Confidential Appendix 10.

134   Sydney Airport also provides discounts from the COU pricing and marketing support to existing airlines and new entrants. Sydney Airport also frequently provides growth incentives to encourage new routes by airlines, and on an existing route for an existing airline at the airport, either through increased frequencies or upgauges (deploying an aircraft with more seats, thereby utilising the airport's infrastructure more efficiently). Examples are set out in Confidential Appendix 10.

Conclusion

135   Since the 2011 PC Report Sydney Airport has consulted extensively with airlines to better understand their complex and highly individual requirements. That consultation has resulted in innovative commercial arrangements. The 2015 BARA ASA and other agreements with major airlines:

(a)   contain appropriate charges for aeronautical services;

(b)   ensure efficient investment decisions and operations;

(c)   guarantee improved service quality standards that reflect each airline's requirements; and

(d)   facilitate on-going consultation with airlines.

Summary

- Sydney Airport continues to invest in aeronautical services and facilities to keep up with passenger growth and to maintain appropriate standards. The efficiency of those decisions and the resultant efficiency of the airport's operations are entirely inconsistent with any notion of Sydney Airport exercising market power.

- Increasingly, Sydney Airport's investment decisions are made in close consultation with stakeholders, most relevantly airlines using data collected for Key Performance Indicators (*KPIs)* and passenger satisfaction surveys. However Sydney Airport must consider investment and customer service improvements from the perspective of the entire airport community; a community that does not always speak with one voice as different members have different needs, priorities and incentives.

- Sydney Airport regularly seeks and responds to passenger feedback. Ongoing improvements in response to such feedback have seen passenger satisfaction improve significantly.

- Sydney Airport voluntarily publicly discloses key measures of passenger satisfaction, and reports on KPI metrics to airport stakeholders at quarterly industry forums.

7.1 Continuous improvements at Sydney Airport

Sydney Airport's consultative approach to investment in capacity, efficiency and passenger experience

136 This section describes recent examples of Sydney Airport's approach to making investments and improvements, and the introduction of a range of efficiency measures. Sydney Airport's investments have been significant, as shown in Figure 10.

Figure 10
Sydney Airport's investment since FY12
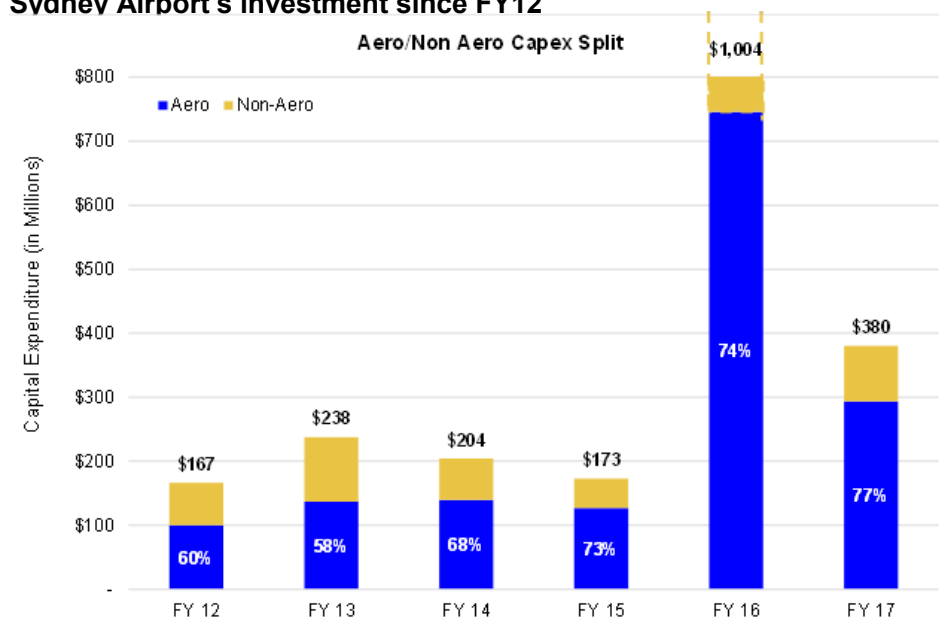
FY16 additions include investments relating to the Qantas T3 transaction

Source: ACCC accounts and Sydney Airport analysis

Top 10 Investment projects, Sydney Airport (FY11 – FY17)

No.	Project Description	Investment Type	Investment ($m)
1	T3 Transaction	Aeronautical & Commercial	535.0
2	T1 Airside Dwell Precinct	Aeronautical & Commercial	73.4
3	T1 Northern Multi Storey Carpark	Commercial	47.8
4	T2 Pier A Extension	Aeronautical	46.4
5	T1 Sortation Baggage Handling System (BHS) Upgrade	Aeronautical	42.8
6	Bay 77/76 layover	Aeronautical	40.8
7	T1 Northern Multi Storey Carpark Extension	Commercial	31.5
8	Central Terrace Building	Commercial	30.4
9	SE Sector Aprons	Aeronautical	29.8
10	Seventh Street Extension	Aeronautical	28.8

Source: Sydney Airport Analysis

137   Sydney Airport is essentially a service provider to the entire airport community taking a 'total system' approach to ensure that each interrelated system associated with airport infrastructure operates cohesively and effectively.

138   In addition to the formal agreements with airlines, Sydney Airport engages closely on both day-to-day operational matters and major investment and improvement projects with key stakeholders such as airlines, ground handlers and the government. Many of these projects have reduced the operating costs of airlines.

139   By way of example, Sydney Airport engages regularly with stakeholders through:

(a)   ICF which is part of the ASA and so allows a range of airlines which are BARA members to ventilate their views with Sydney Airport. It is at ICF that the Sydney Airport KPIs (agreed and measured as part of the BARA agreement) are reported on;

(b)   Qantas Group Consultative Forum (**QGCF**), which is a bilateral forum through which similar issues to those discussed at ICF are considered, often in more detail. Qantas is included in both the ICF and QGCF;

(c)   a T3 capital expenditure forum where Qantas is consulted on capital works projects in T3;

(d)   airline specific SteerCos where Sydney Airport engages directly with key airline customers to understand their business direction, priorities and issues;

(e)   the monthly T2 Airport Operators' Committee and the T1 Airport Operators' Committee, where Sydney Airport presents on key operational and development matters as raised by airlines;

(f)   the Ground Handlers Forum, which provides a forum for discussion of key investment and operational matters with our four ground handlers; and

(g)   the Bussing Working Group, a forum established through the Airport Operators Committee, organised by the airlines, and at which Sydney Airport regularly presents. The role of the working group is to develop solutions to improve efficiency and quality of the bussing service Sydney Airport provides to airlines.[83]

Willingness to be held accountable

140   Sydney Airport publishes key customer service metrics publicly. Doing so helps to ensure continued improvements, and builds trust between Sydney Airport and passengers.

141   Other accountability measures include:

•   publishing the result of passenger satisfaction surveys across four key measures (overall satisfaction, airport ambience, airport cleanliness and airport wayfinding) on the Sydney Airport website, as part of its results announcements and in its annual reports;[84]

•   quarterly sharing of its performance against its KPI metrics at the ICF to BARA airlines and ground handlers;[85] and

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[83] Sydney Airport, *Presentation at ICF* (21 March 2016) p 13.

[84] See e.g., Sydney Airport, *Customer Service* <https://www.sydneyairport.com.au/corporate/sustainability/customer-service>; Sydney Airport, *2017 Annual Report* (21 February 2018) p 47 <https://assets.ctfassets.net/v228i5y5k0x4/7gQkThyOPKmwAycmQIOmOc/37f1710697644fe2fd8c1ca6790ad7dc/2017_Sydney_Airport_Annual_Report.pdf>.

[85] Most recently in Sydney Airport, *Presentation at ICF* (21 June 2018) p 60–76.

- discussing its performance against key KPI metrics in its results announcements and annual reports.

KPI outcomes

142   The new KPI regime included in the ASA holds Sydney Airport accountable for agreed levels of service and provides an objective and comprehensive data source to track service improvements and inform business decision-making, especially for future investment. Sydney Airport believes that these KPIs should form the basis of any quality of service reporting carried out by external bodies and regulators, including the ACCC.

143   Since being developed in consultation with airlines, KPIs have guided investment decisions, and reporting shows that these are clearly translating into improved outcomes for passengers. The customer satisfaction KPIs are informed by the passenger survey results and selected based on their impact on the overall satisfaction with their airport experience.

144   Figure 11 below, shows the baseline measures that Sydney Airport recorded in the 2016 financial year and the same KPI measurements taken in 2017 (where green indicates a positive movement, red indicates a negative movement and blue indicates a neutral movement).

Figure 11
KPI Outcomes (2017 v 2016)

	KPI Measure	2016	2017	Trend
On time Performance	Arrival OTP	75.0%	72.2%	🟥
	Peak Arrival OTP	74.6%	71.4%	🟥
	Departure OTP	75.8%	75.5%	🟦
	Peak Departure OTP	73.0%	75.0%	🟩
Queue Time	Average wait time outbound Emigration (mins)	n/a	1.8	🟦
	Average wait time security (mins)	2.6	3	🟥
	Peak wait time security (mins)	4.5	4.3	🟦
	Total outbound time (mins)	n/a	4.7	🟦
	Peak outbound time (mins)	n/a	5.4	🟦
Bussing	Arrival Bussing (movements)	5.6%	5.5%	🟦
	Departure Bussing (movements)	6.5%	6.5%	🟦
	Passengers Bussed (%)	4.6%	4.4%	🟦
	Arrivals Bussing Time (mins)	16	14.8	🟩
	Overall time to terminal (mins)	23.2	21.7	🟩
	Difference in Avg. taxi time between remote bays and contact bays	1.1	1.2	🟦
Baggage	Unisys Total missed bags per 1,000	6.3	4.9	🟩
	Unisys Direct Missed Bags per 1,000	3.4	2.7	🟩
	Unisys Domestic to International bags missed	16	19	🟥
	Unisys International to International bags missed	48	49	🟦

Safety	Passenger incident rate per 100,000 pax	0.9	1.0	
Customer Satisfaction	Overall presentation and ambience of airport	3.99	4.17	
	Cleanliness of airport terminal	4.13	4.24	
	Cleanliness of bathrooms	3.88	3.97	
	Working order of facilities in bathrooms	4.00	4.09	
	Comfort and quality of departure gate area	3.74	3.85	
	Ease of finding your way through airport	3.82	3.97	
	Thoroughness and attention levels of security	4.09	4.16	

145   As can be seen, between 2016 and 2017, Sydney Airport improved its performance on 12 of the 27 metrics and maintained its performance on a further 11. Where it did not improve its performance:

- the two arrivals on-time performance (*OTP*) measures are largely outside the control of Sydney Airport; and

- the increase in security wait time in part results from additional security measures introduced following a terror threat in July 2016.

Nevertheless, Sydney Airport continues to work with airlines partners and other stakeholders to achieve improved performance on these metrics.

146   The KPI framework includes 'trigger levels'. When indicators drop below this designated level, Sydney Airport engages in discussion with BARA and airlines as to how best to improve outcomes in that area. Where an indicator drops below the trigger level, this may be raised initially at a quarterly ICF, and be considered in subsequent working group meetings with all stakeholders to address and resolve.

147   For example, following a drop in the customer satisfaction KPI for the comfort and quality of gate lounges, Sydney Airport reviewed its qualitative passenger feedback to ensure it understood the causes of this drop in satisfaction. Sydney Airport shared this feedback directly with airlines and consulted with them to ensure the designs for the new gate lounges at the T1 International Terminal addressed known concerns of both airline staff and passengers. The designs now respond directly to this feedback and are being rolled out across the terminal. Passenger satisfaction with the comfort and quality of departure gate areas has shown steady improvement during the rollout of the new gate lounge project.

148   This highlights the collaborative approach of the KPI framework, which recognises that in many cases Sydney Airport cannot address an issue with capital investment alone, and a long-term solution requires collaboration between all involved parties.

149   In addition to the KPI framework, the ASA also introduced an outcome focused cleaning and maintenance Service Level Agreement including a commitment for Sydney Airport to lift its service standard from Bronze to Gold within a year.

150   To achieve this, a performance scorecard was agreed with airlines identifying criteria that met 'Bronze', 'Silver' and 'Gold' standards for cleaning, maintenance and terminal presentation. Sydney Airport then engaged its suppliers in agreements that embedded these standards.

151   'Gold' standard was achieved by July 2016, in line with the ASA commitment. Sydney Airport now assesses, via an audit regime, the provision of services against the performance rating scorecard to ensure 'Gold' Standards are sustained.

Investments driven by feedback

152   Many of Sydney Airport's investment decisions and service improvements respond to passenger and airline feedback. Specific investments driven by feedback include:

- self-service check-in and auto bag-drop;

- biometrics facilitation pilot;

- gate lounge refurbishment;

- increased retail options, with a focus on value and choice for passengers;

- improved dwell spaces and general terminal ambience (including increased natural light);

- improved seating and facilities (including smart device charging stations);[86]

- Apple, Google and Baidu Maps of the terminal precinct, to allow passengers to locate retail outlets, amenities and gates from their smart phone (Sydney Airport being the first organisation outside of Greater China to introduce Baidu Maps);[87]

- personalised flight information to passengers' digital devices;

- introduction of the 'Smart Airport' connectivity and real-time reactivity, which informs landside and airside operations;

- improving washrooms by introducing a standard for bathrooms across the airport, to ensure that passengers enjoy high quality facilities consistently across the airport;

- upgrades and enhancements to 'Shep's Mound' (a mound overlooking the airfield, long popular with aviation photographers) to provide better facilities for plane spotters and school children on airport tours, including the construction of two raised platforms, undercover shelter and car parking areas;[88]

- improvements to airport wayfinding including e-directories, multilingual signage and flight information displays in the language of the flight destination, resulting from the recommendations of an independent consultant;

- providing a free 'T-Bus' service for passengers between the domestic and international terminal introduced in early 2018; and

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[86] Sydney Airport, *Planning and Projects* <https://www.sydneyairport.com.au/corporate/planning-and-projects/technology>.

[87] Sydney Airport, *Planning and Projects* <https://www.sydneyairport.com.au/corporate/planning-and-projects/technology>; Sydney Airport, *2017 Annual Report* (21 February 2018) p 47 <https://assets.ctfassets.net/v228i5y5k0x4/7gQkThyOPKmwAycmQIOmOc/37f1710697644fe2fd8c1ca6790ad7dc/2017_Sydney_Air port_Annual_Report.pdf>.

[88] Australian Aviation, 'Sydney Airport Cuts the Ribbon on Shep's Mound', *Australian Aviation* (online), 31 August 2017 <http://australianaviation.com.au/2017/08/sydney-airport-cuts-the-ribbon-on-sheps-mound/>; Sydney Airport, *2017 Annual Report* (21 February 2018) p 52 <https://assets.ctfassets.net/v228i5y5k0x4/7gQkThyOPKmwAycmQIOmOc/37f1710697644fe2fd8c1ca6790ad7dc/2017_Sydney_Air port_Annual_Report.pdf>.

- various initiatives as part of a 'China Ready' program, designed to keep up with the significant increase in airlines, flights and passengers arriving from China. This includes wayfinding in simplified Chinese, and Mandarin-speaking ambassadors.[89]

Working within industry frameworks to improve passenger outcomes without overinvesting

153   The standards published by the airline industry association, IATA, do not require services to be improved year on year. Rather, IATA specifies an 'optimum' service band which assumes some acceptable level of queuing and congestion. Sydney Airport adopts the same targeted approach to its performance. For example, as shown in Figure 12 below, between April 2017 and April 2018 the maximum wait time in the security queue remained within the IATA level of services 'optimum'.

Figure 12
Maximum wait times in security queues at the international terminal
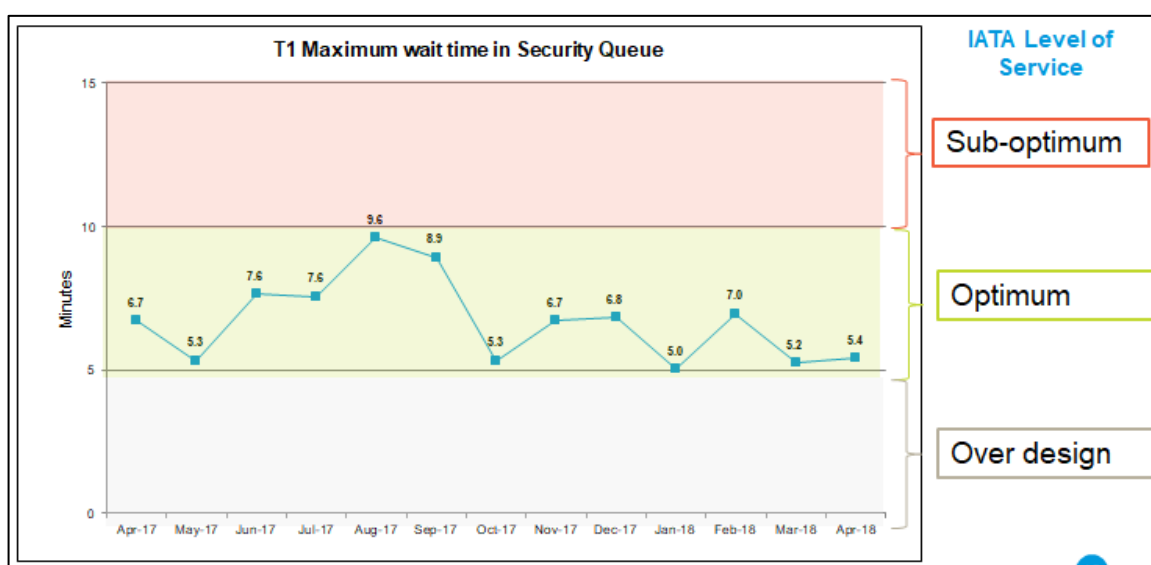
Source: Sydney Airport

154   Sydney Airport is planning for future terminal developments and using the IATA level of service model to ensure proposed developments do not represent under investment or over investment (gold plating) but, rather, target the optimum range as developed by the largest global airline representative group.

155   For example, in its T2 domestic investment strategy, presented to airlines operating out of T2, Sydney Airport has outlined how planned future investments will target IATA optimal levels of service for the security and check-in area.

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[89] Sydney Airport, *2017 Annual Report* (21 February 2018) p 26 <https://assets.ctfassets.net/v228i5y5k0x4/7gQkThyOPKmwAycmQIOmOc/37f1710697644fe2fd8c1ca6790ad7dc/2017_Sydney_Airport_Annual_Report.pdf>.

156   Similarly, Sydney Airport has presented plans to the ICF which include information on how check-in, security and baggage reclaims are currently performing against IATA level of service criteria and how future projects will aim to ensure optimum levels of service are achieved.

Third party acknowledgement of Sydney Airport's approach

157   Sydney Airport has received awards and recognition for its passenger-centric focus, including:

- Skytrax Winning Airport of the Year Award 2018 for the Pacific Region;[90]

- Customer Service Institute of Australia (**CSIA**) Organisation of the Year Finalist in 2017; and

- CSIA Customer Service Accreditation to the International Customer Service Standard (**ICSS**), initially in 2015 and re-certification annually since.[91]

158   Sydney Airport was also chosen as one of eight 2017 Customer Stewardship exemplars for its 2015 ASA, for being 'an excellent example of customer centred design which integrates customer needs and preferences into decision-making for infrastructure design and ongoing service delivery.'[92] The customer stewardship framework is part of the Better Infrastructure Initiative, run by John Grill Centre for Project Leadership at the University of Sydney, and is designed to identify what good customer stewardship looks like and how it is being practised in Australia.[93] The ASA's service level framework, including the customer-focused KPIs, was an acknowledged Australian first, that generates objective and reliable data to guide investment decisions for infrastructure and operations, with the overall result being a more collaborative environment where data is used across the airport community to deliver better passenger outcomes.[94]

159   BARA has also publicly lauded Sydney Airport's KPI framework, stating that the regime should 'serve as a model for Australia's other major international airports to consider.'[95]

160   In addition, the ACCC in its Airport Monitoring Report 2015-16 recognised the industry-leading nature of Sydney Airport's ASA, and its service level framework noting that 'the 2015 commercial agreement struck by Sydney Airport provides a step forward regarding service

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[90] Skytrax World Airport Awards, *Best Airports by Global Region 2018* (February 2018) <http://www.worldairportawards.com/Awards/best_airports_by_world_region.html>.

[91] Sydney Airport, *Service Excellence* <https://www.sydneyairport.com.au/corporate/about/overview/about-us-service-excellence>.

[92] University of Sydney, 'Building a National consensus: Why Customer Stewardship matters' (Policy Outlook Paper No. 4, October 2017) p 23 <https://sydney.edu.au/content/dam/corporate/images/john-grill-centre/publications/why-customer-stewardship-matters.pdf>.

[93] University of Sydney, *Australia's Customer Stewardship 2017 Exemplars* <https://sydney.edu.au/john-grill-centre/our-research/infrastructure/initiative-publications/why-customer-stewardship-matters/australia-s-customer-stewardship-2017-exemplars.html>.

[94] University of Sydney, *Sydney Airport Customer Stewardship Exemplar* <https://sydney.edu.au/john-grill-centre/our-research/infrastructure/initiative-publications/why-customer-stewardship-matters/sydney-airport-customer-stewardship-exemplar.html>.

[95] BARA, *Airline Views* (June 2017) p 4 <http://www.bara.org.au/wp-content/uploads/2017/06/Airline-Views-June-2017.pdf>.

assurance at that airport and is an encouraging sign for where SLAs are heading more generally'.[96]

Figure 13
Upgrades to Shep's Mound

Sydney Airport's recent investments

Terminal areas and facilities

161   Since 2011, Sydney Airport has made a number of improvements to its terminal areas and facilities, including:

(a)   introduction and expansion of self-check-in and auto bag-drop facilities;[97]

(b)   additional and upgraded aerobridges to increase boarding points to provide greater gate allocation flexibility, reduced boarding times and greater ability to deliver product differentiation;

(c)   the expansion, reconfiguration and refurbishment of gate lounges;

(d)   construction of a new and expanded dwell space that provides passengers with a clear pathway to gates, views of the airport and city, improved ambience and natural light;

(e)   increased retail offerings with a focus on value and choice, including a new T2 dining precinct;[98]

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[96] ACCC, *Airport Monitoring Report 2015-16* (6 March 2017) p 12. <https://www.accc.gov.au/system/files/2015-16%20AMR%20revised%206%20March_0.pdf>.

[97] Self-service check-in kiosks have been available for passengers checking in on selected airlines at T1 International Terminal since 2012 and Sydney Airport continues to improve the service. In March 2018, Sydney Airport launched new technology to provide self-service check-in kiosks and automated bag drop dedicated for Qantas customers departing from T1 International Terminal.

(f)   redesign and upgrade of bathrooms across both precincts to ensure a more efficient use of space and provide modern, hands-free facilities;

(g)   refurbishment of baggage systems and reclaim areas including improved finishes;

(h)   improved dwell spaces and terminal ambience;[99]

(i)   improved seating and facilities such as charging points;

(j)   increased natural light within its facilities;

(k)   refurbishment and upgrade of baggage carousels and the baggage reclaim area;

(l)   refurbishment and upgrade of the arrivals concourse; and

(m)   the opening of widened road entries to both the T1 and the T2/T3 precincts to assist with traffic flows.[100]

Figure 14
New T2 dining precinct

Technology

162   In addition to the improvements made to the physical facilities of the airport, Sydney Airport has introduced technological innovations and upgraded its digital infrastructure, including:

(a)   rolling out of world leading technological solutions, such as a multi-lingual flight information display system that adapts to the language of the destination country;[101]

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[98] Sydney Airport, *Next stage of works commences at T2 Domestic terminal* (25 September 2017) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/next-stage-of-works-commences-at-t2-domestic-terminal>.

[99] Sydney Airport, *Next stage of works commences at T2 Domestic terminal* (25 September 2017) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/next-stage-of-works-commences-at-t2-domestic-terminal>.

[100] Sydney Airport, *Sydney Airport opens widened one-way road entrance to T2/T3 Domestic precinct* (16 December 2016) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/sydney-airport-opens-widened-one-way-road-entrance-to-t2-t3-domestic>.

[101] Sydney Airport, *Sydney Airport launches real time flight information service for passengers* (28 January 2017) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/sydney-airport-launches-real-time-flight-information-service-for-passengers>.

(b)   making more personalised flight information available on passengers' devices, for example offering flight updates through Facebook Messenger and Twitter through integration with the Biztweet app;[102]

(c)   providing improved wayfinding through the airport on passengers' devices including through Google maps, Baidu maps and Apple maps;

(d)   undertaking a pilot of a biometric passenger identification system;[103]

(e)   installing digital displays showing baggage carousel wait times; and

(f)   moving towards a 'Smart Airport' model providing connectivity and real-time information sharing that improves landside and airside operations.

Figure 15
Example of multilingual flight information displays

General Operational improvement

163   Sydney Airport has also made operational improvements, which include:

(a)   a collaborative program between airlines, ground handlers and Sydney Airport that is targeted at minimising the number of bags lost in transit;

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[102] Sydney Airport, 'Sydney Airport launches real time flight information service for passengers' (28 January 2017) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/sydney-airport-launches-real-time-flight-information-service-for-passengers>; Sydney Airport, *Sydney Airport introduces indoor Google Maps at terminals* (1 May 2017) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/sydney-airport-introduces-indoor-google-maps-at-terminals>; Sydney Airport, *Sydney Airport launches on Apple Maps* (24 May 2018) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/sydney-airport-launches-on-apple-maps>; Sydney Airport, *Sydney Airport introduces indoor Baidu Maps in Australian first* (29 September 2017) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/sydney-airport-introduces-indoor-baidu-maps-in-australian-first> Sydney Airport was the first organisation to introduce Chinese language indoor mobile navigation app Baidu Maps outside of greater China; Sydney Airport, *Sydney Airport offers flight updates via Facebook Messenger* (8 December 2017) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/sydney-airport-offers-flight-updates-via-facebook-messenger>.

[103] Sydney Airport, *Qantas passengers use facial recognition technology in landmark Sydney Airport trial* (5 July 2018) <https://www.sydneyairport.com.au/corporate/media/corporate-newsroom/qantas-passengers-use-facial-recognition-technology-in-landmark-sydney>.

