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**PRODUCTIVITY COMMISSION**

**ECONOMIC REGULATION OF AIRPORTS**

**MR P LINDWALL Commissioner**

**DR S KING, Commissioner**

**TRANSCRIPT OF PROCEEDINGS**

**AT GRACE HOTEL, SYDNEY**

**ON TUESDAY 26 MARCH 2019 AT 9.29 AM**

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**COMMISSIONER LINDWALL**: Okay, everyone, we might get started shortly in 30 seconds or so because I like an on time departure. Welcome everyone and good morning, and welcome to the public hearings for the Productivity Commission inquiry into the economic regulation of airports. I'm Paul Lindwall the presiding commissioner of this inquiry and I have got Stephen King with me, my fellow commissioner, and we would like to obviously acknowledge the traditional custodians, the Gadigal people.

The inquiry started with a reference from the Australian Government in June 2018. The purpose of the inquiry is to investigate whether the economic regulation of airport services promotes the efficient operation of airports and related industries.

We released an issues paper in July 2018 and talked to a range of organisations and individuals with an interest in the economic regulation of airports. This has included representatives from the Australian State/Territory governments, airports, airlines, industry representative bodies, academics, researchers and individuals - that pretty much covers everyone on the planet I guess - with an interest in the issues throughout the inquiry. We held focus public hearings on competition in the market for jet fuel in Sydney and Melbourne in late November 2018.

Following the release of the draft report in February the Commission has called for further submissions and is undertaking consultations along with these public hearings. I think we have so far received 88 submissions prior to the draft report and 16, but they're coming in still, since the release of the draft report. We are grateful to all organisations and individuals who have taken the time to prepare submissions and appear at these hearings.

This is the second public hearing for this inquiry post release of the draft report. Following this hearing there will also be a hearing in Melbourne and then we will be working towards completing the final report having considered all the evidence presented at the hearings and submissions and informal discussions.

The final report will be submitted to the Australian Government in June, and participants and those who have registered their interest in the inquiry will be advised when the final report is released by the government, which may be up to 25 sitting days after the revision after its completion.

The purpose of these hearings is to provide an opportunity for interested parties to provide comments and feedback on the draft report and to facilitate public scrutiny of the Commission's work. We would like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason comments from the floor cannot be taken, but at the end of today's proceedings we will provide an opportunity for anyone who wishes to do so to make a brief presentation.

You are not required to take an oath, but are required under the Productivity Commission Act to be truthful in your remarks. Participants are welcome to comment on the issues raised in other submissions or by other participants at hearings. The transcripts will be made available on our website following the hearings. Submissions are available also on the website obviously.

For any media representatives, and I understand there may be one today attending, there are some general rules. Please see one of our staff, either Anna or Rebecca, who - there's a handout to explain those rules. To comply with the requirements of the Commonwealth Occupational Health & Safety legislation you are advised that in the unlikely event of an emergency requiring evacuation please listen for instructions over the PA and the meet up point is at the corner of Clarence and Market Streets here. So I think that's it for the introduction, so I would like to welcome our first participants today, they are Sydney Airport Corporation and for the record if you would give your name and position and perhaps make a brief introduction.

**MR CULBERT**: Thank you very much. My name is Geoff Culbert, I'm the CEO of Sydney Airport. I am joined today by Hugh Wehby who is the COO of Sydney Airport.

First of all thank you for the opportunity to appear today, we do appreciate it. This is my first experience with the Productivity Commission review into airports, and for the record I have found it to be extremely professional, open and fair. We have been given the opportunity to meet on numerous occasions, and the discussion and analysis has always been fact-based and evidence-based, and we thank you for that.

This has been an interesting experience for me. I am relatively new to the industry having joined about 12 months ago. I had previous experience in a range of industries, including financial services and energy. So the comparisons have been very interesting. What I see here is an industry that is working very efficiently. Everyone is doing well. Airports are doing well, airlines are doing well, and most importantly the end customer is benefitting.

The current system has allowed us to grow, but we are also incentivised to invest, to attract competition to the market and to improve customer service. Since privatisation we have invested over $4.7b and grown the number of airlines flying into Sydney Airport from 37 to 47, thus increasing competition and providing more choice for consumers. At the same time our customer satisfaction scores have continued to improve and now stand at all-time highs.

