AIRLINES FOR AUSTRALIA & NEW ZEALAND

Mr Paul Lindwall
Presiding Commissioner
Productivity Commission
Level 12, 530 Collins Street
Melbourne, VIC

20 December 2018

RE: Inquiry into the economic regulation of airports

Dear Mr Lindwall,

The purpose of our letter is to bring to Commissioners' attention some important insights from recent events that are relevant to the Inquiry. In doing so, we are particularly conscious of the Government's request that the Commission report on the regulatory model's appropriateness and effectiveness in achieving the following objectives:

- promoting the economically efficient operation of, and timely investment in, airports and related industries;
- minimising unnecessary compliance costs;
- facilitating commercially negotiated outcomes in airport operations.

It has become apparent that there is significant convergence from a range of stakeholders in the sector on the proposition that commercial negotiations between airports and their customers are problematic; with contract delays and disputes highlighting the fact that the system is not working to meet the Government's policy objectives, and that change is required.

A clear picture of the reality of the situation has emerged from the recent dispute at Perth Airport. Taken alongside submissions to the Inquiry, in particular those from Sydney Airport, the AAA, Canberra Airport, NT Airports, and Melbourne Airport; where the airports similarly accuse airlines of being difficult in negotiations, of non-payment of fees, stalling tactics or other negative behaviours, there is a strong case for change that goes beyond the monitored airports.

It is worth noting that, when dealing with airports, airlines have no other recourse under a framework where there is such an imbalance in negotiating power, other than, as the airports describe it, to "behave badly." Airports are not perceived to be doing the same because the behaviour they engage in is simply part of them doing business within the parameters of the regulatory framework, with the advantages their monopoly status affords them.

Even putting aside debates over the reasonableness of charges, it is clear that when there are disputes, the current light-handed regime's threat is neither credible nor working as intended. Indeed, the current situation at Perth Airport highlights the lack of arbitration provisions – for *both* parties to access - when negotiations break down. This was called out in a recent news article on the dispute.

All parties acknowledge that protracted negotiations are not cost-effective, and there is also convergence around the suggestion that negotiation and contracting principles are required. It is worth noting, however, that there are already well-established principles in place that are not being adhered to. Therefore, suggestions by the airports and the AAA that simply adding more guidance will be sufficient to address current challenges, must be considered with caution, for the reasons we outline below.

A system of guidelines and principles that are not enforceable still puts monopoly airports at a considerable advantage; they can demand their customers adhere to the principles or face consequences. Their customers cannot expect the same of them.

While the airports appear attracted to BARA's proposal, BARA themselves have acknowledged that simply adding commercial principles to the existing principles, is unlikely to generate useful improvement, as it lacks a credible mechanism to hold airports accountable for compliance; which leaved us back where we are now.

Furthermore, BARA's proposal contains elements that would be burdensome and costly for Government. In addition to (unspecified) legislative changes having to be made, the proposed system would significantly increase red-tape and workload, as it involves the Department, a panel, the ACCC, and potentially engages the Minister, in reviewing individual commercial agreements between airports and airlines. This would work actively against the policy's objectives and create a far greater cost to the system than leaving airlines and airports to negotiate agreements on their own, but with a clear pathway for commercial arbitration when there are intractable disagreements.

A far simpler, more practical and cost-effective mechanism would be to incorporate by law an ability for any party to an agreement, arrangement or understanding relating to the provision of a service by an airport, to refer a dispute to commercial arbitration with some guiding principles for the arbitration process - should it occur - set out in the legislation. We explain how this could work in our recent supplementary submission.

A4ANZ's approach not only meets the policy objectives of minimising unnecessary compliance costs and facilitating commercially negotiated outcomes in airport operations, but it satisfies the preference of both the Government and Opposition, and expert advice, that the regulatory model for airports remain light-handed. Importantly, it also responds to calls from airports for guiding principles to improve negotiations.

A4ANZ looks forward to working with all stakeholders to progress the introduction of a dispute resolution mechanism, guided by shared principles, in the most pragmatic and efficient way.

Yours sincerely,

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