(b)   the introduction of SmartGates (in conjunction with the Australian Government) and additional security lanes to increase passenger through-put to align with the faster SmartGate processing at passport control;

(c)   a new world class Integrated Operations Centre (*IOC*) which brings together terminal and airside operations in the one location allowing the use of data in real time to make better decisions faster and enhance the customer experience; and

(d)   trialling the introduction of Airport Collaborative Decision Making (*A-CDM*) where the airport, airlines and ground handlers collaborate to provide a timely, accurate and reliable data set for flight arrival and departure. This helps airlines and ground handlers manage their resource allocation and the on-time performance of their flights and provides airports with better information to plan the allocation of assets.

Efficiency measures

164   Sydney Airport has strong incentives to operate efficiently as doing so, among other things, supports Sydney Airport's ability to attract new and retain existing routes and airlines. Similarly, Sydney Airport has strong incentives to streamline the passenger experience and ensure good service quality.

165   Consistent with those incentives, Sydney Airport has undertaken a number of efficiency-focused initiatives to improve its use of airport infrastructure and improve operational outcomes. Examples of Sydney Airport creating such incentives for airlines include:

(a)   offering domestic volume discounts;

(b)   offering airlines the option to open and close check-in earlier, and working with airlines and ground handlers to develop an operational plan for each check-in counter and queuing zone to collectively deliver a seamless check-in customer experience;

(c)   offering an off-peak rebate to encourage airlines to use the apron efficiently outside peak times. Two airlines have taken up the rebate as part of the 'new airline incentive'. Another airline has taken up the off-peak rebate in shifting its services from peak to non-peak times;

(d)   amending gate allocation rules to incentivise airlines to minimise consequential delays caused to other airlines allocated to the same bays and gates;

(e)   introducing time-linked charges to encourage airlines to use the apron as efficiently as possible and minimise impact on other airline customers; and

(f)   seeking to rebalance the use of Sydney Airport's runways by, where possible, encouraging use of the parallel runway rather than main runway. It is difficult to maximise efficiencies in this way, as the allocation of particular flights to runways is regulated by Air Traffic Control.

Case study 3
Reducing congestion in check-in hall

Issue

Sydney Airport became aware that congestion was increasing in the check-in hall area, negatively impacting the passenger experience and creating inefficiencies for airlines.

Sydney Airport conducted a detailed review and identified that the allocation process for check-in counters was weighted towards airline length of tenure and size and did not deliver the best use of the available space.

Approach

Sydney Airport built a capacity model for the check-in hall and identified optimal solutions which it implemented in stages from March 2016. These included:

• allocating counters to maximise airline connectivity to the baggage system being an improvement to the previous model which allowed cross-piering (where an airline's check-in and baggage handling areas are not aligned), and caused logistical issues leading to missed bags;

• changing check-in close out time for baggage so that flights close 15 minutes earlier than previously to limit the incidence of rushed bags delaying flights. This change was ultimately adopted by 15 of the 17 airlines approached. Two airlines declined to participate;[104]

• giving greater priority to considering the passenger experience (including queuing space and processing rates) when allocating the check-in hall gates; and

• creating ground handler zones so that airlines with shared ground handlers were co-located as much as possible.

Outcome

The counter allocation changes increased available peak check-in capacity by 15%, and the reported quality of service experienced by passengers at check-in increased.[105] Cross-piering of bags declined from 50% to almost 0% and as a result, missed bags outcomes improved.[106]

The project was largely successful, despite concern from some key airlines around the scope of the changes and the potential impacts on their specific operation. Sydney Airport worked with airlines to address concerns and over time most airlines participated. For example:

• Airline 1 expressed reservations about moving their location. Sydney Airport worked closely with the airline over the course of a year, addressing their concerns. Airline 1 advertised the new location on their public website as 'new and improved' and has reported improved passenger scores for

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[104] Source: Sydney Airport.

[105] Source: Sydney Airport.

[106] Source: Sydney Airport.

their Sydney service due to the new location;

- Airline 2 was also initially reluctant to move their check-in counter location. Over a lengthy period Sydney Airport worked with Airline 2 to address its concerns and Airline 2 agreed to implement the move as a trial. Airline 2 came to view the new location as preferable and did not wish to return to its former location. The new location placed Airline 2 close to its alliance members, thereby improving its alliance product and ability to compete; and

- Airline 3 remains in its original location and continues to make clear that any requirement that it relocate may result in it declining to add services to Sydney Airport.

The project is continuing. In 2017, additional check-in kiosks and bag drops were introduced to meet demand and provide improved service levels to airlines.[107]Significantly, the improved efficiency of the revised check-in allocation created excess capacity that allowed Sydney Airport to remove 10% of counters temporarily during construction of a new automated check-in zone.

Case study 4
Improving the aircraft gate allocation system

Issue

Allocating aircraft gates was conducted on a manual basis, based on airlines' scheduled times of arrival and departure. When an airline was late or early, the entire allocation changed, causing inefficiencies and inconvenience for airlines and passengers. Since airlines focus on their own operational requirements rather than the demands of the broader system, an airline experiencing a delay would often not inform Sydney Airport in a timely manner.

This would result in another airline waiting for the delayed airline to vacate the gate leading to taxiway congestion and causing flow-on delays to other flights.

Approach

Sydney Airport undertook consultation with ground handlers and airlines in 2016 to address the issue and implemented a suite of measures including:

- amending the gate allocation rules to incorporate a system that penalises airlines who repeatedly behave in a way contrary to the interests of the overall airport operation by causing delays to other airlines; and

- optimising the allocation process to maximise infrastructure utilisation. To do so, Sydney Airport engaged a third-party supplier to build a bespoke software package that could deliver a risk adjusted allocation. The software was built in March 2017 and automatically constructs a gate allocation schedule for a particular day and identifies risks of delays and scheduling clashes. The program analyses and ranks airfield and terminal operational approaches according to efficiency measures and builds in buffers to deal

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[107] Sydney Airport, *Presentation at ICF* (21 June 2018) p 31.

with high risk allocation times and locations. This minimises the disruption from delays caused by, for example, airline operational issues, ground handler capacity limitations and the unavailability of Air Traffic Control towing services.

Outcome

The gate allocation rule amendments have driven significant improvement in communications and behaviour from the airlines. The rules have also assisted Sydney Airport's gate allocation schedule to operate more closely to plan. The rules have therefore improved the utility of existing bay and gate infrastructure at a system level.

The software is being trialled and has not yet entirely replaced the manual system. Sydney Airport expects the new system to be implemented by the end of 2018.

It will be further developed concurrently with the roll-out of A-CDM. In essence, it will enable the allocation to be updated in real time to reflect information shared by all key stakeholders, regardless of whether or not a flight is operating to schedule.

The full and effective implementation of the new gate allocations is dependent on the delivery of additional bays in the T1 international precinct, which have the potential to deliver significant improvements in convenience and punctuality. This investment remains subject to airline consultation and agreement has not yet been reached, with one airline particularly resistant to the project proceeding.

Case study 5
Biometric technology to enhance passenger processing

Issue

Sydney Airport identified an opportunity to increase the efficiency, convenience and security of passenger processing. In June 2017, Sydney Airport approved funding for a world-leading biometrics pilot. The system provides a paperless end-to-end airport experience, where a passenger's face becomes their passport further streamlining and enhancing on-airport passenger facilitation.

Approach

In partnership with Qantas, Sydney Airport is trialling the first stages of a biometric technology solution for facilitation of Qantas passengers. The process being tested enables passengers to complete automated check-in, bag drop, lounge access and boarding using biometric access identification.

Outcome

Subject to the success of the trials, Sydney Airport will consider how the technology can be rolled out across the airport as new terminal developments are planned. The technology has the potential to improve efficiency, enhance security and the passenger experience and minimise certain expensive infrastructure investment.

Case study 6
Gate lounge refurbishment and expansion

Issue

Desirability of improving the presentation, layout and efficiency of gate lounges.

Approach

Sydney Airport consulted with airlines and ground handlers to inform plans for the redevelopment of gate lounges. This feedback allowed Sydney Airport to ensure that the redevelopment not only improved the look and ambience of the lounges but also improved the efficiency of the boarding process. Observational audits were conducted at various boarding gates, collating statistics including human behaviours, passenger experiences, cultural trends, seating utilisation, queue lengths and form and processing.

Incorporating this feedback, rollout of the project commenced in March 2016 and was implemented progressively through to mid-2017. Updates were provided regularly at the ICF. The project specifically involved:[108]

•   redevelopment of 25 gate lounges and bussing lounges, with improved layouts and finishes;

•   1,000 sqm of expansions in gate lounges to provide additional boarding gate lounge space and seating;

•   improved boarding operations layouts;

•   allocation of boarding queues within lounges, rather than extending into the concourse;

•   new boarding joinery and service desks;

•   new gate markers with integrated flight information display screens;

•   replacement of existing solid walls with new windows to open the space; and

•   improved presentation with a consistent and durable palette of finishes across all lounges.

While these works were in progress, the 'comfort and quality of departure gate' KPI measure for T1 fell below the trigger level for four months as illustrated below.

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[108] Sydney Airport, *Presentation at ICF* (21 March 2016) p 31.

T1: Comfort and quality of departure gate area
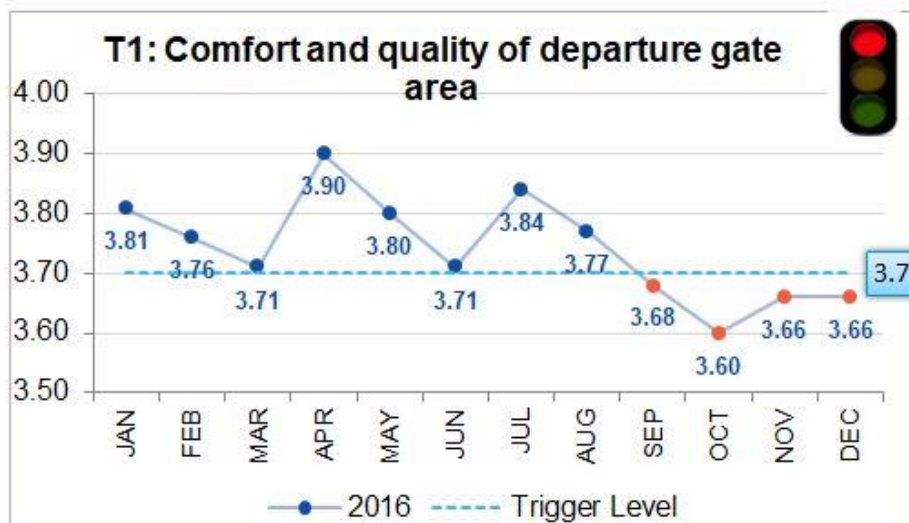
Sydney Airport initiated the KPI resolution process as agreed at the ICF. Consultation was undertaken and the Airline Operators' Committee (**AOC**) agreed that the reason for the low scores was due to the construction work in departure lounges being done as part of the gate lounge redevelopment project, and that the finished construction would resolve the issues.

These works continue and as areas are commissioned, the rating continues an upwards trend and in recent months, has consistently performed at just below a rating of 4 (good), well in excess of the trigger level. When works are complete towards the end of 2018, this rating is expected to improve further.

Outcome

Gate lounge refurbishment is progressively being delivered and related passenger scores are improving (the year to date passenger score for 2018 is 3.91). The refurbishment has:

•   increased comfort for passengers waiting at the gate;

•   resulted in a more intuitive boarding experience for passengers;

•   supported additional airline boarding products; and

•   optimised airline boarding operations to help support on-time performance.

7.2   Measuring outcomes for passengers

Background

166   Importantly, Sydney Airport is able to demonstrate that its investments and other initiatives have significantly improved the experience of passengers at Sydney Airport. These improvements are reflected in:

•   Sydney Airport's passenger satisfaction ratings;

•   Sydney Airport's KPI outcomes; and

•   ACCC Monitoring Report service ratings.

167   In many cases, the investment initiatives directed to improving service quality have been guided by passenger feedback, particularly those measures which drive the biggest impact on overall satisfaction.

168   Importantly, Sydney Airport is careful to ensure that these improvements in passenger outcomes are delivered efficiently. It achieves this by applying a three-pronged approach to targeting capacity and efficiency improvements:

•   investing in operations research to target more efficient use of existing infrastructure;

•   working with airlines and others across the airport to implement efficiency-focused initiatives; and

•   working with airlines and others across the airport to decide the most appropriate outcome-focused investments.

Quantitative improvements in passenger outcomes

Passenger satisfaction ratings

169   Sydney Airport undertakes regular passenger satisfaction surveys regarding the quality and range of services provided at the airport. These surveys are carried out annually, involve large sample sizes (more than 17,200 surveys are collected), and pose a comprehensive set of questions.

170   The surveys are conducted by an external provider using stratified randomisation, to ensure impartiality and a representative cross-section of respondents. Using this method, representatives approach selected individuals at gate lounges where the individual answers a series of questions relating to their experience in Sydney Airport, based on specific key metrics (e.g., bathroom cleanliness) as well as their 'overall' satisfaction with the airport. This survey method is costly but is the most robust form of surveying available to Sydney Airport.

171   Passenger satisfaction scores have continued to rise. Last year, Sydney Airport registered its highest overall passenger satisfaction score.[109] As depicted in Figure 16 below, overall passenger satisfaction grew in 2017 to 80% for international terminal T1 and 79% for domestic terminal T2. Each individual category also recorded improvement.

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[109] This has been taken from the Passenger Satisfaction Surveys undertaken by Ernst and Young on behalf of Sydney Airport dating back to the last Productivity Commission submission.

Figure 16
2017 vs 2016 customer satisfaction scores[110]

CUSTOMER SATISFACTION	INTERNATIONAL PASSENGERS		DOMESTIC PASSENGERS	
	2017	2016	2017	2016
Overall	4.01/5	3.89/5	3.95/5	3.91/5
Ambience	4.17/5	3.99/5	4.11/5	4.06/5
Cleanliness	4.24/5	4.13/5	4.14/5	4.11/5
Wayfinding	4.17/5	3.99/5	4.09/5	4.02/5

172   The upward trend in overall passenger satisfaction between 2015 and today is depicted in Figure 17. The breakdown of this trend by individual factors is depicted in Figures 18 and 19.

Figure 17
2015 – 2018 customer satisfaction
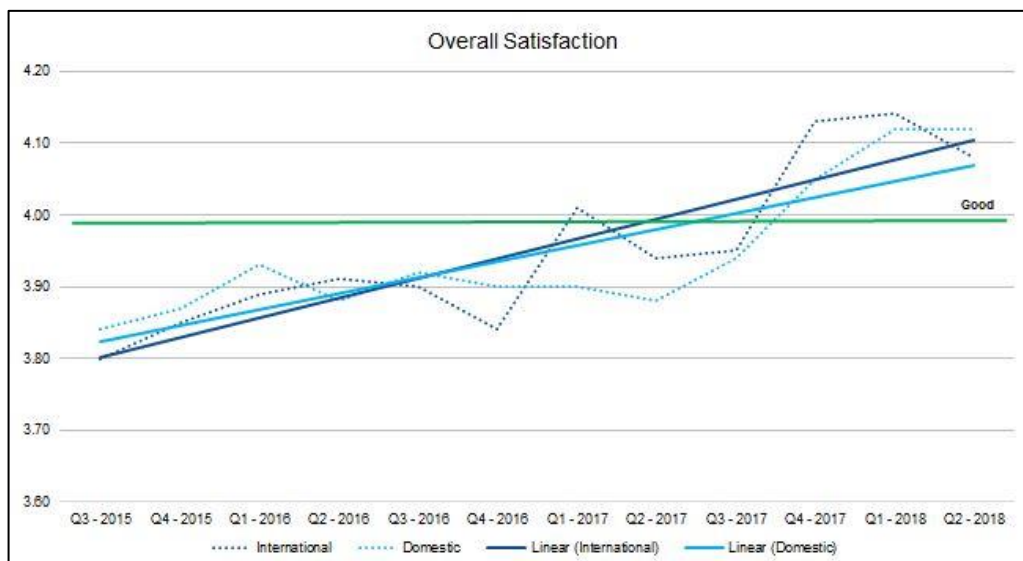
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[110] Sydney Airport, *2017 Annual Report* (21 February 2018) p 47
<https://assets.ctfassets.net/v228i5y5k0x4/7gQkThyOPKmwAycmQIOmOc/37f1710697644fe2fd8c1ca6790ad7dc/2017_Sydney_Airport_Annual_Report.pdf>.

Figure 18
2013 – 2018 customer satisfaction by factor (international)
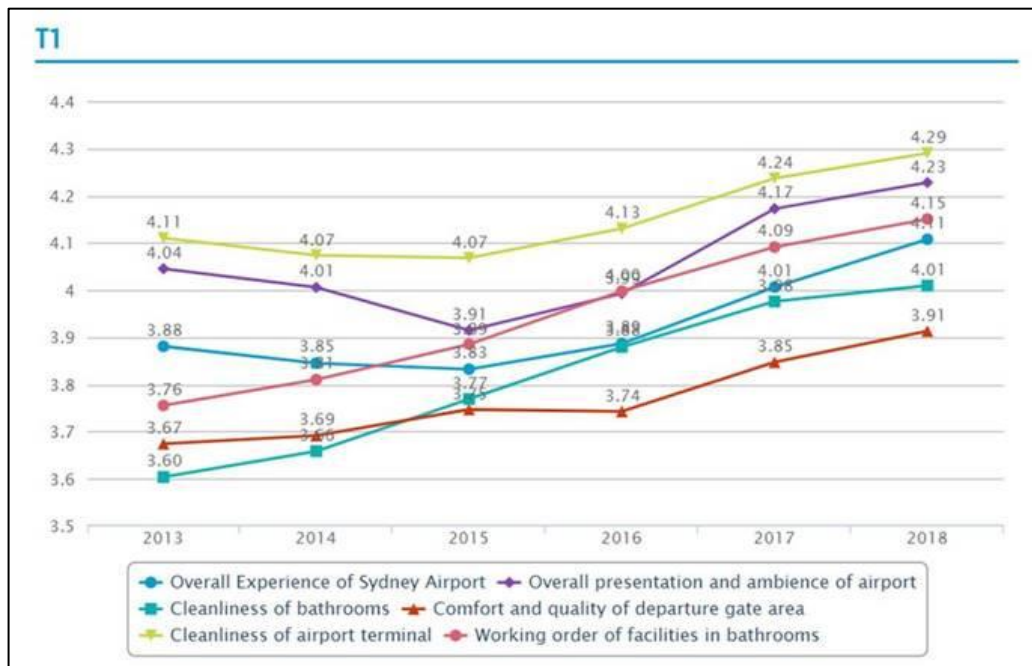
Figure 19
2013 – 2018 customer satisfaction by factor (domestic)
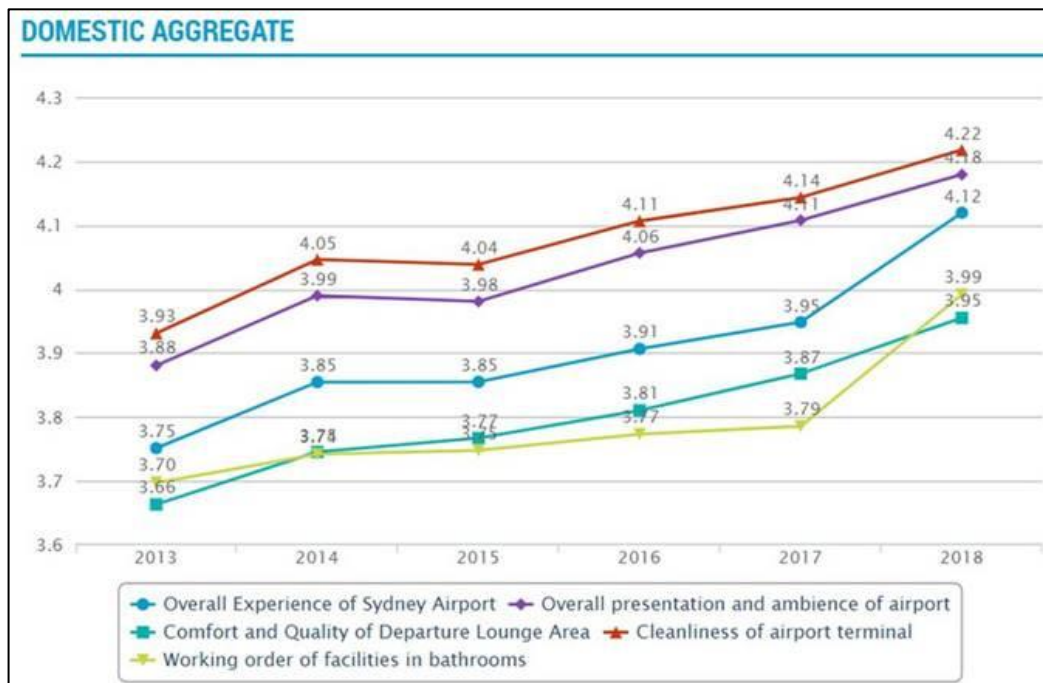
Chapter 8:   Charges for Aeronautical Services

Summary

•   Airlines and passengers at Sydney Airport have received good value for money since the commencement of the current regulatory regime in 2002. The current regulatory regime has delivered stable and reasonable aeronautical charges, which reflect returns on capital within a reasonable range for an airport business with the characteristics of Sydney Airport.

•   Sydney Airport's aeronautical revenues per passenger have remained largely flat in real terms and in some cases have reduced. To the extent that there are increases, these generally reflect the costs of investment in new facilities, infrastructure as developed in extensive consultation with airlines, or the introduction of new revenue streams such as taking control of T3.

•   Sydney Airport's prices are competitive and comparable to those of other airports and do not reflect the exercise of market power.

•   The ACCC's price monitoring results evidence that Sydney Airport's aeronautical charges are reasonable, notwithstanding the limitations of the financial metrics adopted by the ACCC.

8.1   Aeronautical pricing

173   Sydney Airport charges represent a small proportion of overall airfares. While airlines increase ticket prices in response to periods of high demand, Sydney Airport's charges remain flat and do not fluctuate in accordance with daily or seasonal peaks.

174   On average, Sydney Airport's published charges represent less than 6% of international, 9% of domestic and 4% of regional average economy ticket prices[111]. It should be noted that many airlines receive discounts on these charges as part of negotiated agreements.

175   The charts at Figure 20 below show average economy fares on an average day and demonstrate the fluctuation of airfares in response to level of demand. Fluctuations are even greater across periods of high demand such as during school holidays, Christmas, long weekends and major events.

176   On an average day return economy airfares on a full service carrier can range from $1,043 to $1,863 for Sydney to Singapore, $324-$452 for Sydney to Melbourne and $353-$818 for Sydney to Dubbo. Airport charges remain flat regardless of the fare being charged by airlines.

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[111] Source: Infare data scraped from booking websites for average economy airfares over the year ending August 2018. Airfares represent direct full service return trips to Singapore, Melbourne (Tullamarine) and Dubbo for international, domestic and regional respectively inclusive of all taxes. Airport charges are based on the published charges inclusive of terminal, runway and security charges and GST.

Figure 20
Airport charge vs airfares

SYD's passenger charge vs. international airfares:
Sydney to Singapore

SYD's published rate
of $73.44 per
passenger return inc
GST

Return economy airfare ——— SYD's airport charge

SYD's passenger charge vs. domestic airfares:
Sydney to Melbourne

SYD's published rate of
$34.08 per passenger
return inc GST

Return economy airfare ——— SYD's airport charge

**SYD's passenger charge vs. regional airfares:
Sydney to Dubbo**

177   Airlines also vary their prices significantly depending on demand for premium products. For example, in the year ending August 2018, the average price of a return business airfare on the in-demand Sydney/San Francisco route was $13,750[112], but Sydney Airport's charge remained constant at $73.44 for the return trip, or just 0.5% of the ticket price.

178   A4ANZ has claimed that airport charges are driving up airfares for customers. However, the data outlined above highlights that there is no substance to that claim. Airport charges are not a material part of the overall ticket price. To put it in perspective, a 20% reduction in airport charges on an average one-way regional ticket to Dubbo would result in a $1.59 saving to the passenger. Likewise, a 20% reduction on an average business class return ticket from Sydney to San Francisco would result in a $14.69 saving on a $13,750 average fare. This, of course, assumes that the reduction is passed on in full by the airline to the passenger.

179   Sydney Airport's aeronautical revenue per passenger has remained largely flat in real terms and in some cases has reduced since 2013. A summary of Sydney Airport's changes in revenue per passenger are set out in Confidential Appendix 10.[113]

180   As described more fully in Chapters 6 and 7, Sydney Airport has negotiated a range of complex commercial agreements with airlines that encompass infrastructure requirements, service quality commitments, ongoing consultation processes, prices and other elements.

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[112] Source: Infare data scraped from booking websites for average return business airfare to San Francisco over the year ending August 2018 inclusive of all taxes. Airport charges are based on the published charges inclusive of terminal, runway and security charges and GST.

[113] Sydney Airport has disaggregated the charges for international and domestic due to the issues which arise in aggregating charges for domestic and international passengers as discussed in Chapter 9.

During these negotiations the individual airlines are seeking to achieve the best outcome for their business overall, rather than the lowest aeronautical charge.

181   However, in any event, airport charges per passenger should not prima facie be expected to reduce in real terms, because airport investments and operating expenses are driven by many factors beyond capacity requirements.

182   Many airport investments relate to infrastructure that reduces airline expenses by more than the increased airport charge, or that deliver an enhanced airline passenger experience that may be reflected in premium airfares. For example, Sydney Airport has upgraded gates and bays to accommodate the next generation of aircraft which have significantly lower fuel costs for the airlines.

183   The evolution of aeronautical charges at Sydney Airport reflects a combination of:

- taking control of T2 and T3 in return for material capital payments to the Ansett administrator and Qantas respectively, resulting in additional aeronautical revenues related to an entirely new service (the use of the previously airline-controlled terminal);

- investment in new capacity to meet increased demand, in part to accommodate a disproportionate growth in the peak;

- investment in infrastructure modifications to accommodate new aircraft types, without an equivalent increase in capacity;

- investment in infrastructure modifications to comply with new safety or regulatory obligations (such as the Runway End Safety Areas), without any increase in capacity;

- investment in new infrastructure or service to provide airlines with enhanced passenger experience or reduce airline operating costs; and

- inflation (noting that all of Sydney Airports commercial agreements use a real cost of capital and indexed asset base).

8.2   Aeronautical pricing: the Commission's findings in 2011

184   In its previous inquiry in 2011, the Commission considered the aeronautical prices and profits of major airports, as presented in the ACCC's monitoring reports. The Commission concluded that this data did not point to the inappropriate exercise of market power, stating:

> Under the light-handed monitoring regime… aeronautical charges do not point to the inappropriate exercise of market power…Australian airports' aeronautical charges, revenues, costs, profits and investment look reasonable compared with (the mostly non-commercial) overseas airports…[114]

185   In making this finding, the Commission noted that increases in airport charges reflected the costs of airport investment, and that airline concerns regarding airport charges did not take into account the impact of airport investment on prices:

> …it appears that the concerns [of airlines] noted above do not take account of substantial new investments, which require funding from airport users…

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[114] 2011 PC Report, Overview, Key Points, p XX.

…The data obtained from the ACCC's monitoring program show that price increases over the full monitored period have been substantial at most of the airports. However, when taken in the context of investment programs, and given some of the drawbacks of relying solely on monitoring data, the observed price increases do not indicate systemic misuse of market power.[115]

8.3   Sydney Airport's returns are reasonable

186   Sydney Airport's prices reflect, no more than, a reasonable rate of return on capital invested.

187   In this respect, Sydney Airport refers to the expert report of HoustonKemp prepared for the Australian Airports Association (**AAA**).[116] In its report, HoustonKemp:

- estimates an upper and lower bound for the Weighted Average Cost of Capital (**WACC**) of a benchmark Australian airport, based on material readily available in the context of established regulatory decisions on infrastructure pricing (as shown in the figure below);[117]

Figure 21
Returns on aeronautical assets for price monitored airports and WACC range
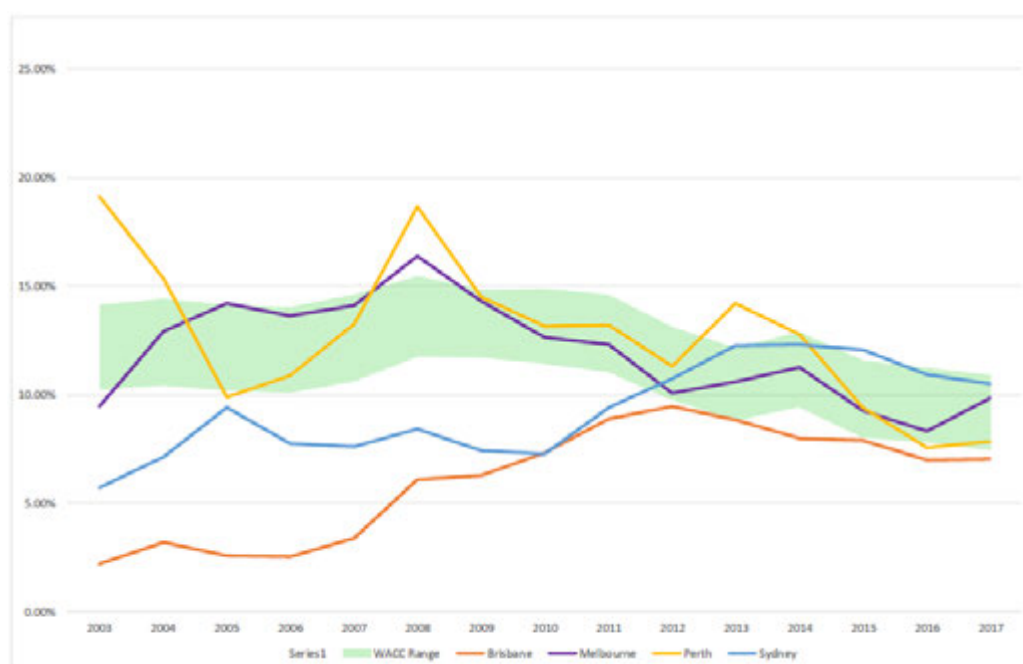
Source: HoustonKemp report on Assessing market power in aeronautical services, page iii

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[115] 2011 PC Report, pp 143, 146.

[116] HoustonKemp Economists, *Assessing market power in aeronautical services*, A report for the Australian Airports Association (Report, 5 September 2018).

[117] HoustonKemp Economists, *Assessing market power in aeronautical services*, A report for the Australian Airports Association (Report, 5 September 2018) p 30.

- plots Sydney Airport's return on aeronautical assets (taken from the ACCC's price monitoring reports) against the upper and lower WACC bounds for a benchmark Australian airport;

- finds that, since 2003, Sydney Airport's return on aeronautical assets has largely been below the lower bound or between the lower and upper bound for the WACC of a benchmark Australian airport; with Sydney Airport's average return being 65 basis points below the average lower WACC bound in that period[118]; and

- concludes that the rate of return data strongly supports a conclusion that Sydney Airport cannot be said to have set prices or achieved levels of profit which reflect the exercise of any market power.

188   Such a conclusion could be made even more strongly if it took into account the inherent limitations in the ACCC's calculation of Sydney Airport's rate of return on aeronautical assets. As discussed in Chapter 9, the ACCC's methodology tends to provide an inflated impression of Sydney Airport's return on capital. Further details are set out in Confidential Appendix 10.

189   These findings are supported by the benchmarking studies produced by LeighFisher, which are referred to in the expert report of InterVISTAS, '*Australian Airports: A Performance Benchmarking Study*'.[119]

8.4   Measures of revenue and profit in the ACCC's monitoring reports

190   As discussed in Chapter 9, the ACCC uses aeronautical revenue per passenger as an indicator of the airports' average prices. By itself, this financial metric can be problematic, since it does not take into account:

- the cost of necessary new investment in aeronautical facilities;

- the changing mix of domestic and international passengers; and

- additional revenue derived from taking control of domestic terminals (i.e. T3).

191   In any case, the ACCC's monitoring reports show that Sydney Airport's aeronautical revenue per passenger has largely remained flat over the last decade in real terms, with incremental increases since taking control of T3 in 2015. Similarly, Sydney Airport's profit per passenger has remained relatively flat in real terms over the same period.

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[118] HoustonKemp Economists, *Assessing market power in aeronautical services*, A report for the Australian Airports Association (4 September 2018) p 29

[119] InterVISTAS, *Australian Airports: A Performance Benchmarking Study*, Prepared for the AAA, July 2018.

Figure 22
Sydney Airport revenue, expenses and profits per passenger 2007 to 2017
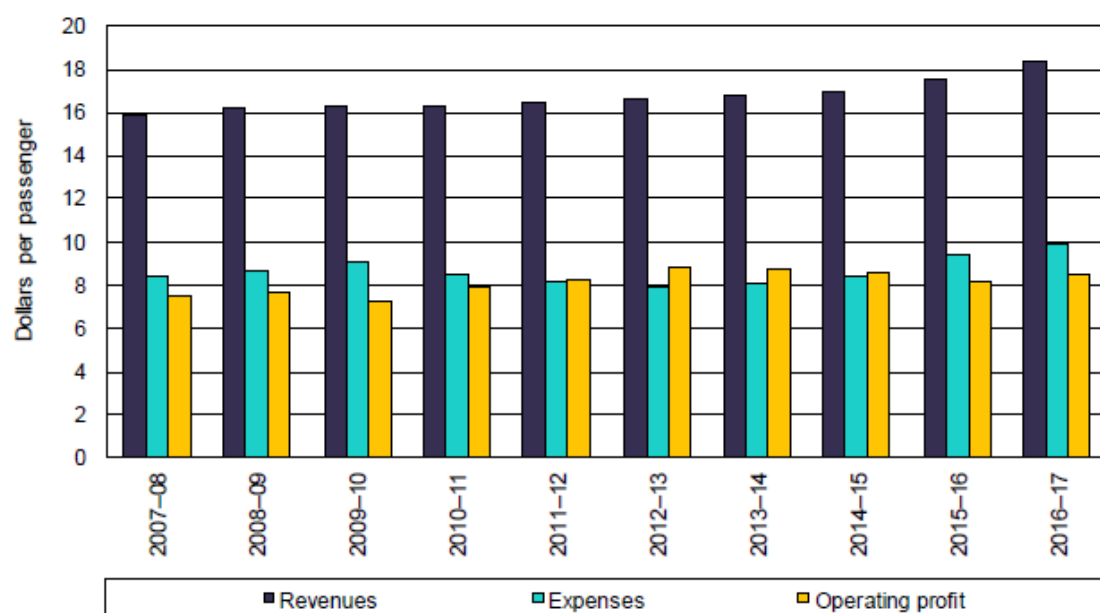
Note: Real values in 2016–17 dollars.

Source: ACCC Monitoring Report 2016-2017, page 150

Part E:
The ACCC Monitoring Regime

Chapter 9:   ACCC Monitoring

Summary

The ACCC monitoring regime is an early warning system to identify and deter a misuse of market power.

The ACCC's monitoring report is a critical part of the regime's effectiveness since the consequences of being criticised in the report operates as a powerful deterrent. This is because:

*   the report compares airports on a range of metrics including price and service quality and an airport does not wish to fall below the ratings achieved by other airports;

*   the report is published and receives wide press coverage;

*   airports are routinely scrutinised in the court of public opinion and the report has potential to cause reputational damage in the general community and within government; and

*   commercial stakeholders can reference the report's findings in their negotiations with airports.

Sydney Airport supports the continuation of the ACCC monitoring regime and acknowledges that the regime has improved since the 2011 PC Report. However, the regime needs to keep pace with developments in the dynamic aviation sector and the following improvements should be made:

*   align financial measures with the specific circumstances of each airport and focus on the return on capital employed (subject to it being calculated correctly e.g. to include indexation);

*   align objective service-quality measures with the priorities of the airlines (as expressed in the commercial agreements). This will make the regime more outcomes focused; and

*   ensure the monitoring report acknowledges that airports are only one stakeholder responsible for the customer experience at airports.

9.1   Background

192   The ACCC airport monitoring regime was established in 2002 following an inquiry by the Commission on airport regulation. Its key function is to serve as an 'early warning system' that draws attention to issues surrounding the misuse of market power in the operation of airports.[120]

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[120] 2011 PC Report, p 217.

193   The government endorsed these objectives in its response to the Commission's 2002 Inquiry Report on 'Price Regulation of Airport Services', as illustrated in the following extract from the government's response:

> Price monitoring enhances market transparency by allowing the community to scrutinise prices and market outcomes, and can also assist the competitive process, without resort to heavy-handed price controls ....

> Quality monitoring of regulated services may also identify whether airports are investing appropriately, for example, by upgrading infrastructure or investing in new facilities to improve levels of service or facilitate increased demand.[121]

194   Sydney Airport considers the monitoring regime has been generally effective in identifying and deterring a misuse of market power. The knowledge that any misuse of market power would be reported is a highly effective deterrent. The monitoring regime is the appropriate regulatory tool for balancing the risk of potential anti-competitive behaviour by airports against the aim to ensure that airports are not subjected to unnecessary regulation that could stifle innovation and investment.

195   This chapter describes the principles that Sydney Airport considers an effective monitoring regime must adopt (section 9.2), the reasons why the monitoring regime is necessary (section 9.3), the improvements that have been implemented since 2011 (section 9.4) and the ways in which Sydney Airport considers the monitoring regime ought to be improved further (sections 9.5 to 9.12).

9.2   Principles of an effective monitoring regime

196   The following factors are critical for the monitoring regime to be effective:

- **consumer-focused**: monitoring should be designed to ensure positive outcomes for those consumers, while recognising that, amongst those consumers, there are a range of varying relationships with businesses and government agencies (which all must form part of the performance assessment);

- **non-distortive**: monitoring should not distort collaboration between airports and airlines on improving performance or distort competition between airlines;

- **focused**: monitoring should concentrate on areas in which the airport has potential market power and should exclude extraneous information;

- **robust**: monitoring should employ methodologies for obtaining, analysing and reporting data that are objective, unbiased, transparent and statistically robust;

- **comparable**: any benchmarking should be conducted against comparable airports in comparable circumstances;

- **dynamic**: the monitoring regime should evolve with changes in the market and technology to ensure that it remains relevant;

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[121] Peter Costello, *Productivity Commission Report on Airport Price Regulation* (Joint Press Release from Treasurer and Minister for Transport and Regional Services, No 024, 13 May 2002) <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2002/024.htm&pageID=003&min=phc&Year=2002&DocType=0>.

- **timely and cost-efficient**: monitoring should be cost-efficient, and the results published quickly; and

- **fully representative**: it should be mandatory for feedback on airports to be completed by all airlines to ensure airline feedback represents the aggregated views of all of the airports customers.

197   Sydney Airport considers that the Commission should adopt these principles in assessing the effectiveness of the current monitoring regime. The improvements that Sydney Airport suggests below are informed by these principles.

9.3   Demonstrated effectiveness of a monitoring regime

198   The 2011 PC Report concluded that the 'role of price monitoring as part of a current regulatory regime is generally accepted' and 'some level of quality of service monitoring has been a necessary complement to price monitoring'.[122]

199   Sydney Airport considers that the above conclusion remains apt. An appropriate monitoring regime is the effective form of regulation for balancing the risk of any potential anti-competitive behaviour by airports against the aim of ensuring that airports are not subjected to unnecessary regulatory burden that could stifle innovation and investment.

200   Critical to the effectiveness of the monitoring regime is publication of the ACCC's monitoring reports which are influential documents receiving widespread press coverage. They have the potential to affect negatively or positively an airport's reputation and financial performance. Commercial stakeholders, the general community and the government publicly reference findings in the ACCC's reports.

201   Sydney Airport takes the monitoring reports very seriously. This is evidenced by the following:

- Sydney Airport significantly increased its stakeholder engagement following ACCC criticism that Sydney Airport was not sufficiently consultative;

- a broad team works to develop and check inputs to the ACCC monitoring report;

- Sydney Airport conscientiously engages with the ACCC, facilitates site visits and provides substantial material to the ACCC to assist in its drafting of the monitoring report; and

- the airport's quality of service scorecard which includes multiple sources of feedback from airport users are reported to senior management monthly and used to drive investment initiatives and priorities.

9.4   Improvements to the monitoring regime since 2011 inquiry

202   Sydney Airport acknowledges the improvements made by the ACCC to its monitoring report since the 2011 PC Report and comments on four in particular.

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[122] 2011 PC Report, pp 217, 219.

Airports can comment on potentially misleading statements in the draft report

203   The ACCC now provides airports the opportunity to review the draft monitoring report for potentially misleading statements or factual inaccuracies before publication. This is a welcome change, because it reduces the risk of error, which can have serious consequences for the business and operations of Sydney Airport.

Reports are now shorter and more streamlined

204   The reports have become shorter and more streamlined making them more accessible to airports, airlines and the public. This gives the reports a sharper consumer focus thereby increasing their deterrent effect.

The ACCC's commentary is now more measured

205   Subject to our comments below regarding suggestions for improvement, over the last two years, the ACCC's monitoring reports have become more factual and measured. This is important, because publication of the ACCC's reports can have a material impact on the effectiveness and profitability of Sydney Airport and the morale of the organisation.

206   The need for contextualised comments was recognised by the Commission in the 2011 PC Report in the following way:

> …when taken in the context of investment programs, and given some of the drawbacks of relying solely on monitoring data, the observed price increases do not indicate systemic misuse of market power…

> …As with the price monitoring data, the quality of service ratings need to be considered in context … and also need to be interpreted in light of the limitations of the monitoring program...[123]

Methodology for rounding final scores has improved

207   The ACCC has improved the manner in which it rounds up or down the quality of service rating. Previous iterations of the ACCC's monitoring report rounded results down (for example, a rating of 4.99 would be reported as a rating of 4 ('Good'), rather than a rating of 5 ('Excellent'). This was misleading. By contrast, the ACCC's current rounding procedure involves rounding results to the nearest whole number (so a rating of 4.99 would be rounded to a 5, but a rating of 4.49 rounded to a 4). This is an improvement on the previous approach.

9.5   Issues with the monitoring regime and recommendations

208   The monitoring regime has been generally effective, however further improvements could increase its value to the government and consumers:

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[123] 2011 PC Report, pp 146,156.

- the objective criteria should align with the priorities of the airlines and passengers as reflected in negotiated KPI frameworks within commercial agreements, which are the key drivers for airline and passenger experience at airports;

- the financial metrics need to recognise an airport's individual characteristics by focusing on the return on capital employed over a long-term period (rather than yearly comparisons);

- results from airline surveys are not representative due to a small sample size and should be replaced with reporting against the commercial agreements between airports and airlines;

- the monitoring report should clearly highlight services over which airports have no control, or limited control; and

- the ACCC should provide further transparency over its methodology for measuring quality of service particularly its calculations to aggregate results across consumer, airline and objective measures.

209   We consider each of these factors below.

9.6   The objective criteria is misleading

210   The ACCC collection of 'objective' measures[124] are not fit for purpose and need to be updated to reflect the customer experience. This is because they focus on simplistic inputs such as the quantity of different processing points without reflecting the quality or efficiency of those processing points (e.g. has automation improved processing efficiency). The objective measures should instead reflect the quality of the passenger's experience.

211   We provide further information below on the issues with the current objective reporting and explain how these issues can be overcome by aligning the reporting with the service level frameworks contained within commercial agreements airports have with airlines.

Measuring quality with objective input measures is problematic

212   The ACCC's current 'objective criteria' seek to measure quality of service by assessing identifiable factors such as the number of immigration desks. This method of measuring quality of service with inputs is problematic because it:

- can incorrectly interpret service quality improvements as a reduction in service quality; and

- does not capture the experience of the customer, or the value generated for users, when the airport changes its services.

213   These factors are evident in the following examples:

- in 2009, after a three-year trial, Sydney Airport and Australian Border Force introduced eGates that significantly reduced the processing time for passengers. This represented a significant improvement in the quality of service provided to

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[124]ACCC, *Guideline for quality of service monitoring at airports* (June 2014) pp 13–21 (Tables 6.1 and 6.2) <https://www.accc.gov.au/system/files/Guideline%20for%20quality%20of%20service%20monitoring%20at%20airports%20-%202014_0.pdf>.

passengers at Sydney Airport. However, the ACCC's current objective criterion relevant to this issue (namely the number of inbound immigration desks) did not capture this improvement. Rather the ACCC recorded a reduction in the number of processing points for Sydney Airport (i.e. a decrease in quality),[125] notwithstanding that the overall quality of the customer experience improved materially;

- in around 2006, Sydney Airport replaced smaller flight information display screens with much larger, more legible digital LCD screens. However, the ACCC's current objective criterion relevant to this issue, which focuses on the *number* of flight information displays, did not capture the improved visibility for users of Sydney Airport that resulted from this change;[126]

- in 2013, Sydney Airport began a project to consolidate multiple washrooms into larger, better-designed facilities which used space more efficiently and provided for a wider variety of users in high dwell areas. This increased the total number of toilet facilities at the airport. In addition, finishes were upgraded, and accessibility improved and the working order of the amenities were improved. However, while this improvement in service has been recognised by passengers through improving satisfactions scores, it was not acknowledged by the ACCC in its monitoring report, because the ACCC's objective criterion considers only the number of separate washroom locations; and

- in 2012, changes were made to the quarantine search facility at Sydney Airport. The facility was redesigned in collaboration with government agencies to take advantage of the new quarantine process. The redesign reduced the number of desks and increased the amount of queuing space, greatly enhancing the overall passenger experience. However, this improvement is not being captured in the ACCC's objective criterion relevant to this issue (i.e. the number of desks per peak hour passenger).

A better approach for measuring quality of service

214   Sydney Airport considers it would be more useful and productive to focus on the outcomes achieved for customers and airlines. This would reduce the incidence of misleading or inaccurate statements in monitoring reports about quality of service and would better reflect the actual experience of customers, rather than relying on inaccurate proxies for the experience of customers.

215   This view is consistent with the Commission's findings in 2011, and its recommendation to the government, which was in the following terms:

> The Commission considers that the best way to 'reveal' the true preferences of the airlines is through the commercial negotiation of service level agreements (SLAs) that stipulate agreed quality standards, as well as means for recourse by airlines when these standards are not

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[125] ACCC, *Airport Monitoring Report 2010-2011* (March 2012) p 248
<https://www.accc.gov.au/system/files/Airport%20monitoring%20report%202010-11.pdf>.

[126] ACCC, *Airport Monitoring Report 2006-2007* (March 2008) pp 241, 397
<https://www.accc.gov.au/system/files/Airport%20monitoring%20report%202006-07.pdf>; See also ACCC, *Airport Monitoring Report 2007-2008* (2009) pp 226, 232 <https://www.accc.gov.au/system/files/Airport%20monitoring%20report%202007-08.pdf>.

met. This would allow SLAs to be tailored where service level expectations differ from airline to airline[127]

216   An outcomes-focused approach can be achieved if the ACCC's 'objective criteria' is aligned with the KPIs recorded in the commercial agreements that Sydney Airport has with airlines, and against which Sydney Airport measures its own performance.

217   As described in Chapter 6, these agreements were the result of rigorous negotiation between commercially sophisticated parties, which means the KPIs recorded in them are likely to be an accurate reflection of the service features that matter to the airlines. It is important that the monitoring regime recognises this important development in the relationship between airports and airlines and utilises this development to improve the monitoring regime.

218   For example, the 2015 BARA ASA included a range of KPIs that Sydney Airport is required to meet, along with mechanisms to ensure compliance with these KPIs. Specifically, the ASA KPI framework includes:

•   the various KPIs summarised in Figure [x] below;

•   a service level recovery mechanism under which the airline can receive financial relief if the airport fails to meet the promised service standards;

•   ongoing reporting and monitoring by the airport against the KPIs, and annual review of the KPIs; and

•   collaboratively reviewing shortfalls in KPIs and jointly agreeing remediation activities where applicable through the AOC.

219   The current ACCC 'objective criteria' does not incorporate the KPIs contained in the ASA which reflect the key drivers of the overall satisfaction of airlines. This inconsistency is illustrated below in Figure 23.

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[127] 2011 PC Report, p 244.

Figure 23
Comparison of Sydney Airport KPIs in ASA and ACCC objective monitoring criteria

SYD KPI Framework	ACCC
Arrival Peak and off-peak OTP	✗
Departure Peak and off-peak OTP	✗
Length of Delay	✗
% of Movements Bussed	✓
% of Passengers Bussed	✓
Arrival Bussing Efficiency – Time to terminal	✗
Bags missed per 1,000 – Direct & Transfer	✗
Arrivals Baggage delivery – Time to first bag	✗
Arrivals Baggage delivery – Time to last bag	✗
Average & Maximum queue wait times in:	
• Security	✗
• Outbound immigration	✗
• Inbound immigration	✗
Safety Incidents per 100,000 passengers	✗
Overall presentation & Ambience of Airport	✗
Cleanliness of Airport Terminal	✗
Cleanliness of bathrooms	✓
Working order of Bathrooms	✗
Comfort and Quality of Departure Gate area	✓
Ease of finding your way through airport	✓
Thoroughness and Attention levels Security	✓

9.7 The financial reporting should reflect the size and operations of an airport

220   The financial metrics currently focused on by the ACCC have the potential to mislead.

221   The ACCC focusses on financial metrics such as revenue per passenger and EBITA which fail to take into account the particular circumstances of an airport (particularly its asset base and cost of capital) and are at best a partial representation of the financial performance of the airport.

222   For example, in the 2015-16 Monitoring Report, the ACCC reported that 'the four airports have collected an extra $1.57 billion from airlines than if they had instead held revenue per passenger constant in real terms'.[128] This statement is misleading unless it takes into

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[128] ACCC, *Airport Monitoring Report 2015-16* (April 2016) p 5 <https://www.accc.gov.au/system/files/2015-16%20AMR%20revised%206%20March_0.pdf>.

account the context in which the revenue was earned. The higher revenue figure in this case can be explained through the following factors:

- increased capital expenditure;

- changing mix of domestic and international customers; and

- the revenue from taking control of domestic terminals (e.g. T3).

223   In particular, Sydney Airport's asset base is materially higher than other airports and therefore its revenues and profits would be higher. We consider this in further detail below.

Sydney Airport's asset base was set materially higher than other airports

224   Measures such as revenue per passenger are heavily affected by the airport's investment per passenger.

225   As background, Sydney Airport's starting asset base, as calculated in 2001 at privatisation by the ACCC, was three to four times higher than the then asset base at Melbourne Airport and Brisbane Airport, and more than ten times higher than the then asset base at Perth Airport. The position is the same for Sydney Airport's asset base per passenger. It was over two and a half times the asset base per passenger as compared to Melbourne Airport and over one and a half times larger than the asset base per passenger at Brisbane Airport.

226   Sydney Airport's higher asset base reflects various factors, including:

- its larger international operations;

- the construction of three runways;

- the significant capital investments made in conjunction with the 2000 Olympics; and

- the higher land value due to its proximity to the Sydney CBD.

227   The effect of this higher overall asset base is that Sydney Airport's allowable charges and revenues are commensurately higher than those at other airports. This was recognised in the prices set by the ACCC for Sydney Airport at privatisation, which were higher than those set at any other airport.

228   The issue with the current reporting is that the ACCC's report simply compares Sydney Airport's charges with those of other airports without acknowledging its higher asset base.

More accurate financial report would focus on return on capital employed

229   Sydney Airport considers this inadequacy can be overcome if the report focused on measuring an airport's return on capital employed over the long term as the primary financial metric. While there is some reporting of the return on capital employed, the report does not sufficiently focus on this metric or base its commentary on this metric. Instead there is a tendency to focus on other less indicative measures.

230   The importance of the asset base and the cost of capital for capital intensive businesses such as airports was recognised in the 2006 PC Report:

The provision of aeronautical services is capital intensive. Hence, charges for these services depend heavily on the costs of financing and maintaining the asset base.[129]

231   In addition, the reporting on the return on capital employed should occur over the life of the asset, rather than on a yearly basis. The yearly returns can be affected by various factors, including the pricing model used by the airport which sets its returns over the life of an asset.

232   To the extent partial measures are used, they should be accompanied by a description of the context in which they occurred.

9.8   The calculation of the return on capital employed can be improved

233   The ACCC's monitoring report provides a limited, and incomplete, focus on the return on capital employed by airports. In addition to increasing its focus on the return on capital employed, the following improvement should be made to its calculation.

234   There is a significant discrepancy between how Sydney Airport calculates its return on capital employed, on the one hand and the ACCC's methodology on the other. Because Sydney Airport was privatised after other airports and under a different privatisation model, the privatisation model for Sydney Airport used a real WACC and asset indexation. In contrast, a nominal WACC with no indexation was used at other airports. However, in its monitoring report, the ACCC uses a nominal WACC with no indexation when analysing return on capital.

235   This has meant that the asset base used for Sydney Airport by the ACCC is increasingly inaccurate. That is, the ACCC has been calculating a lower asset base for Sydney Airport than is the case, which tends to provide an inflated impression of Sydney Airport's return on capital.

236   The impact of this inconsistency is reflected in the return on capital employed for Sydney Airport as reported by the ACCC. Further information on the inconsistency can be found in Confidential Appendix 10. If this distortion were corrected, Sydney Airport's return on capital employed is likely to fall from being the highest to amongst the lowest of the Australian airports.

237   The magnitude of this inaccuracy will continue to increase, and at an increasing rate, because the over-stating of the return on asset base will be an ever-greater margin each year. Accordingly, the ACCC's calculation of return on capital in its monitoring report should reconcile this discrepancy by accounting for the manner in which Sydney Airport (and to its understanding a growing number of other airports) account for their asset base.

238   While the Commission recommended in 2007 that this difference was unlikely to be material; as demonstrated above, the difference is now material and therefore the Commission should revisit its earlier recommendation.[130]

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[129] Productivity Commission, *Review of Price Regulation of Airport Services*, Report No 40 (14 December 2006) p 69 <https://www.pc.gov.au/__data/assets/pdf_file/0019/20638/airportservices.pdf>.

[130] Productivity Commission, *Review of Price Regulation of Airport Services*, Report No 40 (14 December 2006) p 76 <https://www.pc.gov.au/__data/assets/pdf_file/0019/20638/airportservices.pdf>.

9.9 The reporting of aggregate revenue for domestic and international passengers is misleading

239   The ACCC's monitoring report aggregates the revenue per passenger for domestic and international passengers. Sydney Airport considers this has the potential to mislead.

240   The passenger mix between domestic and international passengers varies between airports and over time. This is relevant as the cost of servicing international passengers and therefore the associated revenue is higher.

241   Aggregating the revenue from domestic and international passengers is misleading. Charges for international passengers are necessarily higher to reflect the higher capital and operational costs associated with facilitating those passengers. Increases in the proportion of international customers therefore increases overall revenue but not necessarily profitability. Sydney Airport is the largest international airport in Australia, and its passenger mix contains a higher ratio of international to domestic passengers compared to other Australian airports.

242   In addition, Sydney Airport (and other airports in Australia) is experiencing growth in the volume of international passengers at a faster rate than growth in domestic passengers. Accordingly, the aggregated revenue for domestic and international passengers may present a misleading impression that airports are inappropriately increasing their revenue per passenger, when in fact the increase may be explained by the rising proportion of international passengers.

243   While the ACCC does report the split in revenue between domestic and international passengers in the body of its report, the executive summary and therefore the focus of the report is frequently on the aggregated revenue per passenger for domestic and international passengers.

9.10 The airline survey is flawed

244   The ACCC surveys airlines as one source of data for its monitoring of airport service quality. Although airline feedback is an important input, the ACCC's existing airline survey is not a reliable tool for this purpose.

245   The airline survey is inadequate for the following reasons:

•   the survey is statistically unreliable because it is optional and therefore sample sizes are not sufficient to be truly representative;

•   the survey does not always provide views that are representative of the entire organisation, instead representing the views of the particular airline employees who complete the survey;

•   the accuracy and robustness of the survey is doubtful when airlines have an inherent conflict of interest that prevents them from giving airports a high rating; and

•   the survey is inflexible so it does not provide scope to properly account for the varying needs of different airlines.

246   These deficiencies are described in more detail below. Sydney Airport considers that these deficiencies could be overcome if the airline survey was removed and instead the ACCC's monitoring regime reported against the agreed service levels recorded in the commercial agreements between airports and airlines as discussed above.

Sampling error

247   The sample size of the airlines surveyed is not sufficient to ensure that the results are statistically relevant and not open to sampling self-selection errors. Currently, very few airlines participate in the ACCC's survey, with responses generally only collected from Qantas, Virgin, BARA (which provides the amalgamated view of member airlines) and other smaller or regional airlines.

248   Sydney Airport understands that results are sometimes based on only three or four responses for each of the international and domestic terminals. The sample size is too small to provide meaningful data on Sydney Airport's quality of service.

Conflict of interest

249   Airlines have an incentive to underrate the quality of airports because negative views assist airlines in their negotiations with airports and in regulatory reviews.

250   As acknowledged by the ACCC in its 2016-17 monitoring report,

> …'the ACCC is mindful that customers of airport services such as airlines may be strategically motivated to rate the quality of services downwards at individual airports. In contrast to passenger ratings, airline ratings have generally been much more volatile and lower over the past decade[131]

Inflexible instrument

251   The survey does not account for the fact that different airlines value different levels and types of service depending on their target market. For example, a low cost airline would not have the same service level expectations as a full service airline. Sydney Airport services 47 international, domestic, regional and freight airlines which at times have different and competing priorities. Even within airlines, the operational, financial and other areas of the business have different priorities.

9.11   Service quality at airports is the responsibility of a range of suppliers

252   Quality of service at airports is dependent on a number of suppliers, not just the airport. This should be recognised by the ACCC in its reporting.

253   Services to passengers at Australian airports are typically the result of cooperation between a number of different organisations including airport operators, airlines, Airservices Australia, Australian Immigration and Border Protection Service, and Australian Quarantine and Inspection Service. In particular, the satisfaction of customers and airlines at airports is impacted by the following factors which are outside the control of Sydney Airport including:

- stakeholders' investment in equipment and staff (including rostering and training); and

- government investment in roads and public transport.

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[131] ACCC, *Airport Monitoring Report 2016-17* (April 2018) p 48
<https://www.accc.gov.au/system/files/Airport%20Monitoring%20Report%202016-17.pdf>.

254   The ACCC's current approach is to report the performance of airport operators for some services over which those operators have little or no control. For example, the ACCC measures the performance of airports by reporting on the length of time passengers spend waiting at check-in counters, for their luggage and at customs. These services are delivered collaboratively by a number of different stakeholders, not just the airport, as illustrated below:

- immigration and emigration experiences, where Australian Government budget constraints for border agencies, and the repeated Border Force protected industrial actions, may have limited the ability of border agencies to respond to the increased demand;

- baggage handling, undertaken by airline contractors (ground handlers) using Sydney Airport's infrastructure;

- passenger services, undertaken by airline contractors (ground handlers) such as check-in and boarding and disembarking passengers at contact and remote bays; and

- road capacity outside the terminal precinct.

255   This approach is reflected in how the ACCC calculates the overall customer satisfaction rating. The ACCC uses a broad range of factors, including those outside Sydney Airport's control, to arrive at the overall satisfaction rating.

256   Sydney Airport considers that it is important for the accuracy of the ACCC's monitoring report, that the ACCC accurately acknowledge services over which Sydney Airport has little or no control which could have contributed to the satisfaction of airlines and customers.

257   This is consistent with the previous position of the Commission. In 2009 the Commission stated that 'regulation should not require business to take responsibility for matters over which it has no control or require business to provide information concerning other agencies'.[132]

9.12   There is limited transparency in the ACCC's quality of service methodology

258   The Commissioner stated in the 2011 PC Report:

> …the use of this information should be transparent to those involved, to both encourage confidence and improve the certainty surrounding the regulatory system.[133]

259   However, there is currently limited transparency in:

- how the ACCC calculates the overall quality of service rating, particularly how it aggregates the airline survey, the passenger survey and the objective criteria. It is unclear to Sydney Airport why the ACCC blends the results from the passenger and airline surveys and the objective criteria to create one overall satisfaction rating. Sydney Airport considers these are unrelated ratings and should not be combined. Should the ACCC wish to report an overall satisfaction rating, it could use the rating supplied by passengers, which is one of the key metrics Sydney Airport collects; and

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[132] Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services* (Research Report, Productivity Commission, August 2009) p 264 <https://www.pc.gov.au/inquiries/completed/regulatory-burdens/social-economic-infrastructure/report/social-economic-infrastructure.pdf>.

[133] 2011 PC Report, p 234.

- whether all airlines landing at a particular airport were asked to participate in the survey and, if so, how many responded. As mentioned above, the number of airlines that participate impacts the statistical robustness of the results.

260   Sydney Airport considers that it would be helpful to airports and other users of the ACCC's monitoring reports if the ACCC provided greater transparency on these issues.

9.13   Additional views sought by the Commission

Feedback on the way domestic terminal leases are accounted for

261   Sydney Airport considers that the different number of domestic terminal leases held by each airport and the exclusion of domestic terminal leases from the monitoring regime distorts the reporting of measures such as revenue per passenger.

262   This occurs because airports do not collect terminal charges from customers using domestic lease terminals, however the passengers using these terminals still form part of the total number of passengers who used a particular airport. As a result, domestic terminal leases can materially affect the revenue per passenger for an airport. For example, Sydney Airport has no domestic terminal leases, while Melbourne Airport has two domestic terminal leases. This means, other things being equal, the total revenue collected by Sydney Airport and therefore its total revenue per passenger would be higher than the total revenue per passenger for Melbourne Airport.

263   Despite the above, Sydney Airport does not consider that the monitoring regime should be changed at this time to account for domestic terminal leases. This is due to the significant complexities and the associated costs which would arise if the regime was changed to account for domestic terminal leases. An increase in the cost and complexity of the monitoring regime would be contrary to its purpose of being a light handed regulatory tool. This is particularly relevant given Sydney Airport understands that there is a general trend toward airports taking back terminals which are subject to a domestic terminal lease.

264   Instead, Sydney Airport considers that the distortion can be overcome by focusing the financial reporting on the return on capital employed, rather than revenue per passenger.

Cost of compliance

265   Despite requiring significant time investment (estimated at 45 working days to compile and review the report across the business), the actual cost of monitoring is not considered to be an excessive burden to the business. Sydney Airport considers that the compliance costs could be moderated if the quality of service reporting aligns with objective measures negotiated with airlines as part of commercial agreements.

266   For any complex statistical analytical approach (such as envelopment analysis or stochastic frontier analysis) to be useful in interpreting indicators of airport performance, a large data set would be required for metrics on which monitored airports can be compared. As described above, on the data currently collected by the ACCC, Sydney Airport is not comparable to other Australian airports due to its size, location and passenger mix.

267   In addition, to attempt this analysis, the ACCC would be likely to require more data which would materially increase the regulatory compliance burden of Sydney Airport without

resulting in any identifiable improvement in the regime. Such a result would be contrary to the purpose of a light-handed regulatory regime.

Part F:
Sydney Airport Specific Regulatory Environment

Chapter 10: Operating restrictions that impede efficient use of Airport infrastructure

Summary

- Sydney Airport's first operating restrictions date back to the late 1950s, around the time when jet aircraft commenced operations. Over the decades, additional restrictions were introduced to achieve specific objectives around noise mitigation and protecting regional access.

- Since that time, aviation technology has substantially evolved, providing modern alternatives to noise management and better ways to manage airport access and efficiency.

- Today, the interaction of the various operating restrictions at Sydney Airport prevents the fulfilment of their intended objectives and significantly negatively affects passengers, airlines, the airport, local communities as well as the broader aviation network and national productivity. These can include increased aircraft noise and additional fuel burn with the associated negative environment impacts.

- The Commission should recommend that the government conduct a comprehensive review of Sydney Airport's operating restrictions to ensure that it is fit for purpose and delivers the best outcomes for all stakeholders.

10.1   Overview: operating restrictions and their rationale

Operating restrictions in place at Sydney Airport

268   All Australian airports are subject to restrictions under international aviation standards and federal and state legislation. Sydney Airport is subject to a number of additional operating restrictions.

269   The operating restrictions that apply at Sydney Airport include:[134]

    (a)   the Demand Management Act and Demand Management Regulations, which:

        (i)   place an upper limit on both the number of scheduled and actual aircraft arrivals or departures (each a 'movement') that may occur in each hour between 0600 and 2300;

        (ii)   set a system for the allocation of slots to airlines operating at Sydney Airport;

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[134] *Sydney Airport Curfew Act 1995* (Cth) (the **Curfew Act**); *Sydney Airport Curfew Regulations 1995* (Cth) (the **Curfew Regulations**); *Sydney Airport Demand Management Act 1997* (Cth) (the **Demand Management Act**); *Sydney Airport Demand Management Regulations 1998* (Cth) (the **Demand Management Regulations**).

(iii)   reserve a pool of slots for regional and intra-NSW services (the Regional Ring Fence (**RRF**)); and

(b)   the Curfew Act and Curfew Regulations, which restrict aircraft movements between 2300 and 0600 (the **Curfew** and **Shoulder Restrictions**).[135]

Figure 24
Overview of the operating restrictions at Sydney Airport

Constraint	Time period	Type	Description
Hourly Caps	6am-11pm	Act	• A *Slot Cap* limits the number of *scheduled* movements per hour • A *Movement Cap* limits the number of *actual* movements that can occur per hour • Both the Slot Cap and the Movement Cap are measured on a rolling hour basis, where each 'regulated hour' recommences every 15 minutes • The Slot and Movement Caps are both set at 80 movements per hour
Curfew	12am-5am	Act	• No passenger flights allowed (limited freight operations)
Shoulder restriction	11pm-12am	Regulation	• Up to 14 per week under Curfew Act but limited to zero slots by Curfew Regulations
Shoulder restriction	5am-6am	Regulation	• Up to 35 per week under Curfew Act but limited by Curfew Regulations to up to 24 historically operated slots/week
Regional ring fence	6am-11am, 3pm-8pm	Act	• Regional slots are protected by the regional ring fence and account for ~25% of peak slots (18-23 slots/hour), with the ring fence applying Monday-Friday 6-11am and 3-8pm

10.2   The Regional Ring Fence

270   The RRF was introduced in 1998. The RRF both restricts the total number of regional slots available during peak periods and reserves those slots as a separate pool for regional slot services.

271   In recognition of the importance of regional communities, the RRF reserves a significant number of peak slots at Sydney Airport for services to regional communities. As a result, approximately 25% of peak slots are reserved for approximately 5% of peak time passengers.

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[135] The curfew was originally introduced by agreement in 1958, prior to it being included in regulations made under the *Air Navigation Act 1920* (Cth) until 1995 when the Curfew Act was enacted.

10.3   The Caps

The Caps

272   Sydney Airport is subject to two limitations on aircraft movements (the **Caps**): a cap on scheduled movements (the **Slot Cap**) and a cap on actual movements (the **Movement Cap**)

The Slot Cap

273   For most airports worldwide, to access an airport, an airline will require a slot. A slot is a permission given to an airline to operate at an airport on a specific day and time.

274   The Slot Cap restricts Sydney Airport to no more than 80 scheduled movements per hour outside of the curfew period, where a 'movement' refers to an arrival or a departure. The hour is measured as a rolling hour on a quarter hour basis. For example, there must be no more than 80 aircraft movements in the hour between each of 8:00am and 9:00am, 8:15am and 9:15am, 8:30am and 9:30am and so on.

275   The imposition of a Slot Cap at constrained airports is not uncommon but it is usually more flexible and applies over a longer period of time e.g. London Heathrow has an annual cap of 480,000 movements per year. Sydney Airport is not aware of any other similarly sized airport globally that is subject to a Slot Cap applied on a rolling hour basis.

276   The Slot Cap is a blunt and inflexible instrument, whereby no rolling hour at any point in a scheduling season can exceed 80 scheduled movements.

The Movement Cap

277   The Movement Cap restricts Sydney Airport to no more than 80 actual movements per hour outside of the curfew period. Like the Slot Cap it is measured on a rolling hour basis.

278   The imposition of a Movement Cap on actual movements is unusual. Sydney Airport is the only airport in Australia that operates under an 'actual movements' cap. Sydney Airport is not aware of any other such cap being in place at any similarly sized airport, globally.

279   The Movement Cap is also a blunt and inflexible instrument, with no rolling hour at any point on the day of operations able to exceed 80 movements. Further, because the Movement Cap is not flexible, in practice fewer than 80 movements occur in each rolling hour to ensure that the cap is never breached.

Rationale for Caps

280   The Slot Cap and the Movement Cap are both well below Sydney Airport's capacity.[136] In addition, the Caps, in terms of the current number of slots and movements, were set arbitrarily to fulfil an election promise during the mid-1990s. The productivity loss caused by the Caps is considerable. At a conservative estimate, it is likely to be upwards of ~$10 billion per annum.[137]

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[136] For particular schedules Sydney Airport's capacity could be well above 90 movements per hour. For example, more flights can be operated on favourable and homogeneous aircraft mixes. E.g. Gatwick Airport does 55 movements/hour on a single runway.

[137] Assuming that a cap set at actual airport capacity would allow 50 additional services across the morning peak or the equivalent of an additional twenty daily widebody return flights.

281   The intent of the Slot Cap and the Movement Cap was to limit the impact of day time noise on residents surrounding the airport.

10.4   Slot allocation

282   The Worldwide Slot Guidelines (**WSG**) have been developed by the IATA. Sydney Airport's Slot Scheme broadly implements the 13 key WSG principles for level three airports[138], as well as aspects of Australian Government policy such as the RRF.

283   The prime objective of the slot scheme and the WSG is to 'ensure the most efficient use of airport infrastructure in order to maximize benefits to the greatest number of airport users'.[139]

284   Slots at Sydney Airport are managed and allocated by a government appointed independent coordinator (currently ACA). Slots are allocated by ACA based on a set of priority rules set out in the Slot Scheme with the highest priority given to airlines that previously operated each slot and have 'historical precedence' to that slot.

285   As a result, Sydney Airport does not control slots and relies on third parties including slot users (airlines), the slot allocator (ACA) and the Commonwealth Government, the ultimate maker of operating restriction policies.

10.5   Unintended consequences of the operating restrictions

286   The collective intent of the Slot Scheme, the RRF and the Caps was that within fixed constraints that would mitigate noise impacts and ensure regional access, slots would be allocated to maximise the volume and economic value of the services operating to and from Sydney Airport.

287   It has become increasingly clear over a number of years that the interaction of the Slot Scheme, the Caps, the RRF and other operating restrictions actively prevent the fulfilment of any of these objectives. Instead, these operating restrictions produce worse outcomes for passengers, airlines, Sydney Airport and the community, and significant negative impacts on the broader aviation network and overall national productivity.

288   The next section sets out some undesirable outcomes of the operating restrictions. This is not an exhaustive list.

289   The Government should undertake a comprehensive review of the operating restrictions in order to ensure that they reflect international best practice, use the latest technology and systems and drive the best overall outcomes for all airport stakeholders and for national productivity.

290   The interactions of the operating restrictions can be complex. More detailed explanations, including the unintended consequences of the RRF, are set out in Appendix 4.

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[138] International Air Transport Association, 'Worldwide Slot Guidelines' (1 January 2017) p 31 <https://www.iata.org/policy/slots/Documents/wsg-8-english.pdf>.

[139] International Air Transport Association, 'Worldwide Slot Guidelines' (1 January 2017) p 13 <https://www.iata.org/policy/slots/Documents/wsg-8-english.pdf>.

10.6 Unintended consequences of the operating restrictions on passengers, airlines, Sydney Airport, local communities, the broader aviation network and national productivity

Issues at the scheduling level:

Slots made available to regional airlines under the regional ring fence may not be usable in practice

291   Even though regional communities would greatly benefit from improved connectivity, Sydney Airport estimates that as many as 17% of RRF slots are not allocated and not used.[140]

Impact of operating restrictions on maximising airport productivity

292   Details on the impact of operating restrictions on maximising airport productivity are set out in Confidential Appendix 10.

Issues on the day of operations:

Impact of on time performance at Sydney Airport on airlines, passengers and the broader aviation network of Australia

293   Airports in general have little control over each airline's OTP. Nevertheless, OTP is one of the key metrics for airlines and is included in the key performance indicators that Sydney Airport reports under the international ASA.

294   On time performance impacts caused by the Cap are significant for both passengers and airlines. The Cap limits the airport's ability to recover from delays, exacerbating the impact of any delays and affecting a greater number of travellers. These impacts are particularly felt by:

   (a)   domestic travellers who commute to and from their destination on the same day and risk missing the reason for their travel; and

   (b)   international travellers who risk missing connecting flights or losing the use of accommodation and other activities they have already paid for.

Many hours of passengers' time are lost due to the Cap which results in a major loss of productivity.

295   Sydney Airport operates as a gateway to, and a key hub for, the Australian aviation network. Domestic routes within Australia have some of the highest frequencies in the world, for example, SYD-MEL and SYD-BNE are respectively the second and eighth busiest air routes in the world.[141] Off-schedule movements, congestion and longer dwell times at Sydney Airport create delays and inefficiencies across the national aviation network.[142] The following examples should be read with this context in mind.

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[140] Sydney Airport analysed slot usage figures for a busy week in August for the purposes of its latest 2039 Master Plan.

[141] OAG statistics for 2017 regarding busiest routes by aircraft movements in the world.

[142] The Slot Compliance Committee has identified over 100 reasons for delays.

Sydney Airport is particularly susceptible to off-schedule movements and delays

296   Sydney Airport is particularly susceptible to off-schedule movements (delays and early arrivals). This is because:

(a)   *First*, almost all of Sydney Airport's international services are long-haul flights that are particularly prone to off-schedule movements.

(b)   *Second,* approximately 40% of Sydney Airport's domestic arrivals originate from Melbourne or Brisbane airport. As a result, delays at either airport will cause a large volume of off-schedule arrivals.

(c)   *Third,* as the Curfew and Shoulder Restrictions prevent most aircraft from landing before 0600, a backlog of flights can arise when international flights arrive at Sydney before the Curfew lifts.

The Movement Cap makes it difficult to recover from unexpected incidents that cause delay

297   Although Sydney Airport is able to absorb some off-schedule movements it cannot absorb significant delays of multiple flights where to do so would result in a breach of the Movement Cap. By way of example:

(a)   on 14 September 2017, strong westerly winds prevented use of the parallel runways, meaning that only a single runway could be used. Flights were delayed for several hours and approximately 180 flights were cancelled. The airport's overall OTP for that day was 40%. This caused further delays on 15 September with airport-wide OTP only recovering to 51% (vs an average of ~76% on normal days).

(b)   on 25 September 2017, Airservices Australia experienced a serious software problem affecting their air traffic control systems. As a result, flights were delayed for several hours and 50 flights were cancelled. Despite the Airservices outage only lasting for three hours, flow-on impacts throughout the day caused an overall airport-wide OTP of 23%.[143]

298   In both instances the cause of the delay was unavoidable. However, the number of flights affected and the duration of the delays were exacerbated by the Movement Cap which prohibited the airport from being able to 'catch up' the number of delayed flights. These two events collectively resulted in around 230 flight cancellations, the delay of many other flights and disruptions to the travel plans of tens of thousands of airline passengers nationwide.

The inflexibility of the Cap increases the noise and environmental impact on the community

299   In order to comply with the Cap, when off-schedule movements occur aircraft are held either on the ground or in the air waiting for the next rolling hour to start. This results in a host of detrimental impacts for airlines, passengers and the community including additional noise, excess environmental emissions and increased fuel burn.

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[143] Sydney Airport, Submission to Department of Infrastructure and Regional Development, *Aviation Regulation Sunsetting review on Sydney Airport Demand Management Regulations 1998 (2017)*, p 4.

Difficulty obtaining consistent slots at airlines' preferred times is artificially compressing the peak at Sydney Airport

300   While peak periods of demand are experienced at all Australian airports due to geographic factors, the peak period for the usage of Sydney Airport is artificially amplified and prolonged due to the difficulty of obtaining consistent slots at peak times. As airlines are unable to operate arrival and departure flights in quick succession during peak periods, a new service (typically an international service) will schedule its arrival before, and its departure after, the peak period. The result is that aircraft spend more time on the tarmac occupying key infrastructure such as gates.

301   This issue is illustrated further in Confidential Appendix 10.

302   Concentrated peak growth imposes a high demand on infrastructure and resources. The operating restrictions push airlines from their preferred times into windows of slot availability. This can impose significantly higher costs than would be required without the operating restrictions. This is illustrated by way of example in Confidential Appendix 10.

303   The recent rapid increase in Sydney Airport's congestion during peak periods has made this a difficult challenge as the only options are:

(a)   increased capital expenditure (but this would result in infrastructure being underutilised for the rest of the day); and/or

(b)   increased operating expenditure (because minimum shift times for staff are typically four hours); and/or

(c)   acceptance of a lower level of service quality at a time when large volumes of passengers are moving through the terminals.

10.7   Need for the slot scheme to provide an effective check on potential slot misuse

The process for receiving historic grandfathering rights to slots

304   If only one airline applies for a slot, it will be allocated that slot. There is typically no fee and only minimal threshold that must be met to be awarded a slot.

305   When multiple airlines apply for the same slot, the WSG will typically prioritise larger aircraft over smaller aircraft and international services over domestic services.

306   To give airlines long term certainty around fleet purchases and network development, once an airline has been allocated a series of slots (five or more consecutive slots for the same time on the same day of the week), it will retain the right to use it in perpetuity ('historical precedence') subject to passing the 'use it or lose it' test.

307   The 'use it or lose it' test is intentionally set at a low threshold, typically that an airline must operate at least 80% of a slot series on the scheduled day.[144]

The need for an effective check against slot misuse

308   Slots are relatively easy for airlines to acquire and there is a low threshold for airlines to retain them in perpetuity. However, slots can be extremely valuable to airlines either because

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[144] There is no requirement for the slot to be used at the scheduled time.

they block competitors from operating services or, where slot trading exists, they can be traded to achieve significant windfall gains. For example, pairs of landing slots at Heathrow Airport have been sold for upwards of $50 million. It follows that a workable slot system requires strong protections and sanctions against various forms of slot misuse.

309   An airline could misuse slots by hoarding them, i.e. applying for more slots than it needs and not relinquishing those slots for other airlines to use. There is no penalty for not operating a slot during a season, with the only consequence being that the airline would fail the 'use it or lose it' test, not benefit from historical precedence and release that slot back into the pool of available slots for the following season. There is no bar to an airline repeating that practice in each season to lock up part of the slot pool and increase the difficulty for new entrants to compete against the entrenched dominant airlines.

310   Further information regarding slot misuse is set out in Confidential Appendix 10.

Changes in slot usage since privatisation

311   As noted by the WSG, it can be difficult to prove slot misuse because 'legitimate changes of an airline's plans may appear to be slot misuse. This makes deliberate slot misuse difficult to confirm.'[145]

312   Nevertheless, it is instructive to describe how the usage of slots at Sydney Airport has evolved over the past 15 years.

313   Since 2002, Sydney Airport has observed a significant shift amongst the domestic carriers to higher frequency, smaller aircraft instead of larger aircraft. More services require more slots and as a result, the proportion of slots held by the dominant airlines has significantly increased. For example, Australian and New Zealand based carriers held 70% of peak slots in 2002.[146] This increased to 87% in 2017.

314   Since 2002, the average gauge on major routes has reduced. For example, the average gauge on the Sydney-Melbourne route fell by 12% from 201 seats in 2002 to 177 seats in 2017. Similarly, the average gauge on the Sydney-Brisbane route fell by 5% from 171 in 2002 to 162 in 2017.

315   The entrenchment of the dominant airlines' slot position will make it very difficult for new entrants to compete effectively. This could have the impact of restricting airline growth leading to broader productivity impacts for passengers, foreign airlines and the airport.

316   It is likely that prioritising frequency over gauge is a profit maximising strategy for Australian Airlines. However, this shift fails to maximise productivity benefits for the overall economy. The Commission has previously indicated that peak/congestion pricing may be effective in aligning slot use with broader national productivity. This is explored further in section 10.8 below.

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[145] International Air Transport Association, 'Worldwide Slot Guidelines' (1 January 2017) p 39 <https://www.iata.org/policy/slots/Documents/wsg-8-english.pdf>.

[146] Absolute slot peak defined as 7-9 am.

10.8   Congestion pricing alone

317   Previous Commission reports envisaged that some consequences of the operating restrictions could be effectively dealt with by the airport, through the introduction of measures such as congestion pricing.

318   The 2006 Productivity Commission Report stated that 'The Review Principles also provide for price discrimination between users of airport services that 'promotes efficient use of the airport' and for congestion pricing at capacity-constrained airports.'[147]

319   Sydney Airport has given consideration to whether peak or congestion pricing could mitigate the negative impacts of the operating restrictions set out in this chapter. While the introduction of peak pricing could be of benefit in some instances, in most cases the issues that arise out of the airport's operating restrictions, particularly Sydney Airport's inability to recover from delays, simply cannot be addressed.

320   To the extent that peak pricing could address some issues, it is Sydney Airport's view that such pricing could drive unintended detrimental consequences, particularly for regional and smaller airlines.

321   Although pricing slots would incentivise airlines to reduce their slot usage, for example by transitioning from frequent narrow-body domestic flights to less frequent wider body flights, as slots are scarce and can be retained only by ongoing use, an airline's demand for slots is unlikely to respond simply to an increase in price. An illustrative example is set out in Confidential Appendix 10.

322   The level of congestion charge necessary to drive changes in behaviour could differ markedly between airlines or routes. The level that might impose a significant impact on a dominant player might make the same route unviable to a smaller airline. Given the countervailing power of airlines (discussed in Chapter 5), Sydney Airport is not of the view that it could easily negotiate a congestion pricing model.

323   As the slot scheme is controlled by third parties (the airlines, ACA and the Commonwealth Government), Sydney Airport has no avenues to make improvements to the scheme itself. Further, although peak pricing has been proposed, it is inadequate to address most of the operating restriction issues. Accordingly, it is Sydney Airport's view that the scheme should be reviewed.

10.9   Conclusion

324   Sydney Airport is increasingly constrained by outdated operating requirements which are not delivering their intended objectives while having significant impacts on the aviation network and national productivity more generally.

325   The Commission should recommend that the government conduct a comprehensive review of Sydney Airport's operating restrictions with the scope of any such review to include the unintended consequences of the operating restrictions as set out in this chapter.

326   Other bodies have concluded that a review of the operating restrictions is appropriate. For example:

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[147] Productivity Commission, *Review of Price Regulation of Airport Services*, Report No 40 (14 December 2006) p 12 <https://www.pc.gov.au/__data/assets/pdf_file/0019/20638/airportservices.pdf>.

(a) Infrastructure Australia recommended that the restrictions be reviewed in their 2016 Australian Infrastructure Plan (Recommendation 1.3);[148] and

(b) the ACCC recommended that the restrictions be reviewed in its 2017/2018 report.[149]

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[148] Infrastructure Australia, *Australian Infrastructure Plan* (Report, February 2016) p 20 <http://infrastructureaustralia.gov.au/policy-publications/publications/files/Australian_Infrastructure_Plan.pdf>.

[149] ACCC, *Airport Monitoring Report 2016-17* (April 2018) p 16–17 <https://www.accc.gov.au/system/files/Airport%20Monitoring%20Report%202016-17.pdf>.

Chapter 11: Regional Pricing

Summary

•   Sydney Airport supports regional airlines and acknowledges the importance of the existing network of regional air services to communities across NSW. Sydney Airport also recognises the Government's strong commitment to maintaining access for regional communities into Sydney Airport. Indeed, many regional passengers upon arrival at Sydney Airport go on to use domestic or international services.

•   The current price notification regime limits the practical ability of regional air service providers and Sydney Airport to give effect to mutually beneficial agreements that contain confidential and commercially sensitive terms. This effect is unintended and may result in inefficient outcomes.

•   The notification regime that applies to regional aeronautical services should exclude services provided under a confidential agreement negotiated between providers of regional air services and Sydney Airport. Such an approach would not diminish the protections of the current regime but would enable regional airlines to implement mutually beneficial agreements with Sydney Airport on a confidential basis.

11.1   Background: the current price notification regime

327   Since July 2002, regional aeronautical services and facilities at Sydney Airport have been subject to price notification. The most recent declaration by the Treasurer giving effect to the price notification regime at Sydney Airport commenced on 1 July 2016 and will cease on 30 June 2019 (**Declaration 94**).

328   Under the price notification regime for regional aeronautical services:

    (a)   Sydney Airport cannot raise prices or offer new services unless it first notifies the ACCC.

    (b)   The ACCC can approve or object to a proposed price increase, based on whether the proposed price is economically efficient.

    (c)   If the ACCC objects to a proposed price increase, Sydney Airport cannot implement the price increase until 21 days after its notification.

    (d)   The ACCC, in considering a notification, must have regard to the Government's policy that the total revenue-weighted percentage increase in prices should not exceed CPI over a three year period.

329   Regional air services at Sydney Airport are provided by a range of carriers including Virgin Australia Group, Qantas Group, Rex and FlyPelican.

330   The regime is designed to discourage Sydney Airport from increasing its prices in the event of ACCC opposition, as doing so could lead to a formal ACCC pricing inquiry.

331   A more detailed overview of the legislative scheme is set out at Appendix 5.

332   Since 2002, 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.

11.2   The unintended consequences of the regime

333   The Commission has been requested to review the regulatory notification regime for regional
        air services into and out of Sydney Airport and, in particular, to consider any unintended
        consequences of those arrangements.

334   Sydney Airport considers that the existing regime gives rise to significant unintended
        consequences, namely: it prevents or deters the implementation of arrangements agreed
        commercially between Sydney Airport and providers of regional air services, which contain
        commercially sensitive information.

335   This consequence flows from the public nature of the ACCC's assessment of notifications.[150]
        The process is time-consuming, costly, and likely to require the disclosure of information that
        would otherwise be confidential. While it may be possible to maintain confidentiality over
        certain information, this ability is unlikely to extend to any proposed price changes.[151]

336   The notification requirements under the current regime deter regional air service providers
        from giving effect to new and innovative arrangements with Sydney Airport. This is
        particularly so when the agreements contain commercially sensitive information that the
        regional air service providers may not wish to be known by their competitors. Ultimately this
        acts as a barrier to developing new or better product offerings for passengers.

337   A clear example of this unintended consequence is set out in Confidential Appendix 10.

11.3   Proposed reform

338   Sydney Airport supports regional airlines and the Government's commitment to maintaining
        access for regional communities into Sydney Airport. Indeed, many regional passengers on
        arrival go on to utilise Sydney Airport's domestic or international services. Sydney Airport
        wishes to find a way to deliver to regional air service providers, particularly providers such as
        Virgin Group, Qantas Group and Rex who have extensive and diverse operations at Sydney
        Airport, the same flexible and bespoke agreements which Sydney Airport has been able to
        reach with international and domestic carriers, without also making public those confidential
        commercial agreements.

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[150] In addition to the requirements under the CCA, in its *Statement of regulatory approach to assessing price notifications*, the ACCC
describes its suggested process for assessing a notification as including pre-lodgement, lodgement of a draft notification, the issuing
of an issues paper, the ACCC's consideration of submissions, the lodgement of a formal notification and the ACCC reaching a
decision: ACCC, *Statement of regulatory approach to assessing price notifications under Part VIIA of the Competition and
Consumer Act 2010*, March 2017, pp 8-10
<https://www.accc.gov.au/system/files/Statement%20of%20regulatory%20approach%20to%20assessing%20price%20notifications
%20under%20....pdf>.

[151] ACCC, *Statement of regulatory approach to assessing price notifications under Part VIIA of the Competition and Consumer Act
2010* (March 2017) p 18
<https://www.accc.gov.au/system/files/Statement%20of%20regulatory%20approach%20to%20assessing%20price%20notifications
%20under%20....pdf>.

339   This could be achieved by amending Declaration 94 to explicitly exclude services provided under a commercial agreement arrived at between Sydney Airport and the provider of regional air services, where that agreement is confidential.

340   Such an approach would ensure regional air service providers are in a better position than currently. They would retain the benefits of the current regime but could also maintain confidentiality over any agreement with Sydney Airport. The proposal would not provide to Sydney Airport an avenue to unilaterally increase charges.

341   Specifically, the proposal:

   (a)   maintains the current price notification regime for the provision of aeronautical services and facilities to regional air services;

   (b)   prevents the disclosure of agreed confidential commercial terms, so those terms would not be seen by competitor airlines; and

   (c)   creates incentives for both parties to reach a mutually agreed contractual outcome.

342   This modification would increase the likelihood of regional air service providers and Sydney Airport implementing mutually beneficial agreements and expanding the range of services and facilities available to regional operators.

11.4   Conclusion

343   The current price notification regime has the unintended effect of limiting the practical ability of regional air service providers and Sydney Airport to give effect to mutually beneficial and innovative agreements.

344   To address this unintended consequence, the declaration of regional aeronautical services requiring notification should exclude those services provided under a confidential agreement negotiated between providers of regional air services and Sydney Airport. Such an approach would not diminish the perceived protections afforded by the current regime, but would enable regional air service providers to reach mutually beneficial agreements with Sydney Airport on a confidential basis.

Part G:
Airport Accessibility

Chapter 12: Ground Access

Summary

• Sydney Airport's key ground access priorities are more options, better connectivity and improved traffic flow for those accessing the airport.

• Since the 2011 PC Report, Sydney Airport has continued to facilitate new and improved ground access infrastructure and services, and to advocate for and promote alternate ground access choices for people travelling to, from and past the airport.

• Sydney Airport's car parking products have expanded and diversified, and take their place within a broad range of car parking options available for customers around the airport.

• Passengers now have a more diverse range of options for accessing the airport than ever before. Since the 2011 PC Report, use of the train, free pick-up and drop-off, active transport (e.g. walking and cycling) and public buses, all methods which Sydney Airport actively promotes but derives no financial benefit from, have all increased. While use of Sydney Airport car parking, though, has declined as a percentage of mode share.

• The range of car parking options and substitutes for car parking mean that Sydney Airport does not have market power in the provision of car parking services.

• Additionally, Sydney Airport continues to advocate for improvements to public transport to the airport including a reduction in the train fare to and from the airport, as well as new rail links and additional and improved bus services. Sydney Airport also continues to collaborate with State and Federal Governments on opportunities to improve road access.

12.1   Effective ground access is critically important for Sydney Airport

345   High quality and effective ground access is important for allowing people and businesses to connect efficiently. This extends to connecting people travelling from their households and workplaces to their major metropolitan airports. By contrast, ineffective ground access undermines the significant economic activity and opportunities generated by regional, national and international aviation. The impacts of sub-optimal ground access to airports are significant, including:

•   scheduling and on-time performance issues for airports and airlines;

•   increased congestion around airport precincts;

•   safety and security risks; and

- higher resourcing requirements.

Accordingly, it is critical to the successful operation and commercial viability of Sydney Airport that there is effective and efficient ground access to the airport.

346   Each day, over 150,000 people travel to Sydney Airport.[152] This includes passengers, people working at Sydney Airport, people meeting or seeing off friends and family, commercial freight operators, business people and suppliers.

347   By way of comparison, this is roughly equivalent to double the number of people that would travel to Sydney Olympic Park for a major event, such as the National Rugby League Grand Final.[153] However, when major events take place at Sydney Olympic Park, a number of additional transport measures are employed, such as 'special event clearways' and additional buses and trains serving that precinct. For Sydney Airport, this volume of visitors is an everyday challenge to be managed alongside morning and afternoon commuter traffic peaks.

348   Several major arterial roads converge on and around the airport, forming part of Sydney's broader road network that connects the western and southern suburbs to the CBD. On a typical day, non-airport commuter traffic accounts for around 65% of the daily westbound traffic travelling past the T1 precinct and around 60% of the daily eastbound traffic travelling past the T2/T3 precinct.[154]

349   The problem of poor ground access service levels was recognised in the 2011 PC Report,[155] which observed that the roads to and around Sydney Airport are often heavily congested with airport and non-airport traffic.

350   Since the 2011 PC Report, the challenges relating to ground access service have become more acute, with a greater number of people travelling to and past the airport each day.
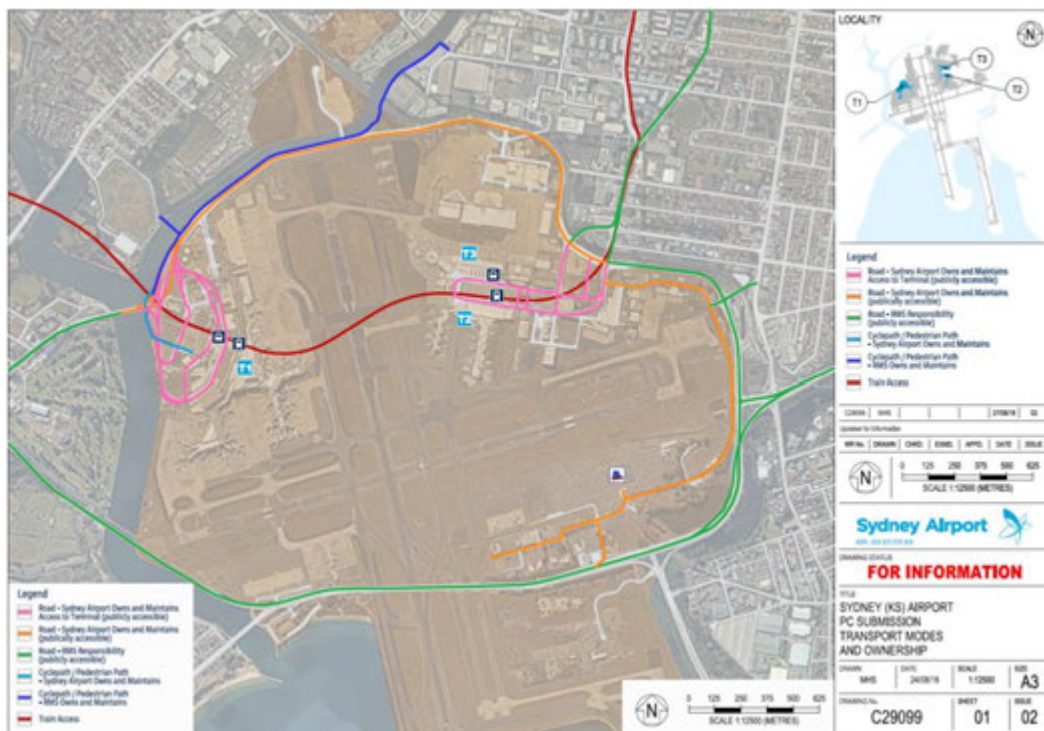
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[152] Sydney Airport data.

[153] ANZ Stadium seats up to 83,000 spectators: Sydney Olympic Park, *The Arena, ANZ Stadium* <https://www.sydneyolympicpark.com.au/Business-Events/ANZ-Stadium/The-Arena>.

[154] Sydney Airport, *Master Plan 2039* (August 2018) p 137.

[155] 2011 PC Report, p 299-304.

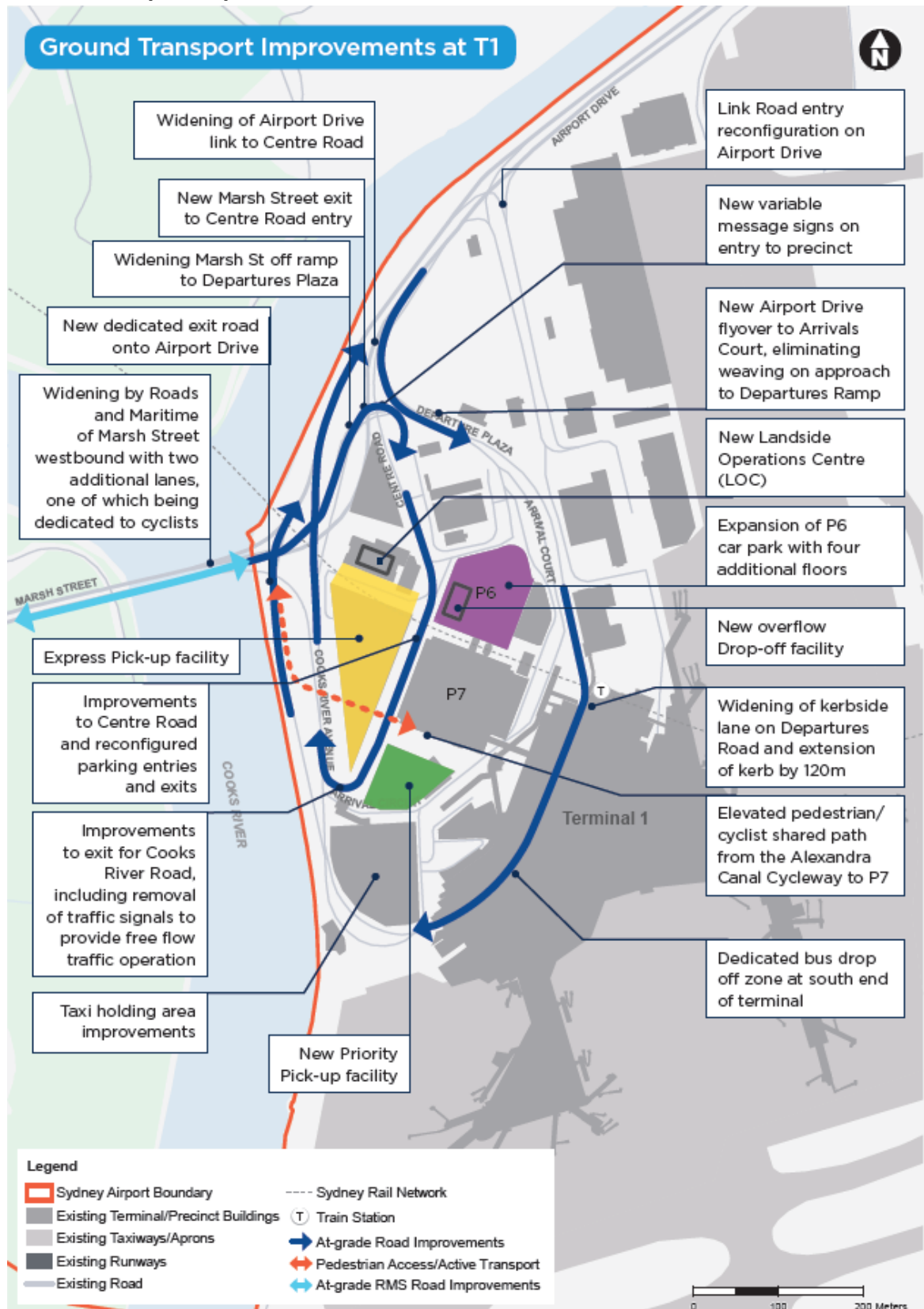**Figure 25**
Road network in and around Sydney Airport

12.2 There is a broad market of transport options that enable airport access

351   In the 2011 PC Report, the Commission recognised that the relevant question when assessing an airport's ability to abuse market power is whether there are effective substitutes for driving to and parking at the airport.[156] Since that report was published, more alternatives to parking have become available at Sydney Airport.

352   There are now many ground access options available to airport users which differ in price, speed and convenience. Factors which influence a visitor's choice of transport to Sydney Airport include the length and nature of the trip (business or leisure), time of day of departure or arrival, luggage requirements, number of people travelling together and budget.

353   Sydney Airport has invested significantly in supporting the increased number of options available by providing land and infrastructure for:

•   free pick-up or drop-off by private vehicle;

•   paid pick-up by private vehicle;

•   road improvements;

•   rental cars, taxis, limousines, rideshare and car share services;

•   private coaches and shuttle buses;

•   active transport (pedestrian and cycle); and

•   parking at various car parks on the airport.
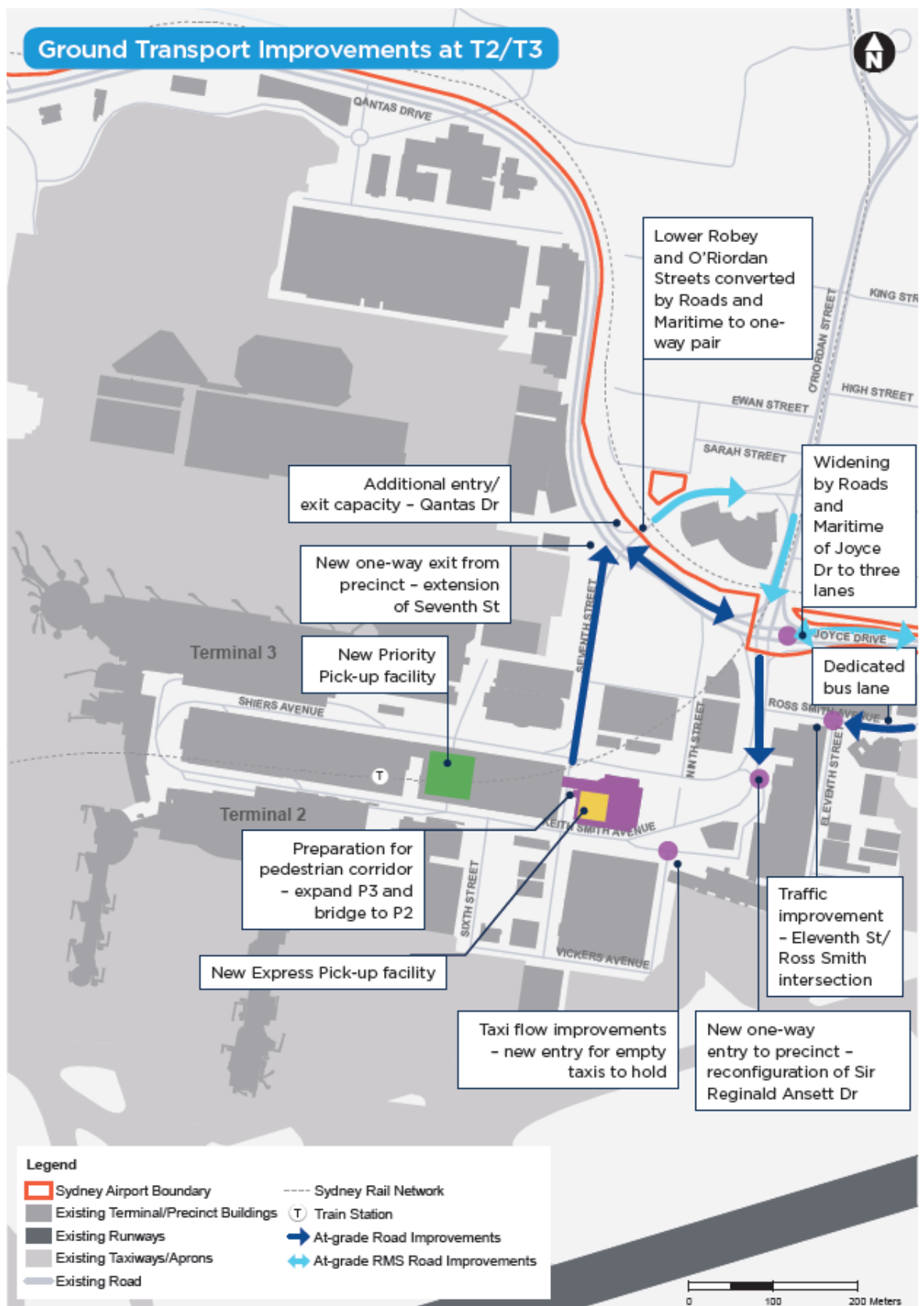
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[156] 2011 PC Report, pp 254-256.

354   Some of Sydney Airport's actions to facilitate more options for passengers, staff and visitors to access the airport more easily are set out in the following sections and are illustrated in Figures 26 and 27 below.

355   In addition to investments made by Sydney Airport, the State Government has also invested in rail infrastructure and road upgrades to improve access to, from and past the airport.

356   The fact that Sydney Airport's car parking services are subject to competitive constraints can be seen through the small and decreasing proportion of airport users making use of paid parking facilities 'on-airport'. Meanwhile, the mode shares of the train and free pick-up or drop-off have increased significantly. As outlined below, Sydney Airport has actively promoted these options, often to the detriment of its paid parking business.

Figure 26
Ground transport improvements at T1 since 2014

Ground Transport Improvements at T1

N

Widening of Airport Drive link to Centre Road

New Marsh Street exit to Centre Road entry

Widening Marsh St off ramp to Departures Plaza

New dedicated exit road onto Airport Drive

Widening by Roads and Maritime of Marsh Street westbound with two additional lanes, one of which being dedicated to cyclists

Express Pick-up facility

Improvements to Centre Road and reconfigured parking entries and exits

Improvements to exit for Cooks River Road, including removal of traffic signals to provide free flow traffic operation

Taxi holding area improvements

New Priority Pick-up facility

Link Road entry reconfiguration on Airport Drive

New variable message signs on entry to precinct

New Airport Drive flyover to Arrivals Court, eliminating weaving on approach to Departures Ramp

New Landside Operations Centre (LOC)

Expansion of P6 car park with four additional floors

New overflow Drop-off facility

Widening of kerbside lane on Departures Road and extension of kerb by 120m

Elevated pedestrian/ cyclist shared path from the Alexandra Canal Cycleway to P7

Dedicated bus drop off zone at south end of terminal

MARSH STREET

AIRPORT DRIVE

DEPARTURE PLAZA

CENTRE ROAD

ARRIVAL COURT

COOKS RIVER AVENUE

COOKS RIVER

ARRIVAL

P6

P7

Terminal 1

T

Legend

Sydney Airport Boundary
Existing Terminal/Precinct Buildings
Existing Taxiways/Aprons
Existing Runways
Existing Road

Sydney Rail Network
(T) Train Station
At-grade Road Improvements
Pedestrian Access/Active Transport
At-grade RMS Road Improvements

0   100   200 Meters

Source: Sydney Airport

Figure 27
Ground transport improvements at T2/T3 since 2014

Source: Sydney Airport

Sydney Airport actions to improve ground access

357   Sydney Airport has actively encouraged and facilitated the development of a variety of ground access modes to the airport, even though they compete with Sydney Airport's car parking business. Sydney Airport's chief objective in doing so is to ensure the smooth operation of the airport in order to get passengers to their flight and staff to work on time, and to enhance the overall passenger experience. These objectives are best met when access to the airport is quick and easy and road congestion around the precinct is minimised.

358   The provision and promotion of car parking options as well the diverse range of other ground access options to reach Sydney Airport demonstrates that Sydney Airport has not engaged in monopoly behaviour with regard to its car parking services.

Sydney Airport's car parking services

359   Sydney Airport provides a range of car parking and landside access facilities and services that are important to the overall experience of airport users. When providing these services, Sydney Airport aims to achieve the best possible airport user experience by allowing users to choose the transport option that best meets their needs, regardless of its supplier.

360   Sydney Airport offers a range of on-airport car parking services including:

•   covered parking for passengers and visitors in multistorey car parks close to the terminals;

•   low cost parking with shuttle services to/from the terminal;

•   guaranteed spaces;

•   valet parking; and

•   premium add-on services like car washing.

This maximises customer choice. Customers can purchase these car parking services online in advance (at a discount) or upon arrival at the car park. There is also staff car parking provided in various locations, which staff can access via contracts with their employer.

361   The location of Sydney Airport car parks is illustrated in the below Figure 28.

Figure 28
Location of car parks at Sydney airport

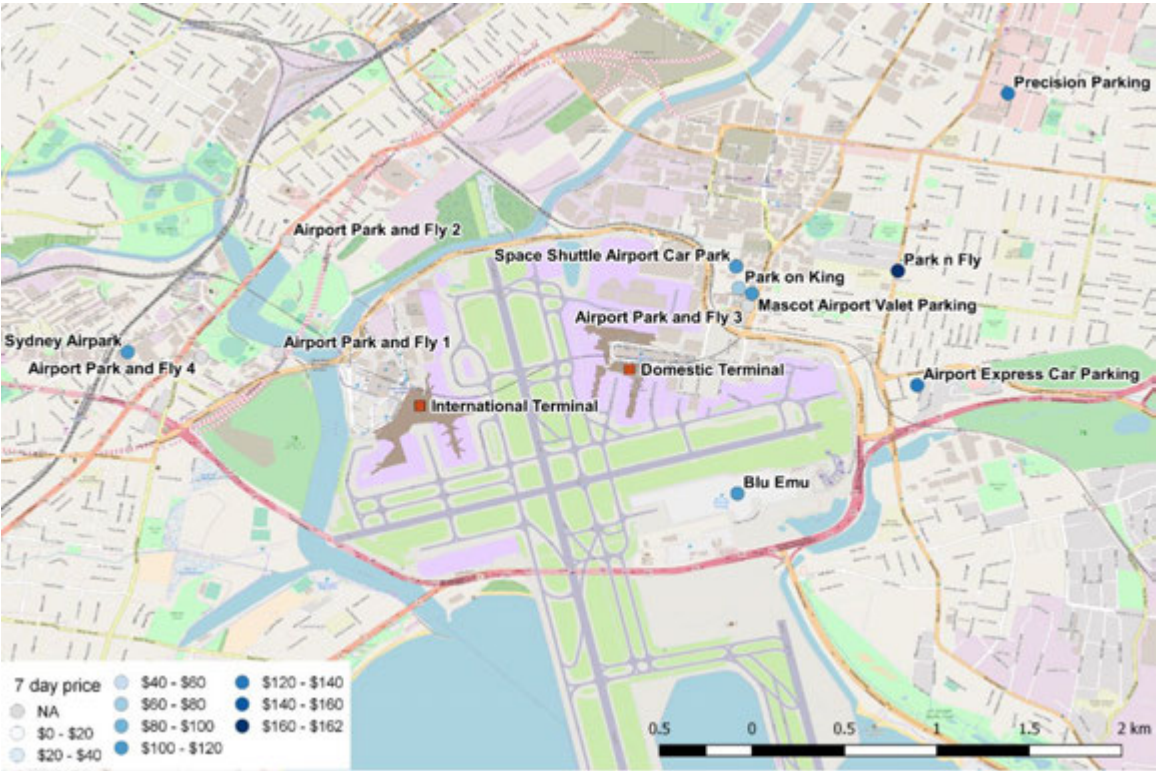

Source: HoustonKemp report, page 3

Competition from off-airport car parking providers

362   Sydney Airport faces strong competition from third party off-airport car parks, particularly for long-term parking. These providers offer several services in addition to the parking service itself (such as passenger transfer to the terminal, car washing, detailing and valet parking).

363   There are at least eight other providers of off-airport parking, including Park n Fly, Airport Express Car Parking, Airport Park and Fly, Mascot Airport Valet Parking, Space Shuttle Parking, Park on King, Precision Parking and Syd Airpark.[157] These operators are located in the surrounding suburbs of the airport and operate shuttle buses to and from the airport terminals. Some of them are located closer to the airport terminals than Sydney Airport's Blu Emu facility, which means they are likely to be considered a more attractive option than Blu Emu by some customers. The location of off-airport car parks, including Sydney Airport's Blu Emu, can be seen below in Figure 29.

364   Further, the prices at Sydney Airport's Blu Emu car park are comparable to those charged by off-airport operators. Figure 30 below sets out publicly available prices of off-airport car parks compared to Sydney Airport's Blu Emu car park.

365   In addition to the published drive-up parking rates, Sydney Airport offers a range of online parking deals at discounted rates across all car parks, determined by factors including arrival date, booking data and length of stay. Customers can obtain significant discounts on rates when they pre-book parking online. For example, customers can save more than 50% on the drive-up rates at the P1/P2 domestic car park by booking online.

366   Similar to Sydney Airport's dynamic pricing systems, nearby rival off-airport parking competitors have advanced pricing tools that are highly dynamic and respond to market

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[157] HoustonKemp Economists, *Car parking and ground access – market power assessment* (Report, 31 August 2018) p 23.
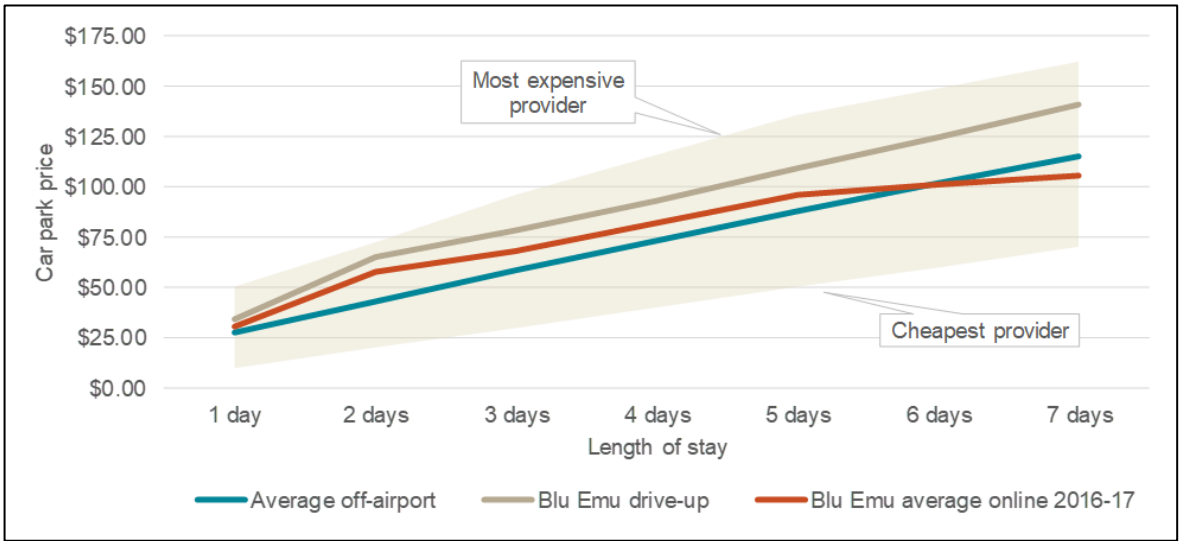
changes including Sydney Airport's discounted online prices. Sydney Airport monitors these online offerings to remain competitive.

Figure 29
Location of off-airport car parks servicing Sydney Airport, and price

Source: HoustonKemp report, page 24

Figure 30
Prices of off-airport car parks at Sydney Airport

Source: HoustonKemp Report, page 24

Encouraging people travelling to Sydney Airport to use the train

367   Sydney Airport has actively encouraged airport users to travel to the airport by train. It has advertised the train option (e.g. radio and banners on its website), particularly during school holidays and at other peak travel times, to inform travellers that they should allow additional time if they are travelling by car or consider travelling by train. Examples of such advertisements are provided at Appendices 6 and 7.

368   Sydney Airport has lobbied for and supported government improvements to the airport train link that make it more accessible. For example:

•   the NSW Government's announcement in May 2017 to introduce an extra 200 services a week to accommodate demand on the Airport Line from November 2017;[158] and

•   the NSW Government's announcement in 2018 of an $880 million investment in technology improvements to the Sydney train network which will increase the number of trains that can run during the morning and afternoon peaks on the T8 Airport Line.[159] Sydney Airport welcomed this announcement and will continue to work with the NSW government to seek upgrades to the capacity of the Airport Line. If these further upgrades occur, they will facilitate improved services to be added in the future to cope with increasing customer demand.

•   Sydney Airport continues to advocate for a reduction to the station access fee. In response to Sydney Airport advocacy, the NSW Government placed a weekly cap on the station access fee, benefiting the 30,900 people who work on the airport site every day, as well as regular airport travellers.[160]

369   The share of passengers using rail has grown from 16% in 2012 to 24% in 2017, a growth rate higher than airport passengers overall.[161] This equates to 33,000 more rail passengers per day across both airport stations.[162] In 2018 alone, train usage to date has grown by 6.2% while total airport passengers has grown by 3.7%. In this same period paid car parking use has fallen by 7%.[163]

Providing for free pick-up and drop-off

370   Sydney Airport has overhauled its domestic and international terminal free pick-up and drop-off options to provide greater customer choice, enhanced safety and improved access and convenience. These investments can be seen in Figures 26 and 27 above.

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[158] Patrick Hatch, 'Parking Pain may have Peaked at Sydney Airport', *Sydney Morning Herald* (online), 22 August 2017 <https://www.smh.com.au/business/companies/international-travellers-keep-sydney-airport-aloft-amid-weak-domestic-growth-20170822-gy1990.html>; Transport for NSW, 'More Trains More Services on Airport rail line as growth takes off' (Media Release, 15 May 2017) <https://www.transport.nsw.gov.au/newsroom-and-events/media-releases/more-trains-more-services-on-airport-rail-line-as-growth-takes>. See Sydney Airport media release dated 15 May 2017 at Appendix 6.

[159] NSW Government, 'NSW Budget: More trains and more services for the T4 and T8 lines' (Media Release, 10 June 2018) <https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/nsw-budget-more-trains-and-more-services-for-the-t4-and-t8-lines/>.

[160] The weekly cap is currently $29.

[161] Sydney Airport, *Master Plan 2039* (August 2018) p 136.

[162] Sydney Airport, *Master Plan 2039* (August 2018) p 136.

[163] Sydney Airport data.

371   The improvements to free pick-up and drop-off facilities increased the total area at the T1 kerbside and designated free waiting areas for pick-up by 56% from 2015-16 to 2016-17.[164] In addition to these improvements, Sydney Airport also provides one hour free at the Blu Emu car park to allow those picking-up to wait for their passenger to clear the terminal.

Accommodating the rise of rideshare services

372   Following the NSW Government's decision to legalise such services in December 2015, rideshare services have grown significantly in popularity, with airport users now choosing from a variety of rideshare operators including Taxify, GoCatch, Shebah, Uber and Ola, with DiDi expected to launch soon. To support the ridesharing industry, and following extensive consultation with stakeholders, Sydney Airport developed new pick-up zones ('priority pick-up') to accommodate pre-booked taxis and ridesharing services, thereby making it easier for passengers to find their rideshare service. The priority pick-up areas were opened at the domestic terminals in September 2016 and at the international terminal in March 2018. All passengers can now request and find their rideshare service at close proximity to the terminals.

373   Uber users, for example, can now request an Uber car once they have collected their luggage. Sydney Airport provides a priority pick-up area designated for rideshare services within walking distance of each terminal, and the Uber app clearly directs passengers to their nearest priority pick-up area. The new pick-up zones introduced for ridesharing services has given customers greater choice of cost-effective and convenient ground access services. Uber also advertises its services at the airport to target airport customers directly.

374   The priority pick-up areas are not for the exclusive use of rideshare operators. General public and other commercial operators such as limousines can also use this convenient location for pick-up at the airport.

375   Monthly domestic priority pick-ups have increased from fewer than 30,000 to almost 80,000 between September 2016 and July 2018. This is demonstrated in Figure 36 below, which shows total domestic priority pick-up volumes since September 2016. Although it is difficult to obtain specific data on rideshare use due to the difficulty in distinguishing between rideshare operators and private vehicles, Sydney Airport estimates that between 55% and 60% of vehicles in the domestic priority pick-up area are rideshare operators.

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[164] HoustonKemp Economists, *Car parking and ground access – market power assessment* (Report, 31 August 2018) p 18.

Figure 31
Domestic priority pick-up total vehicle volume per month since September 2016
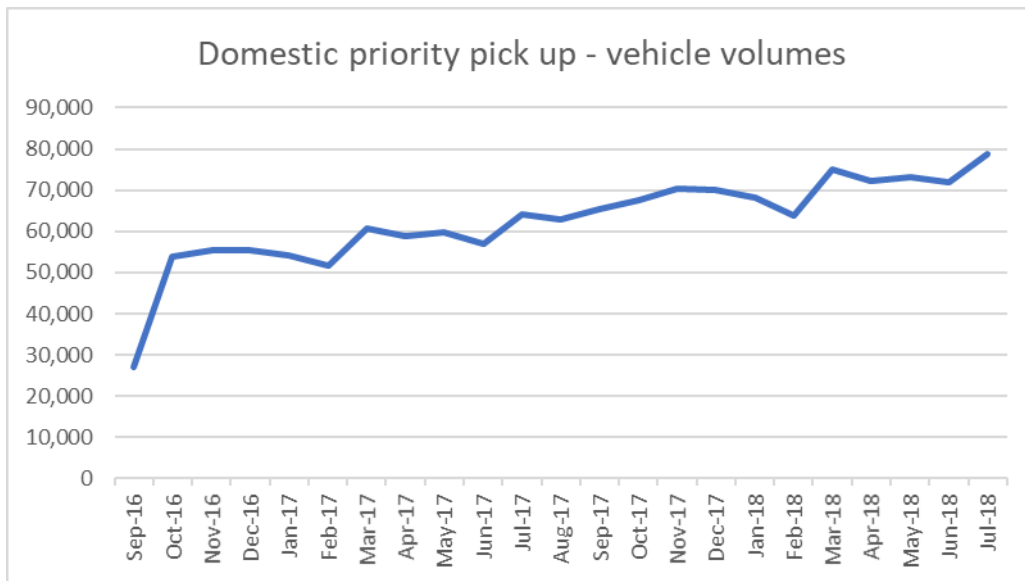
Source: Sydney Airport

Upgrading road infrastructure in and around the airport

376   Sydney Airport has invested significantly in ground access improvements in and around the airport as is evident in Figures 26 and 27 above. Since 2013, Sydney Airport has invested in roads and traffic management initiatives such as installing variable message signs and developing the Landside Operations Centre. Details of Sydney Airport's investment are set out in Confidential Appendix 10. These investments have delivered additional capacity, improved vehicle circulation and enhanced driver experience travelling to, from and past the airport.

377   The ground access services which require the use of roads such as free 'pick-up and drop-off' facilities, taxis, commercial and public buses, rideshare and rental cars are now more efficient and productive as a result of the airport's internal road network improvements. As presented in Figures 26 and 27, these improvements include:

•   constructing a new five lane one way exit road from the domestic precinct by extending Seventh Street to Qantas Drive;

•   upgrading Sir Reginald Ansett Drive to a five lane one-way entry to the domestic precinct;

•   a new bus lane and signal priority on Ross Smith Avenue;

•   widening Qantas Drive between Robey and O'Riordan Streets to increase through traffic and entry/exit capacity;

•   a new free flowing road through the T1 precinct (Centre Road);

•   a new Marsh Street exist to Centre Road;

•   a new exit road from T1 to Airport Drive; and

•   additional entry lanes to the T1 precinct.

378   In addition, Sydney Airport has been working with the NSW Government to address congestion challenges around the Sydney Airport precinct. In 2014, the NSW Government and Sydney Airport jointly committed to a $500 million package of off-airport works,[165] including:

-       Airport West Works -widening Marsh St, to the west of the airport;

-       Airport North Works - converting Robey and O'Riordan Streets to a 'one-way pair' around the Stamford Hotel and widening O'Riordan Street to three lanes in each direction between Robey Street and Bourke Road; and

-       Airport East Works - widening Joyce Drive and General Holmes Drive between O'Riordan Street and Mill Pond Road, replacing the rail level cross at General Holmes Drive with a road underpass that links General Holmes Drive, Botany Road and Wentworth Avenue. Importantly, Sydney Airport provided the NSW Government its land between Wentworth Ave and General Holmes Drive to enable the Airport East Works.

379   Sydney Airport has also been collaborating with state and federal governments to deliver a high capacity road link, known as Sydney Gateway, between WestConnex, Sydney Airport and Port Botany. This connection would reduce travel times between Sydney Airport and Sydney's west and south-west significantly.

Other ways in which Sydney Airport has improved and promoted ground access

380   Sydney Airport continues to invest in a range of other ground access infrastructure, supporting a choice of multiple modes for passengers to reach the airport. Examples of such projects Sydney Airport has undertaken since 2013 include:

-       expanding the T2/T3 taxi holding area with 20% additional vehicle storage;

-       additional holding areas for limousine and rideshare operators;

-       a dedicated bus drop-off zone for T1;

-       new bicycle storage for over 100 bicycles and end-of-trip facilities at T1, as well as a new pedestrian and cycle bridge for easy, safe access to the precinct;

-       introducing a taxi queue wait time display to provide customers with expected wait times for taxi services; and

-       installing e-tag payment facilities in the 'priority pick-up' area for members of the public and rideshare operators.[166]

381   Besides its advocacy for additional and improved train services as already outlined, Sydney Airport has also worked closely with the NSW Government to regularly advocate for additional and improved bus services. For example, Sydney Airport has included advocacy for increased services in most of its submissions relating to ground transport issues, including most recently in its Response to the Environmental Impact Statement on the M4-M5 Link (2017). Sydney Airport is a vocal advocate for improved bus services in meetings

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[165] New South Wales Government, '$500 million to improve Sydney Airport traffic congestion' (Media Release, 30 June 2014) <https://www.nsw.gov.au/news-and-events/news/500-million-to-improve-sydney-airport-traffic-congestion/>.

[166] HoustonKemp Economists, *Car parking and ground access – market power assessment* (Report, 31 August 2018) p 46; Sydney Airport, *Master Plan 2039* (August 2018) pp 17-18, 140-141.

and correspondence with relevant ministers, their staff, public service officials and relevant shadow ministers.[167]

382   Since early 2018, Sydney Airport has offered free T-bus shuttle transfer services between its airport terminals, which saves airport users the $6.20 train fare to move between terminals or a higher taxi / rideshare fee.

12.3   Changing patterns of mode share for land transport to Sydney Airport

383   Over the past five years, passengers have increasingly turned to options like the train and free pick-up which have shown high growth, while use of paid parking has slowed and taxis, declined. Sydney Airport has actively facilitated and promoted these options to consumers in recognition that they are good for consumers and the overall efficient operation of the airport. These decisions have been to the detriment of its paid parking business as evidenced below.

384   Figure 32 below shows the changes in transport volumes compared with passenger growth between 2013 and 2018 for various access modes to the airport at the international terminal.

Figure 32
Growth rates for passengers and transport modes at the international terminal between 2013 and 2018

Source: Sydney Airport

[167] Sydney Airport has advocated for increased bus access in the following submissions relating to ground transport issues: Sydney Airport, Submission to Transport for NSW, *Transport NSW Blueprint* (2009); Sydney Airport, Submission to Transport for NSW, *Proposed changes to bus routes in the inner west and south region* (2009); Sydney Airport, Submission to NSW Department of Planning and Environment, *NSW Department of Planning and Environment Metropolitan Strategy* (2010); Sydney Airport, Submission to NSW Department of Infrastructure and Transport, *Our Cities – Department of Infrastructure and Transport Discussion Paper* (2011); Sydney Airport, Submission to NSW Roads and Traffic Authority, *M5 Transport Corridor Study* (2010); Sydney Airport, Submission to Transport for NSW, *NSW Long Term Transport Master Plan* (2012); Sydney Airport, Submission to NSW Department of Planning and Environment, *Bayside West Precinct Land Use and Infrastructure Strategy* (2013); Sydney Airport, Submission to NSW Government, *Sydney Metro* (2015); Sydney Airport, Submission to Transport for NSW, *Future Transport Plan* (2017); Sydney Airport, Submission No 15 to NSW Legislative Council, *Inquiry into Removal of the Station Access Fee* (2012); Sydney Airport, Submission to Greater Sydney Commission *Draft District Plan* (2017); Sydney Airport, Submission to NSW Department of Planning and Environment, *Response to the Environment Impact Statement on the M4-M5 Link* (2017).

385   At the time of 2011 PC Report, paid car parking and taxis were the most popular mode of transport to Sydney Airport, accounting for 22% and 33% respectively of all passengers.

386   In 2018, these numbers have reduced with around 7% of passengers now using paid parking and around 19% using taxis. Meanwhile, 23% of passengers now use free pick-up, 8% use rideshare and 24% use the train. Sydney Airport also offers free drop-off for all vehicle modes including commercial operators.

Conclusion on substitution between car parking and ground access

387   In 2011, the Commission concluded that an increase in airport parking prices was only likely to result in a small increase in the use of mass transit (specifically, bus and rail).[168] The reasons for its conclusion were that these alternative transport options were not widely available or the services offered did not satisfy consumer preferences at that time.[169] In 2018, this conclusion no longer reflects the current land transport options and substitution possibilities for customers in Sydney.

388   Today there are a range of ground access options, such as free pick-up and drop-off, train, taxi, ridesharing and 'off-airport' parking that are all substitution possibilities for customers journeying to Sydney Airport.

389   Sydney Airport has facilitated, invested in and promoted the introduction and use of many of these options at times to the detriment of its paid parking revenues.

390   The range of substitutable options for Sydney Airport's paid car parking services and the competitive constraint imposed by those substitutes means that Sydney Airport does not have market power in supplying paid car parking.

391   Although Sydney Airport is the only supplier of on-airport car parking services (apart from Qantas Valet parking), these services are supplied in a broad and competitive market that extends beyond parking services. This is the primary reason why Sydney Airport considers that monitoring of car parking prices should cease – it does not fit the purpose of monitoring to act as an early warning system and deterrent for potential misuse of market power since Sydney Airport does not have market power for the supply of car parking services. Furthermore, the methodology adopted by the ACCC in its airport monitoring function for car parking is EBITA, which is not a true indicator of the economic profits from car parking services. It does not reflect the opportunity cost of the land, or properly reflect the return on capital invested in Sydney Airport's self-drive car parking facilities. The significance of this is explained in the HoustonKemp report provided at Appendix 9 (and in full at Confidential Appendix 9a) to this submission, and the current monitoring regime is discussed more generally in Chapter 9.

392   Even if the Commission adopts a narrow market definition, so that Sydney Airport has some power in that market, that would not be sufficient to warrant increased regulation of its car parking. The issue is whether or not Sydney Airport has any incentive to exercise market power, and whether in practice it has done so.

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[168] 2011 PC Report, p 265.

[169] 2011 PC Report, p 265.

393   In short, the following matters demonstrate why Sydney Airport has not, and would not, exercise market power in relation to its car parking services.

12.4   No exercise of market power in supply of car parking services

Car park prices alone are not indicative of market power

394   Sydney Airport's car parking prices, in and of themselves, are not indicative of the existence or exercise of market power. Consistent with the Commission's conclusion in 2011, car parking prices generally reflect a number of factors, including:

- the fixed and variable costs of the service;

- the inbuilt over-capacity inherent in catering to peak demand; and

- the opportunity cost of the land.[170]

395   In assessing whether Sydney Airport has exercised any market power by setting car parking prices above competitive levels, the distinction between 'locational rents' and 'monopoly rents' must be considered. Locational rents exist when users are willing to pay a premium for limited land. This scarcity must have been created by legitimate causes, and not because of artificial supply restrictions. For example, locational rents exist for houses that are close to good schools and for car parks close to Sydney's CBD.[171] These premium locations are scarce, and people are willing to pay more for them as a result. This explains why, for example, off-airport parking rates are generally lower than parking facilities on-airport. As observed by the Commission, the lower price could reflect the lower cost of providing the service and the less convenient nature of the service.[172]

396   Monopoly rents, on the other hand, arise from the use of market power. This occurs when a land owner can charge a price exceeding the cost of supply (including the opportunity cost of the land), charge a price above the competitive level, or reduce quality in order to reduce costs. The impact of these strategies would be to increase the margin earned for the land owner.

397   While locational rents will also theoretically lead to higher margins, the key distinction is that locational rent incorporates the opportunity cost of the land but no more. This is what makes locational rents consistent with efficient cost-reflective pricing. At Sydney Airport, land close to the terminals is scarce, and the opportunity cost of the land used for parking is significant.

398   Sydney Airport must and does balance how it uses this scarce land to reduce congestion and keep traffic flowing while also offering consumers a range of access options including free pick-up and drop-off facilities, paid pick-up and convenient paid parking.

399   Sydney Airport's drive-up car parking prices at both its domestic and international terminals have remained relatively flat in real terms over the past five years.[173] A significant change has been the introduction of free parking for up to one hour at the Blu Emu car park in 2016. Sydney Airport has also innovated its service by offering discounted online pre-booking and

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[170] 2011 PC Report, p 277.

[171] The HoustonKemp Economists report provided at Appendix 9 (confidential version) and Appendix 9a (non-confidential version) considers the existence of locational rents in the Sydney CBD and compares CBD car parking charges with Sydney Airport. The charge for one hour of car parking at Sydney Airport is below the average charge for one hour in the CBD.

[172] 2011 PC Report, p 261.

[173] HoustonKemp Economists, *Car parking and ground access – market power assessment* (Report, 31 August 2018) p 13.

there has been a steady increase in its adoption from 2013. In 2017-18, around 19% of all bookings were online and this proportion is increasing.[174] As of 2016-17, more than 50% of stays longer than one day were booked online.[175] With the increase in competition from off-airport parking and certain ground access services, Sydney Airport has also increased the competitiveness of its short-term parking rates including through offering online discounts.

400   All of these matters are consistent with Sydney Airport not having exercised any market power in relation to car parking.

Sydney Airport's continued investment in car parking facilities

401   Another matter that is inconsistent with the notion that Sydney Airport has exercised market power is that Sydney Airport has invested heavily in improving the quality and supply of on-airport car parking facilities. There are a number of ways in which Sydney Airport has invested in car parking over recent years.

402   Sydney Airport has invested in and increased its car parking capacity. Since 2013, the cost of Sydney Airport's investment in expanding these car parks has exceeded $60 million,[176] providing additional parking in both the T1 and T2/T3 precinct for passengers, 'meeters', 'farewellers' and staff.

403   Although the long-term trend has been an increase to capacity, the number of car spaces has fluctuated year-to-year. This reflects investments made by Sydney Airport to repurpose some car parking facilities to support alternative ground access options (rideshare, free pick-up and drop-off, taxis) or build new roads to better meet customer needs.

404   Sydney Airport has also introduced several new customer-focused initiatives including:

- one hour free parking in the Blu Emu car park for short stay visitors;

- electric buses and charging stations on the Blu Emu bus service for passengers and staff;

- online booking for cheaper parking rates;

- valet parking with optional additional services such as car wash; and

- a customer feedback survey program for car parking users to inform future strategies of service improvement.

405   In the 2011 PC Report, the Commission referred to the phenomenon whereby users are surprised by the cost of parking on return to their vehicle.[177] Sydney Airport has taken steps to address this by advertising clearly the ways customers can reduce or eliminate parking charges. Examples of this are provided at Appendix 7.

406   Sydney Airport's maintenance and investment in the quality of its car parking services is reflected in customer quality ratings for its car parks which consistently have been 'good' (international) and at the upper end of the 'satisfactory' band (domestic).[178]

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[174] HoustonKemp Economists, *Car parking and ground access – market power assessment* (Report, 31 August 2018) p 10.

[175] HoustonKemp Economists, *Car parking and ground access – market power assessment* (Report, 31 August 2018) p 9.

[176] Sydney Airport data.

[177] 2011 PC Report, p 276-277.

[178] ACCC, *Airport Monitoring Report 2016-2017* (April 2018) p 174.

12.5   No exercise of market power in supply of landside access

Sydney Airport's landside access service

407   Sydney Airport provides a range of landside infrastructure and services that assist passengers to access its terminals efficiently and safely. These include the roads throughout the airport precinct and associated infrastructure, dedicated pick-up and drop-off zones and access areas for public transport and taxis.

408   Sydney Airport charges landside access fees to some, but not all, transport operators to cover the significant cost of providing this infrastructure and these services. For example, some commercial operators, such as taxis, are charged a fixed fee of $4.60 for each taxi pick-up. This fee assists Sydney Airport to provide the infrastructure and services that support taxi operations, including taxi holding bays, waiting areas, monitoring equipment, refuelling stations, canteen facilities, toilets and showers, prayer rooms, kerbside and traffic supervisors, ticketing payment systems (including electronic systems), concierge services and pick-up bays.

409   Sydney Airport also has several landside access agreements with individual transport operators. These include:

- four licensed ground transport access zones for exclusive use operated by Royale Limousines (T1), Redy2go (T1), Redy2go (T2/T3), and Brunel Chauffeur (T3);

- two Sublease Agreements with Redy2go to operate Ground Transport Travel Desks in the T2 and T1 terminal buildings;

- 3,175 Ground Transport Operator Agreements that permit buses and limousines access into commercial pick-up zones; and

- 10 Branded Wayfinding Agreements for booking platforms to display company logos and access into the priority pick-up zones.

Evidence that Sydney Airport has not exercised market power in providing landside access

410   Sydney Airport continues to promote and support a range of ground access options to travel to the airport. The active promotion and relative growth in mode share of the train, rideshare and free pick-up and drop-off facilities demonstrates that Sydney Airport has not exercised market power in its provision of landside access.

411   Significantly, no landside access fees are charged to any vehicle (commercial or private) dropping off passengers at designated kerbside drop-off facilities.

412   In the 2011 PC Report, the Commission acknowledged: '… the price of ground transport access must reflect the cost of providing the service'.[179] Sydney Airport charges landside access fees which recover only part of the costs of providing the many landside access facilities and services required for efficient, convenient and safe passenger movement.

413   As to the 'station access fee' ($14.30) that is charged for using the train, this is set and collected by Airport Link, not Sydney Airport. Despite heavily promoting the train, Sydney Airport does not receive any direct revenue from passengers using the train service. As

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[179] 2011 PC Report, p 286.

discussed earlier in this chapter, Sydney Airport has regularly advocated for a reduction of the station access fee and increased rail services, all of which is inconsistent with it seeking to exercise market power in relation to its supply of landside access services.

Sydney Airport has invested in landside access

414   As previously outlined, Sydney Airport has invested in a range of ground access infrastructure options, serving the various modes of transport used to access Sydney Airport. These investments are focused on optimising passenger experience and facilitating smooth access to and from the airport.

415   Sydney Airport is undertaking a number of major upgrades to landside access facilities, including the construction of a ground transport interchange at the domestic precinct. This will be a new multi-level structure comprising bus and coach pick-up and drop-off facilities, storage and parking for approximately 4,000 vehicles, as well as additional facilities for rental cars. The total investment is expected to exceed $100 million.[180]

416   These investments reflect Sydney Airport's commitment to providing its customers with a broad range of competitive ground access options to and from the airport. This is especially so in relation to Sydney Airport's investment in priority pick-up zones for rideshare operators, which confirms that Sydney Airport is not seeking to exercise market power in relation to landside access.

417   The ACCC's 2016-17 monitoring report records ratings of quality for Sydney Airport's landside access that are inconsistent with any reduction of service or quality. Most services were rated as 'good' by passengers,[181] and are summarised in Figure 33 below. Although kerbside space congestion was rated as being 'satisfactory', this does not indicate any exercise of market power. As described earlier in this chapter, road congestion in and around the airport is a significant issue for Sydney Airport, which it has actively sought to improve by calling for improved public transport options, and by introducing new options for landside access such as the express and priority pick-up areas with e-tag technology.

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[180] HoustonKemp Economists, *Car parking and ground access – market power assessment* (Report, 31 August 2018) p 18.

[181] ACCC, *Airport Monitoring Report 2016-2017* (April 2018) p 177.

Figure 33
Quality of landside access ratings at Sydney Airport

Terminal	Indicator	Rating category 2016–17	1-year change
International	Kerbside pick-up and drop-off facilities	Good	▬
	Taxi facilities waiting time	Good	▲
	Kerbside space congestion	Satisfactory	▼
Domestic terminal (T2)	Kerbside pick-up and drop-off facilities	Good	▲
	Taxi facilities waiting time	Good	▲
	Kerbside space congestion	Satisfactory	▲
Domestic terminal (T3)	Kerbside pick-up and drop-off facilities	Good	▲
	Taxi facilities waiting time	Good	▲
	Kerbside space congestion	Satisfactory	▲

Source: Airport Monitoring Report 2016-2017 (April 2018) page 177

Conclusion

418   Ground access is of critical importance to Sydney Airport, to support airport operations and in turn customer satisfaction.

419   With increased passenger numbers, ground access continues to present challenges to the efficient operation of the airport.

420   Sydney Airport has invested significantly in road improvements and delivered infrastructure to support new access options including ride share.

421   Sydney Airport continues to actively promote alternate modes of transport to the airport, with the aim of reducing traffic and supporting smooth journeys for passengers and has dedicated resources to working with all levels of government to further increase access options for people travelling to the airport. This can be to the detriment of our paid parking business but is in the interest of the overall efficient operation of the airport and consumers.

422   Sydney Airport's car parking facilities are diverse and are only one option in a broad range of alternate, proximate car parking options available to customers and are priced competitively. Paid car parking at Sydney Airport currently comprises only 7% of all journeys to the airport, with its mode share continuing to decline.

423   The range of car parking options and substitutes for car parking mean that Sydney Airport does not have market power in the provision of car parking services.

Part H:
Jet Fuel Supply

Chapter 13: Jet fuel supply

Summary

•   Sydney Airport agrees with other parties, including BARA, that suggest there are opportunities to increase competition in the supply of jet fuel at Sydney Airport.

•   Sydney Airport does not have control of the supply of jet fuel but it will continue to seek to influence and support an increase in competition through future leasing and licensing arrangements.

13.1   Background

424   A number of industry participants have identified opportunities to improve competitiveness of the jet fuel supply chain in Sydney. BARA has identified that the consensus of its members is that there is a lack of effective competition between suppliers of jet fuel at Sydney Airport.[182] In 2011, BARA sought but was unsuccessful in obtaining declaration of services provided by jet fuel supply infrastructure, owned by third parties, at Sydney Airport.[183]

425   Sydney Airport has limited ability to control the jet fuel supply chain. Its role is effectively limited to the leasing and licensing of operators of jet fuel storage and distribution facilities at Sydney Airport. Sydney Airport's primary concern is to ensure that there is a reliable and adequate supply of jet fuel to users of Sydney Airport. As a matter of principle, Sydney Airport considers that competition in the jet fuel supply chain is to be encouraged. The JUHI at Sydney Airport is an unincorporated joint venture, in which BP, Caltex, ExxonMobil, Qantas and Viva Energy are venturers. There is no exclusivity granted to the JUHI. With four fuel suppliers amongst the JUHI joint venture, Sydney Airport has the best diversity of fuel products in Australia.

13.2   Jet fuel supply chain in Sydney

426   There are three import terminals for jet fuel in Sydney and three large off-site storage sites. These import terminals and storage facilities are operated by Viva Energy, Vopak and Caltex. From the storage sites, jet fuel is transported to Sydney Airport by BP, Caltex, Q8 Aviation and Viva Energy either by pipe or by truck. The vast majority of jet fuel arrives at

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[182] BARA, 'A competitive Supply of Jet Fuel at Australia's Major International Airports', Submission to the Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into Australia's transport energy resilience and sustainability* (December 2014) p 4.

[183] Specifically, BARA sought declaration of: (i) the service provided by the Caltex pipeline facility, which transports fuel from interconnection points with off-site jet fuel storage facilities and Port Botany to the Sydney Airport JUHI; and (ii) the services provided by the jet fuel storage facility and the jet fuel hydrant pipeline network facility provided by the JUHI at Sydney Airport.

Sydney Airport by pipe. There are currently two pipelines to Sydney Airport with close to 15ML/day capacity: one operated by Viva Energy and the other by Caltex.

427   Once at Sydney Airport, storage and distribution of jet fuel is operated by the JUHI on land leased from Sydney Airport.

428   Sydney Airport's primary role is to ensure that there is a reliable and adequate supply of jet fuel to users of Sydney Airport. There is at most times, three days' fuel supply on hold at Sydney Airport.

13.3   Conclusions

429   Sydney Airport agrees that there are opportunities to improve competition in the supply of jet fuel at Sydney Airport. Sydney Airport does not play a substantial role in the supply of jet fuel but will continue to seek to influence and support the improvement of competition in the fuel supply chain through future leasing and licensing arrangements.

Part I:
Appendices

Appendix 1:
Economic contribution made by Sydney Airport

Chapter 2: Developments in the aviation industry since the 2011 PC Report

430   In 2017, Sydney Airport generated $38 billion of economic activity,[184] $19.9 billion in household income[185] and supported 338,500 full-time equivalent jobs.[186] This equated to 10.1% of NSW employment,[187] paying an average full-time equivalent worker 12% more than the NSW average wage.[188]

431   In addition to facilitating tourism, freight and other more obvious on-airport operations,[189] the majority of businesses generating economic activity at Sydney Airport are not directly involved in regular passenger transport aviation: more than 800 businesses operate on Sydney Airport's premises,[190] employing, in a wide range of businesses, significant numbers of people who live close to the airport.[191]

432   Airport growth assists in achieving NSW Government targets for visitor growth and employment in local government areas close to the airport: a typical daily international

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[184] Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p ii <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqImQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >. This is an increase of 37.7% since 2012, in which the total economic contribution was $27.6 billion. Deloitte Access Economics, *The economic value of Sydney Airport: Sydney Airport Corporation Limited* (January 2013) p 1.

[185] $38 billion in economic activity equated to 6.8% of the NSW economy (some of which occurs outside of NSW), 2.2% of the Australian economy, and included $19.9 billion in household income. Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p ii <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqImQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >. This was an increase of 50.8% since 2012 (2012 contribution to household income was $13.2 billion). Deloitte Access Economics, *The economic value of Sydney Airport: Sydney Airport Corporation Limited* (January 2013) p 2.

[186] An increase of 54,800 since 2012, including 30,900 full-time equivalent jobs on-airport, see Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p 8 <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqImQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >.

[187] Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p iii <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqImQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >.

[188] The annual wage of an employee working at Sydney Airport in 2017 was $85,400, see Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p iii <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqImQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >.

[189] Such as catering, baggage handling, aircraft maintenance and refuelling.

[190] Sydney Airport, *Master Plan 2039* (August 2018) p 26.

[191] Businesses include: onsite retail, such as newsagencies, fashion and duty-free stores; precinct hospitality, including accommodation and on-site food and beverage providers; ground transport, including terminal shuttle buses, rail, taxi and rideshare services; security; Australian Government services, including customs, Australian Federal Police and quarantine; dedicated freight and logistics businesses; and other corporate/office-based businesses.

service contributes an estimated $122 million a year to the NSW economy and generated an estimated 1,300 direct and indirect jobs in the state. A daily A380 aircraft service from China alone was estimated to generate more than 5,200 direct and indirect jobs and contribute an average of $470 million a year to the Australian economy.[192]

433   Sydney Airport's economic contribution is expected to grow to $40.6 billion in 2019 and to $45.8 billion by 2024,[193] with consequential increases in total full-time equivalent employment.[194] This is consistent with air traffic forecasts prepared which anticipate increases from 2017 to 2039 of 58% in freight handled and 51% in passengers passing through Sydney Airport.[195] These forecasts assume that from late 2026 Sydney's aviation demand will be served by two international airports once the Western Sydney Airport commences operation.

[192] Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p 12 <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqlmQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >.

[193] Growing to $52.6 billion in 2039. Tourism & Transport Forum Australia, *Connecting the Dots: Enhancing our National Aviation Network* (July 2018) p 21 <http://www.ttf.org.au/wp-content/uploads/2018/07/Connecting-the-Dots-Enhancing-our-National-Aviation-Network.pdf>; Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p14 <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqlmQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >.

[194] Increase from 338,500 jobs in 2017 to 414,000 by 2039. Deloitte Access Economics, *Economic contribution of Sydney Airport* (April 2018) p14 <https://assets.ctfassets.net/v228i5y5k0x4/27X6x1DbBWEMqqlmQogmOq/dd7cb8c76d0c15c773d5b681f47710c6/Sydney_Airport_contribution_2018_FINAL_-_2018.04.11.pdf >.

[195] By 2039, forecasts anticipate an annual total of 65.6 million passengers passing through Sydney Airport:. Sydney Airport, *Master Plan 2039* (August 2018) p 54.

Appendix 2:
Factors explaining the growth in international air traffic

Chapter 2: Developments in the aviation industry since the 2011 PC Report

Growth of Asian and Middle Eastern airlines

434   The continued expansion of air rights between Australia and various regions has encouraged growth in air travel, particularly from the Middle East and Asia. Inbound traffic into Sydney Airport from both regions has grown over the past decade, now accounting for 11% and 35% of inbound passenger traffic, up from 8% and 29% respectively.[196]

Middle East

435   Over the past 10 years, the total number of seats on flights to Sydney Airport from the Middle East has grown significantly. In 2016, Etihad Airways brought its newest aircraft on the Brisbane route from Abu Dhabi (the B787-9 Dreamliner service), and commenced using A380s on its Melbourne and Sydney routes.[197] This has resulted from improved aviation links and the expansion of air rights between Australia and the Middle East.

436   From around 2012 to 2013, capacity nearly doubled on routes between the United Arab Emirates and Australia,[198] and both Australian and Middle Eastern airlines made a significant investment in the relationship between the two regions, which is evidenced through:

- the establishment of Australian airline hubs in Abu Dhabi and Dubai;

- investments by Middle Eastern carriers in Australian airlines;[199] and

- long-term partnerships between Middle Eastern and Australian airlines.[200]

437   The partnerships between Australian and Middle Eastern airlines were accompanied by a repeated enlargement of air services arrangements between the two regions. In both March 2014 and March 2015, 14 additional services per week were added under the Bilateral Air

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[196] Sydney Airport data.

[197] Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry of the Trade Sub-Committee, Parliament of Australia, *Report on Inquiry into Australia's trade and investment relationships with countries of the Middle East* (2016) p 75 <https://www.aph.gov.au/~/media/02%20Parliamentary%20Business/24%20Committees/244%20Joint%20Committees/JFADT/Foreign%20Affairs%20Defence%20and%20Trade/Middle%20East/full_report.pdf?la=en>.

[198] CAPA – Centre for Aviation, 'CAPA Commentary – Traffic Prospects for Sydney Airport' (July 2018) p 3.

[199] Etihad Airways purchased a 4% stake in Virgin Australia in 2012, see Praveen Menon, 'UAE's Etihad buys stake in Virgin Australia', *Reuters* , 5 June 2012, <https://www.reuters.com/article/uk-etihad-virgin-stake/uaes-etihad-buys-stake-in-virgin-australia-idUSLNE85400P20120605>. This later increased to 21% and was in addition to a 10 year partnership agreement signed by the airlines in 2010. See Patrick Hatch, 'Five elephants in the room': Virgin Australia dances ownership tango', *The Sydney Morning Herald*, 12 January 2018, <https://www.smh.com.au/business/companies/five-elephants-in-the-room-virgin-australia-dances-ownership-tango-20180110-p4yydg.html>; Etihad Airways, 'Etihad Airways, the national airline of the United Arab Emirates, today confirmed its equity stake in Virgin Australia Holdings had reached 19.9 per cent' (Media Release, 2013) <https://www.etihad.com/de/about-us/etihad-news/archive/2013/etihad-airways-increases-stake-in-virgin-australia/>.

[200] In 2013 Emirates and Qantas entered into a five year partnership, which saw Qantas change its hub for European flights from Singapore to Dubai. See Qantas Group, Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry of the Trade Sub-Committee, Parliament of Australia*, Report on Inquiry into Australia's trade and investment relationships with countries of the Middle East* (19 May 2014) <https://www.aph.gov.au/DocumentStore.ashx?id=51fb6264-6396-4409-a9ba-485c29509ca6&subId=252807>. This partnership was recently extended for another five years to 2023. See also Qantas Group, 'Qantas, Emirates announce global aviation partnership' (Media Release, 6 September 2012) <https://www.qantas.com/travel/airlines/media-releases/sep-2012/5440/global/en>; Qantas Group, 'Qantas and Emirates to extend Partnership' (Media Release, 31 August 2017) <https://www.qantasnewsroom.com.au/media-releases/qantas-and-emirates-to-extend-partnership/>.

Service Agreement between Australia and the United Arab Emirates. In September 2015, the governments of Australia and Qatar announced that they had approved an expanded Air Service Agreement to allow 50% more flights, as well as routes to new destinations.[201]

Asia

438   Asia presently accounts for seven of Australia's top ten source markets for international visitors.[202] For example, the number of mainland Chinese operators flying to Sydney Airport in 2018 is eight airlines serving 19 separate routes. This has increased from four airlines serving five routes in 2011.[203]

439   Another contributing factor to the growth in Chinese inbound traffic over the past five years has been the continued liberalisation of air rights between Australia and China. An airline capacity constraint on flights between Australia and China was expanded initially in 2015, and again in 2016, when the countries agreed to an 'open skies' regime which removed all capacity restrictions on flights between them.[204]

440   This has seen moves by airlines (including Qantas[205] and Virgin Australia[206]) to accommodate growth from this region.

The rise of long-haul low cost airlines

441   Since the 2011 PC Report, growth of long-haul LCCs has been considerable, contributing to and resulting from growth in international leisure passengers. Together with technology advancements, LCCs have driven reductions in real airfares, feeding further air traffic growth and stimulating demand.

442   Two of the three world leading long-haul LCCs,[207] AirAsia X and Scoot, are based in Asia and account for a third of total global long-haul LCC operations. To date, Australia has

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[201] Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry of the Trade Sub-Committee, Parliament of Australia, *Report on Inquiry into Australia's trade and investment relationships with countries of the Middle East* (2016) p 79 <https://www.aph.gov.au/~/media/02%20Parliamentary%20Business/24%20Committees/244%20Joint%20Committees/JFADT/Foreign%20Affairs%20Defence%20and%20Trade/Middle%20East/full_report.pdf?la=en>.

[202] Tourism & Transport Forum Australia, *Connecting the Dots: Enhancing our National Aviation Network* (July 2018) p 28 <http://www.ttf.org.au/wp-content/uploads/2018/07/Connecting-the-Dots-Enhancing-our-National-Aviation-Network.pdf>.

[203] Sydney Airport, *Master Plan 2039* (August 2018) p 57.

[204] Minister for Infrastructure and Transport, 'Australia and China agree open aviation market' (Media Release, 4 December 2016) <http://minister.infrastructure.gov.au/chester/releases/2016/December/dc209_2016.aspx>.

[205] Qantas resumed flights between Sydney and Beijing in January 2017 as part of an expansion of its alliance with Shanghai-based China Eastern. See, Matt O'Sullivan, 'Arrival of seventh Chinese airline to Sydney marks new era for tourism', *The Sydney Morning Herald* (online), 29 October 2017 <https://www.smh.com.au/national/nsw/arrival-of-seventh-chinese-airline-to-sydney-marks-new-era-for-tourism-20171027-gz9cy4.html>; Qantas also recently moved its stopover point for London flights back to Singapore from Dubai to facilitate better connections to fast growing Asian markets.

[206] Virgin Australia recently implemented a codeshare partnership with Chinese airlines in the HNA Group to improve Virgin Australia's presence in China. See Sydney Airport, *Master Plan 2039* (August 2018) p 57.

[207] The third is Norwegian Air Shuttle ASA.

accounted for a large proportion of origin traffic for these long-haul LCCs,[208] as it has for Jetstar International, and will likely continue to do so.[209]

443   The rise of long-haul LCCs has resulted in increased competition between airlines. To compete, full service carriers have adapted their business models to include low cost offerings, with Virgin Australia acquiring Tigerair outright in 2014,[210] joining Qantas (through Jetstar) in offering both full service and low cost options in Australia.

Factors explaining international air passenger growth: up-gauging in aircraft bodies

444   Airlines have increased the average number of passengers per aircraft through larger aircraft, increased seating densities and improved load factors.[211]

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[208] The Blue Swan Daily, 'AirAsia X achieves phenomenal growth in Australia over the last decade', (online), 9 May 2017, <https://blueswandaily.com/airasia-x-achieves-phenomenal-growth-in-australia-over-the-last-decade/>.

[209] CAPA – Centre for Aviation, 'CAPA Commentary' (July 2018) p 8.

[210] Virgin Australia announced that it will expand Tiger Airways' operations across the Tasman starting in 2019. See CAPA – Centre for Aviation, 'CAPA Commentary – Traffic Prospects for Sydney Airport' (July 2018) p 7.

[211] Sydney Airport, *Master Plan 2039* (August 2018) p 56. This has included, for instance, replacement of older generation B737-300 and B737-400 aircraft with B737-800s (with 25-50% more seats); up-gauging of Dash8-200 aircraft to predominantly Dash8-Q400s (with 100 percent more seats); introduction of A380s, B787s and A350s (which are larger aircraft and have more seating capacity); the vast majority of orders being for narrowbody jets, such as A320s and A321s. See also CAPA – Centre for Aviation, 'CAPA Commentary – Traffic Prospects for Sydney Airport' (July 2018) p 6.

Appendix 3:
The BARA endorsed 2015 BARA ASA

Chapter 6: Negotiation of agreements

Background and Negotiations

445   In 2015, Sydney Airport and BARA agreed on the terms of a new BARA endorsed international air services agreement.

446   BARA collectively represents airlines (including Qantas and Virgin Australia) carrying approximately 84% of all international passengers who pass through Sydney Airport. As a result negotiations were at times complicated and difficult with Sydney Airport making significant concessions to accommodate BARA's requirements and the requirements of individual airlines who were BARA members.

447   During the negotiations, BARA provided to Sydney Airport five commercial principles that set out its requirements.[212] These principles are set out in Figure 34, below. In order to reach an agreement Sydney Airport took active steps to meet BARA's requirements. Figure 43 also sets out both the:

(a)   steps that Sydney Airport took during negotiations to facilitate each of BARA's commercial principles; and

(b)   features of the 2015 BARA ASA that directly address BARA's commercial principles.

Figure 34
How BARA's commercial principles were met by the 2015 BARA ASA

BARA Commercial Principles[213]		Relevant 2015 BARA ASA Features
Pricing for service delivery	*Agreements should be focused on outcomes (services delivered) instead of capital inputs (the cost of providing services)*	• During negotiations, Sydney Airport agreed to use the 2001 ACCC decision to set the starting asset base and roll forward approach. • Improved pricing and specifically, a reduction in passenger charges accompanied with an increase in service quality. • Clear, tabulated prices that provide price certainty for five years. • Transparent procedures for varying the price path in certain circumstances. • A transparent Investment Strategy and provisions requiring regular consultation.

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[212] BARA, Timely and Reasonably Priced Aircraft Infrastructure, *BARA's five commercial principles*, p 8 <http://bara.org.au/wp-content/uploads/2015/09/2-Airport-Infrastructure.pdf>.

[213] BARA, Timely and Reasonably Priced Aircraft Infrastructure, *BARA's five commercial principles*, p 8 <http://bara.org.au/wp-content/uploads/2015/09/2-Airport-Infrastructure.pdf>.

BARA Commercial Principles[213]		Relevant 2015 BARA ASA Features
Reasonable investment outcomes	*Reasonable rates of return for airports*	• During negotiations, Sydney Airport benchmarked its projected rate of return against interest rate estimations used by the Independent Pricing and Regulatory Tribunal and the Australian Energy Regulator.
Efficient airport operations	*To provide ongoing value airport operators must have the incentive to manage their operating costs effectively*	• Sydney Airport adopted a transparent 'open book' approach to negotiations and facilitated BARA's independent audit of operating costs. • New forum, the ICF, for ongoing collaboration on infrastructure and productivity projects. • New KPI framework to track Sydney Airport's performance against key metrics.
Balanced and consistent agreements	*Agreements should contain a clear record of commercial terms*	• Plain English drafting. • The 2015 BARA ASA is brief and tailored to international airlines specifically.
Service quality culture	*The quality of airport services is critical in promoting high quality, adaptive and efficient international aviation in Australia.*	• New forum, the ICF, for ongoing collaboration on Sydney Airport's delivery of services. • Framework for the agreement of new 'service level agreements' (**SLAs**). The SLAs sets out specific performance standards that Sydney Airport is required to meet. • New KPI framework to track Sydney Airport's performance against key metrics. • SLRM through which airlines can obtain a rebate for certain delays caused by facilities being out of service.

448   BARA has been able to satisfy its members' commercial objectives. BARA has stated that it would like to 'apply the service level framework recently agreed with Sydney Airport to the other major international airports'.[214] Immediately before the launch of the KPI framework in July 2017 BARA noted that:

> 'The KPI regime developed and implemented with Sydney Airport should serve as a model for Australia's other major international airports to consider.'[215]

449   BARA has specifically noted outcome-focused KPIs, performance improvement projects, compensation for significantly delayed flights and effective consultation forums are key

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[214] BARA, Airline Views, *A service quality culture* (December 2015) <http://www.bara.org.au/wp-content/uploads/2015/12/Airline-Views-December-2015.pdf>.

[215] BARA, Airline Views, *Airport KPI regimes* (June 2017) <http://www.bara.org.au/wp-content/uploads/2017/06/Airline-Views-June-2017.pdf>.

elements of an effective performance framework.[216] Each of these elements is provided for in the 2015 BARA ASA.

Delivering outcomes in line with BARA's requirements

450   The section below sets out how the 2015 BARA ASA has delivered for BARA's members:

(a)   improved pricing;

(b)   improved service delivery;

(c)   more consultation on infrastructure investments;

(d)   better forums for consultation and co-operation; and

(e)   more effective dispute resolution.

A – Improved Pricing

451   Predictable annual price increases were a key priority for BARA's members. Previous commercial agreements provided for six-monthly increases in the NNI which had the unintended effect of putting airlines at risk for the cost of flights when they sold tickets more than one month in advance.

452   The fee structure in the 2015 BARA ASA delivers better pricing outcomes including:

(a)   a five-year price path with annual price increases; and

(b)   an initial step-down in the international charge per passenger charge of:

    (i) $0.18 compared with the charges in place under the NNI up to 30 June 2015; and

    (ii) $0.65 compared with the charges that would have applied from 1 July 2015 under the NNI.

B – Improved service delivery

453   The 2015 BARA ASA incorporates contractual mechanisms designed to improve service delivery, including:

(a)   SLAs that set out key service standards and resourcing levels for Sydney Airport's services;[217]

(b)   a KPI framework to track Sydney Airport's performance against key metrics;[218] and

(c)   a SLRM through which airlines can obtain a rebate for certain delays caused by facilities being out of service.[219]

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[216] BARA, Airline Views, *A service quality culture* (December 2015) <http://www.bara.org.au/wp-content/uploads/2015/12/Airline-Views-December-2015.pdf>.

[217] Sydney Airport and BARA Air Services Agreement cl 2.3(b).

[218] Sydney Airport and BARA Air Services Agreement cl 5.2(c).

[219] Sydney Airport and BARA Air Services Agreement cl 2.6.

Service Level Recovery Mechanism

454   The SLRM provides airlines with financial relief if:

(a)   a key facility[220] at Sydney Airport has been out of service; and

(b)   that facility being out of service causes a flight to be significantly delayed.

455   The 2015 BARA ASA was the first Australian airport ASA to provide airlines a rebate for the impact of facilities being out of service. Since the SLRM commenced, Sydney Airport has accepted 38 claims from airlines including nine claims that, although they did not strictly meet the mechanisms' criteria, were paid as a goodwill gesture.

Service Level Agreements

456   Sydney Airport and the airlines agreed to develop an SLA that would set out specific standards for a mutually defined 'gold' level of service. Once agreed, gold standard services were required from 1 July 2016. Sydney Airport estimates that providing that higher standard of service costs Sydney Airport an additional $8 million per year. As discussed above, despite this increase in costs, the 2015 BARA ASA reduced rather than increased the per passenger fees charged to the airlines.

KPIs

457   Under the 2015 BARA ASA, Sydney Airport and the airlines developed a set of KPIs and a broader performance framework to reliably measure Sydney Airport's performance. A key goal of the KPIs has been to produce an extensive dataset of performance metrics that will inform future investments and operational decisions. As part of the framework, if Sydney Airport's performance against a KPI falls below an agreed level, Sydney Airport is required to take action under the *Resolution Procedure* set out in the performance framework.

458   In the first year of the 2015 BARA ASA, Sydney Airport rolled out systems to actively measure KPI performance and engaged an independent facilitation expert (7Skies) to assist in the development of an initial set of KPIs. Sydney Airport obtained the ICF's endorsement of the initial KPIs in December 2015. Sydney Airport and the airlines continued to refine the KPIs up to the launch of the performance framework in July 2017.

459   Sydney Airport's roll-out of the KPI framework included investment in software solutions that would monitor KPIs effectively:

(a)   September 2015: Sydney Airport commissioned Unisys to develop an automated baggage report to track misconnected bags;[221]

(b)   October 2015: Sydney Airport installed a queue management system provided by Xovis;[222] and

(c)   December 2015: Sydney Airport began selecting vendors to provide solutions for measuring wait times in customs, check-in and arrivals areas.[223]

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[220] Key facilities include runways, taxiways, aprons, gate lounges, aerobridges, flight information display systems and baggage systems including baggage reclaim and security screening facilities.

[221] Sydney Airport, *Presentation at ICF* (7 December 2015) p 73.

[222] Sydney Airport, *Presentation at ICF* (7 December 2015) p 73.

460   Although not required until after the launch of the performance framework in July 2017, Sydney Airport begun providing KPI data to the airlines in December 2015.[224] Commencing data sharing was a significant cultural shift in the relationship between Sydney Airport and the airlines.

461   The performance framework requires that KPIs are reviewed annually in consultation with BARA representatives, the airlines and ground handlers.[225] The annual review ensures KPIs remain indicative of actual service levels and facilitates the identification of gaps in the metrics that may develop over time.

C – More consultation on infrastructure investments

462   The 2015 BARA ASA sets out Sydney Airport's *Investment Strategy* for 2015 to 2020 and provides for ongoing consultation through the ICF. Under the Aeronautical Capital Investment Consultative Group (**ACICG**), Sydney Airport's previously existing consultation forum, international airlines had been engaged on a project by project basis. That consultation was granular and did not encourage broader strategic discussions.

463   Under the 2015 BARA ASA the parties agreed that while Sydney Airport's infrastructure spend remained within the Investment Strategy there would be no changes to the fixed price path. Sydney Airport is required to consult with the ICF before making any changes to its charges that result from the Total Aeronautical Investment being above or below the amounts agreed in the Investment Strategy.

D – Better forums for consultation and co-operation

464   The 2015 BARA ASA established the ICF, a forum for on-going and increased consultation between Sydney Airport and the airlines. Under the agreement:

(a)   Sydney Airport must regularly report on the progress of its *Investment Strategy* and the agreed envelope of Sydney Airport's aeronautical investment between 2015 and 2020;

(b)   Sydney Airport must regularly report on its performance against the KPI framework;

(c)   the parties must initially seek to resolve disputes that are '*ICF matters'* through the ICF; and

(d)   the ICF facilitates discussions regarding the development of SLAs, changes to airport charges and the initiation of projects to improve safety, operating efficiencies and passenger experiences.

465   The ICF facilitates greater consultation than under Sydney Airport's previously existing consultation forum, the ACICG. Domestic, regional and freight carriers and any other airlines that have not entered into a 2015 BARA ASA continue to attend the ACICG. Under the ACICG, Sydney Airport shares detailed data about individual projects, some as minor as substation or bathroom upgrades. The ICF:

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[223] Sydney Airport, *Presentation at ICF* (7 December 2015) p 73.

[224] In December 2015 Sydney Airport began sharing KPIs including metrics for *On-Time Performance, Bussing Percentages* and *Bussing Arrival Times*.

[225] Sydney Airport, *Presentation at ICF* (21 June 2018) p 6.

(a)   focuses on higher level, strategic issues;

(b)   involves airlines in the airport's broader investment strategy; and

(c)   focuses on issues important to the airlines (such as performance against the airport's KPIs).

466   In conjunction with the ICF Sydney Airport has established additional forums focused on specific airport operations, including a:

(a)   Sydney Airport T1 Forum;

(b)   Ground Handlers Forum; and

(c)   Bussing Working Group.

E – More effective dispute resolution

467   The 2015 BARA ASA provides for an extended dispute resolution procedure that progressively escalates from the ICF for 'ICF matters' to the CEO of each party.

Conclusion

468   The 2015 BARA ASA is a new and innovative agreement which includes many industry-leading elements that are beneficial to airlines such as KPI reporting and SLRMs. Significantly, the agreement provided BARA with contractual provisions that addressed each of its commercial requirements.

Confidential Appendix 4:
Commercial in Confidence

Appendix 5:
The current regional price notification regime

Chapter 11: Regional Pricing

469   Section 95X(1) of the CCA provides that the Minister may declare goods or services to be notified goods or services for the purposes of Part VIIA of the CCA. Section 95X(2) provides that the Minister may declare a person to be a declared person in relation to goods or services of a specified description. By Declaration 94, made on 5 May 2016, the Treasurer declared:

    (a)   the provision of aeronautical services and facilities to regional air services to be notified services; and

    (b)   Sydney Airport, in relation to the provision of regional aeronautical services and facilities to regional air services at Sydney Kingsford Smith Airport, to be a declared person.

470   For the purposes of Declaration 94:

    (a)   'regional air services' means regular public transport air services operating wholly within the State of New South Wales; and

    (b)   'aeronautical services and facilities' means those services and facilities at an airport that are necessary for the operation and maintenance of civil aviation at the airport, and includes a number of services and facilities set out in regulation 7.02A of the *Airports Regulations 1997*.

471   Section 95Z creates a series of criminal offences. Of particular relevance, s95Z(1) provides that a person commits an offence if:

    (a)   they are a declared person in relation to notified goods and services;

    (b)   they supply goods and services on particular terms and conditions and at a particular price;

    (c)   they have supplied those goods or services on substantially similar terms and conditions within the past 12 months;

    (d)   the actual price charged exceeds the highest price at which the person has supplied the goods or services on those terms and conditions in the previous 12 months; and

    (e)   the supply is not an exempt supply.

472   Subject to the defence set out in paragraph 473 below, this provision effectively precludes Sydney Airport from increasing the prices it charges for the provision of regional aeronautical services and facilities to regional air services.

473   Section 95Z(4) provides that a person does not commit an offence if the following four conditions are satisfied:

    (a)   the person has given the ACCC a notice in writing that the person proposes to supply the goods or serves on specified terms and conditions and at a specified price;

    (b)   one of the following has occurred:

        (i)   the 'applicable period' (being 21 days unless extended by the ACCC) has ended;

<blockquote>
<blockquote>

(ii)   the ACCC has given a notice stating that it has no objection the notification; or

(iii)   the ACCC has given a notice stating that it would have no objection if the price were lower and the person notifies the ACCC that it proposes to supply the goods or services at that, or a lower, price;

</blockquote>

(c)   the actual terms of supply are substantially similar to the notified terms; and

(d)   the actual price does not exceed the proposed or approved price.
</blockquote>

474   In exercising its functions under Part VIIA of the CCA, the ACCC is required, subject to ministerial directions, to have particular regard to:

> (a)   the need to maintain investment and employment, including the influence of profitability on investment and employment;
>
> (b)   the need to discourage the taking advantage of market power; and
>
> (c)   the need to discourage cost increases arising from increases in wages and changes in employment conditions.

475   The Treasurer gave Direction 35 on 5 May 2016, under s 95ZH of the CCA, requiring the ACCC to give special consideration to the following matters, among others:

> (a)   the Government's policy that the total revenue-weighted percentage increase in prices paid by operators of regional air services to Sydney Airport for the provision of the services declared by Declaration 94 should not exceed consumer price inflation over the same period; and
>
> (b)   the starting point for assessing price increases is 1 July 2016.

476   A regime in similar terms to those identified above has been in place since 2002.

Chapter 12: Ground Access

Alan Jones school holiday traffic - train – radio advertisement transcript

477   The school holidays are a very busy time at Sydney Airport at both the domestic and international terminals. If you are planning on driving to the airport these holidays you should plan your journey and leave plenty of extra time as roads across Sydney will be busy. If you are flying from 'International' plan to get to the airport at least three hours before your departure and for 'Domestic' you should arrive at least 90 minutes ahead of your flight. Remember that you should also consider using the train as a convenient alternative to driving. Whichever way you are travelling to the Sydney Airport these holidays, whether it be for the 'Domestic' or 'International' Terminals the best way to avoid any stress or inconvenience is to plan ahead and make sure you leave plenty of time for your journey. For all the details go to sydneyairport.com.au, sydneyairport.com.au.

Ben Fordham school holidays traffic - train – radio advertisement transcript

478   School holidays are a busy time at Sydney Airport, both the domestic and international terminals. If you are driving to the airport these holidays, plan your journey, leave lots of extra travel time because the roads are going to by busy. If you are flying from 'International' plan to get to the airport at least three hours before departure, for 'Domestic' at least 90 minutes ahead of the flight. Remember if you want to consider using the train that is a convenient alternative to driving. Whichever way you are travelling to Sydney Airport, whether it is for 'Domestic' or 'International' Terminals the best way to avoid any stress or inconvenience is to plan ahead and make sure you leave plenty of time for your journey. Enjoy your holidays. For all of the details sydneyairport.com.au and remember leave a little extra time for your travel. Sydneyairport.com.au

Ray Hadley school holiday traffic - train – radio advertisement transcript

479   As you know the school holidays a very busy time at Sydney Airport at both domestic and international terminals. If you are planning on driving to the airport these holidays you should plan your journey and leave plenty of extra time as the roads across Sydney will be very very busy. If you are flying from 'International' plan to get to the airport at least three hours before your departure and for 'Domestic' you should arrive at least 90 minutes ahead of your flight. Remember you should also consider using the train as a convenient alternative to driving. Whichever way you are travelling to the Sydney Airport these holidays, whether it be 'Domestic' or 'International' terminals the best way to avoid any stress or inconvenience is to plan ahead and make sure you leave plenty of time for that journey. For all the details go to the website sydneyairport.com.au. It is all about planning, sydneyairport.com.au is the place to find the details.

Sydney Airport media release regarding train use dated 15 May 2017

Sydney Airport ⟡

FOR IMMEDIATE RELEASE   15 May 2017

Sydney Airport welcomes increased T2 Airport Line train frequency

- Sydney Airport welcomes Transport for NSW announcement to increase airport train frequency
- The airport remains committed to providing a broad choice of transport options to and from T1 and T2/T3
- Sydney Airport and NSW Government road upgrade works continue apace

Sydney Airport has welcomed the announcement by the NSW Minister for Transport and Infrastructure Andrew Constance that Transport for NSW will increase the frequency of trains on the T2 Airport Line during off-peak times.

Minister Constance announced today that the State Government will provide an additional 200 airport train services per week by the end of 2017. This will result in average waiting times for a train to or from Central Station and the airport's Domestic and International stations of approximately 7.5 minutes during off-peak hours on weekdays and throughout weekends, and a reduction from 30 minutes down to 15 minutes late at night.

Sydney Airport Managing Director and Chief Executive Officer Kerrie Mather said the additional services would be of great benefit to airport visitors as well as airport staff who catch the train to work.

"We're delighted that Minister Constance has announced more trains for Sydney Airport," Ms Mather said.

"The additional services will make it even more convenient for travellers, meeters and farewellers to catch the train to and from the airport, especially on weekends when trains will be more frequent.

"Many of the almost 30,000 people who work at the airport commute by train and I know they will also welcome the extra frequency," Ms Mather said.

Sydney Airport has a strong commitment to offering a range of public transport options to and from the airport in addition to the train, including taxis, limousines, shuttles, buses and ride sharing services.

Recent improvements for public transport have included upgrades to the access road into, and facilities at, the taxi holding area at T2/T3 as well as the opening last year of the T2/T3 Priority pick-up zone specifically for ride sharing services.

For road users, transformational road upgrades and traffic management initiatives within the airport are contributing to smoother traffic flows in and around the precincts.

Sydney Airport is now three years into a five-year ground access improvement program that is being complemented by the NSW Government's own upgrades to the road network around the airport.

"The scope of work that Sydney Airport and the NSW Government are undertaking make it easier to travel to and from the airport by car, taxi or public transport is unprecedented," Ms Mather said.

"The airport's upgrades to roads within the terminal precincts have resulted in significant improvements to the travel experience for airport visitors, commuters and other road users since our works began in 2014, while the NSW Government's key Airport East and Airport West road projects are also well under way."

The airport's completion in late 2016 of dedicated five-lane entry and exit roads at T2/T3 has delivered smoother traffic flows and reduced congestion at peak periods for motorists, while further improvements will come with the completion of the government's Airport East project to widen Joyce Drive and remove the level crossing on Wentworth Avenue.

Other airport ground access improvement projects due for completion within the next 12 months include:

- an elevated shared cycle/pedestrian path from the Alexandra Canal cycleway to provide access over roads and car parks into P7 at T1;
- a new dedicated exit road for Departures Road/Arrivals Court to Airport Drive at T1 to streamline traffic movement;
- a new flyover from Airport Drive into the T1 precinct to eliminate traffic weaving; and
- an additional lane on Qantas Drive at T2/T3 to provide more capacity for traffic exiting the precinct.

ABOUT SYDNEY AIRPORT

Sydney Airport is Australia's gateway airport, serving 42 million passengers a year and connecting Sydney to a network of close to 100 international, domestic and regional destinations.

Located just eight kilometres from the city centre, Sydney Airport contributes $30.8 billion in economic activity a year, equivalent to 6.4 per cent of the NSW economy. Sydney Airport is a major employer in NSW, generating more than 306,700 direct and indirect jobs, equivalent to 8.9 per cent of NSW employment. Some 29,000 of these jobs are at the airport itself.

Sydney Airport media:

Joeley Pettit

0437 033 479

Sydney Airport website notice regarding travel during school holidays

School holidays means heavier than usual traffic on roads in and around Sydney Airport

The start of school holidays means heavier than usual traffic on roads in and around Sydney Airport.

Motorists are advised that traffic in and around the airport will be heavier than usual during the first weekend of the school holidays.

Large numbers of travellers are expected at the airport on Friday, Saturday and Sunday, 6, 7 and 8 July.

Traffic will be busiest:

- between 5.00pm and 10.00pm at the T2/T3 Domestic terminals (Friday 6 July);
- between 6.00am and 10.30am at the T1 International terminal and T2/T3 Domestic terminals (Friday, Saturday and Sunday 6, 7 and 8 July)

If you are travelling by car to the airport, it's important to allow plenty of additional travel time, particularly if you are planning to arrive at the airport to catch a flight or pick up passengers during the above peak periods. Travellers should also strongly consider catching the train to the airport to avoid traffic congestion.

Plan to arrive at least three hours before your flight if travelling internationally and 90 minutes beforehand if flying domestically.

Note: Sydney Airport has an overflow drop-off zone at T1 International which operates during peak morning periods. Motorists are asked to follow all signage and directions from airport staff.

Drop-off stopping times at the terminals are limited to one minute in order to keep traffic flowing.

Thank you for your patience and co-operation.

SHARE THIS PAGE   [f Share]   [▼ Tweet]   [in Share]

Appendix 7:
Sydney Airport advertisements to assist customers to minimise car parking fees

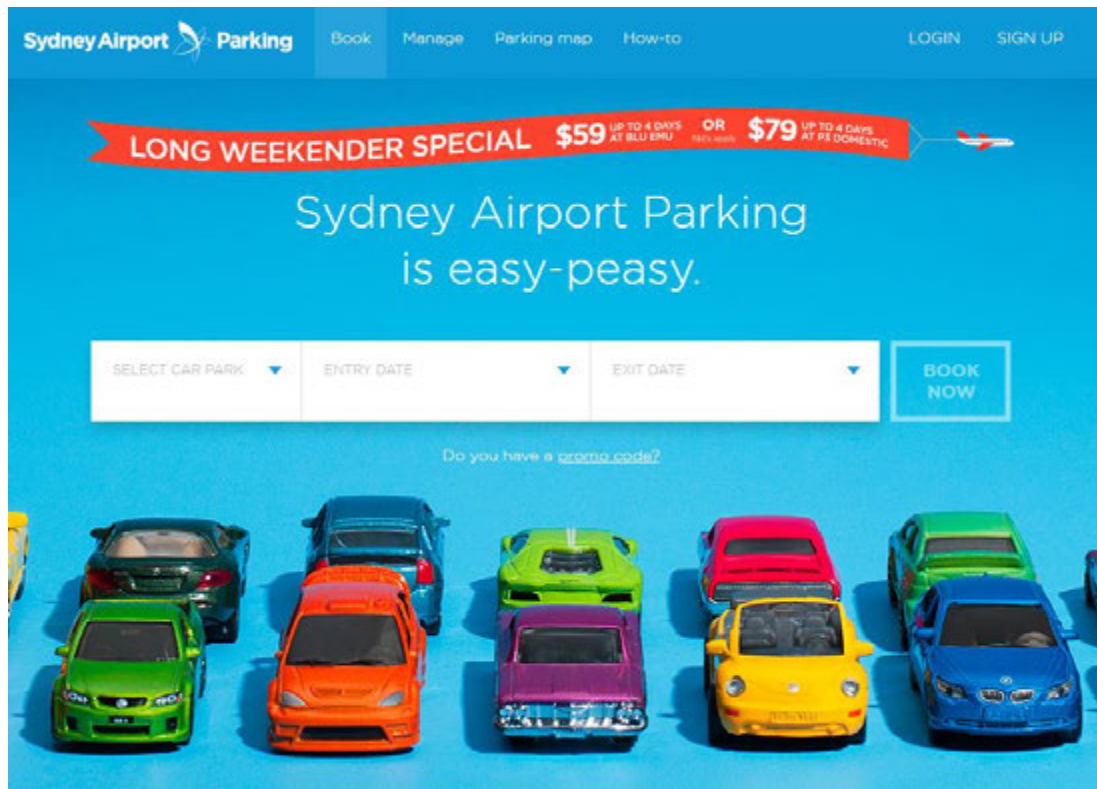## Chapter 12: Ground Access

Blu Emu family getaway advertisement

Easy-peasy parking campaign and long weekender special

Appendix 8:
Chronology of key car parking developments since the 2011 PC Report

Chapter 12: Ground Access

Date	Event
Jun 2011	Total number of car spaces available to the public: **12,271**
Nov 2011	First discounted online self-drive parking special deals offered
Jan 2012	Discounted online self-drive parking deals progressively introduced to a total 48 specific deals/price points. Discounts up to 73% off drive-up rates
Jun 2012	Total number of car spaces available to the public: **13,116**
Aug 2012	Remote long-term car park renamed as 'Blu Emu' car park
Oct 2012	Northern car park (P6) opens in the international precinct for staff parking and vehicle storage of up to around 2,400 vehicles
Jun 2013	Total number of car spaces available to the public: **15,822**
Dec 2013	New P3 car park opens with around 1000 spaces for the domestic precinct
Jun 2014	Total number of car spaces available to the public: **16,886**
Dec 2014	New purpose built Express pick-up area opened at T1 with 15% additional bays
	New Centre Road opened with dedicated entry and exit points for the Express Pick-up/short-term parking zone at P9 for the international precinct
Jun 2015	Dynamic demand management system introduced to manage online self-drive parking bookings. Algorithmic pricing to provide deeper discounts dependent on period of advanced booking
	Total number of car spaces available to the public: **16,492**
Sep 2015	Parking advertising on TV launched to complement radio, outdoor and direct marketing. Key messaging around booking online to save on parking rates
Dec 2015	New dedicated five lane one way exit road (Seventh Street extension) to new intersection on Qantas Drive at Robey Street for domestic precinct
Mar 2016	New exit road from Marsh Street to Centre road opens allowing Marsh Street traffic quicker access to Express Pick-up and parking facilities for international precinct
Jun 2016	Total number of car spaces available to the public: **15,933**
Sep 2016	Priority Pick-up launched and Express Pick-up relocated to P3 and expanded by 50% to 91 spaces for domestic precinct. Dedicated rideshare pick-up area introduced for domestic terminals

	One hour free parking introduced at Blu Emu to compliment Priority pick-up launch
	Overflow drop-off introduced at international precinct by converting 56 parking bay area on the ground floor of P6 to a five lane drop-off zone
Oct 2016	Three additional levels (around 410 spaces) opened at P3 with connectivity to P2 via the P2/P3 car park bridge at the domestic precinct
Dec 2016	Online self-drive parking booking platform creative refresh to improve customer experience
	Sir Reginald Ansett Drive reconfiguration to a five lane one way entry to the domestic precinct completed
Feb 2017	Guaranteed Space introduced at P1/P2 for domestic precinct
Jun 2017	Guaranteed Space introduced at P7 for international precinct
	Express Pick-up extended to cover all of P9 (329 bays) at the international precinct due to growing demand for free pick-up
	Total number of car spaces available to the public: **17,094**
Sep 2017	Overflow drop-off expanded from five to seven drop-off lanes at the international precinct
	New footbridge opened providing pedestrians and cyclists direct access into the international precinct and removing pedestrian crossings for quicker vehicle exits
Oct 2017	Expansion of P6 in the international precinct with four extra levels (around 1,200 spaces) completed with connectivity to P7
	Qantas Drive widening between Robey and O-Riordan Streets completed and NSW government opens complementary one-way road configuration on lower Robey & O'Riordan Streets for the domestic precinct
Dec 2017	New dedicated exit road for international departures traffic to Airport Drive opens allowing free flow traffic exit from the international precinct
Late 2017	NSW government introduced an extra 200 rail services per week
Mar 2018	Priority pick-up (including dedicated rideshare) area introduced for international terminal with 50 pick-up bays
	Additional entry lane from Marsh Street and flyover from Airport Drive to Arrivals Court open with notable improvements to drop-off capacity & traffic performance at the international precinct
Aug 2018	Total number of car spaces available to the public: **19,101**

Appendix 9:

HoustonKemp Economists Report on 'Car parking and ground access – market power assessment' (Commercial in Confidence information redacted)

Confidential Appendix 9a:
Commercial in Confidence

Confidential Appendix 10:
Commercial in Confidence information