In addition airlines are doing well. Qantas's most recent results demonstrate this. They are posting record profits. We don't begrudge this. In fact we are happy for their success as it contributes to the overall success of the aviation sector. A healthy vibrant aviation sector is essential to deliver improved outcomes for passengers and to grow the economy, but most importantly as I said before the current system is working in the interests of passengers. Customer satisfaction has never been higher and international prices have never been lower. By way of an example in 1994 an economy airfare from Sydney to Singapore would have cost you about $2,100 in today's terms. That was equivalent to around two and a half weeks of the average income at that time. Today in 2019 a ticket from Sydney to Singapore will cost you about $350 on a low cost carrier, or $850 full fare, which is less than a week's average income.

So when Australians sit down to plan the next family holiday they're seeing more choice and they're seeing more value than ever before. So airports are profitable, airlines are profitable, and passengers are enjoying more choice, lower prices and better quality of service. It does beg the question what's wrong with the current system. The short answer is nothing. The light-handed regulatory regime is working.

We agree with the Commission's conclusion that the current regulatory regime is fit for purpose. The market is working efficiently and everyone is benefitting. There is nothing with the current regime that is broken that needs to be fixed. We also agree with the Commission's conclusion that commercial negotiations between airports and airlines give little cause for concern. The role of regulation is to protect consumers and to guard against market failures. The role of regulation is not to readjust the bargaining position of sophisticated commercial entities that are capable of looking after themselves.

Perhaps most importantly we were pleased with the conclusion that there is no evidence that we as an airport are exercising market power. We take our obligations seriously. We're constantly seeking to improve the airport for the benefit of both airlines and passengers. We are currently investing over $1m a day to improve facilities, balancing the needs of all 47 airlines who fly into Sydney Airport and numerous other stakeholders.

We constantly take feedback from customers and we use that feedback to invest in areas that matter the most to them. This has been reflected in our customer satisfaction scores and through the ACCC monitoring reports where we were rated good for the first time in a decade. Having said that we recognise that we can improve and will continue to do that. We will continue to do it because it's the right thing to do, but it is worth noting that the current regulatory regime provides a real and effective deterrent to any inappropriate exercise of market power. The potential threat of price notification and declaration is tangible and credible. The current regime's effectiveness should not be underestimated.

Finally I will say the PC made a number of recommendations in the report and we largely agree with them. This is reflected in our most recent submission. This review has been a valuable exercise in assessing where the industry stands, our own performance as Australia's largest airport, and as a means to identify areas where we can all improve. The review makes the industry better, and that's good for customers, and with that Hugh and I are happy to take any questions you may have.

**COMMISSIONER LINDWALL**: Thank you very much, Geoff. I might start with - could we talk about the negotiate-arbitrate, which is a proposal that airlines and some other participants have made, and they would point to the fact that the (indistinct) in the case of the east coast gas pipelines that have been around (indistinct) negotiate-arbitrate for about 18 months and then have been (indistinct) arbitration since then, and that therefore it wouldn't make any difference to negotiation, but it might help balance what they perceive as an imbalance in bargaining power. Would you like to comment on whether the relevance of the east coast gas market and the fact that perhaps you wouldn't (indistinct) with arbitration terribly much. At least we would have such (indistinct) for airports.

**MR CULBERT**: Yes, I think it's a good question. The aviation industry is very different from the gas industry, and we believe that the concept of negotiate-arbitrate will not be effective in relation to the aviation industry, and we say that for two reasons; number 1, we think it's open to gaming and it removes the incentive to negotiate, and by that I mean there is an incentive for parties just to put a low ball offer in, claim the negotiations have broken down and then take your chances with the arbitrator in the negotiation-arbitration process, but perhaps more importantly a bigger concern detailed in our submissions is the fact that we believe that negotiate-arbitrate will lead to outcomes very difficult for us to reconcile.

So we currently, as I said before, have 47 different airlines that operate out of Sydney Airport. If we were to enter into negotiate-arbitrate arrangements we would potentially end up with 47 different outcomes which are very difficult to then reconcile. We have common use infrastructure, we have common use assets, and each airline at the airport is looking for a preferred position. So if we were to end up with outcomes from an arbitration process that we then have to try and reconcile amongst those 47 airlines, we think that would be extremely difficult to manage and really not realistic. So we believe that negotiate-arbitrate process has its flaws and wouldn't work.

**COMMISSIONER LINDWALL**: One way of the negotiate-arbitrate working I would perceive will be for an airport such as Sydney and a single airline working on to an arbitrator. Another way would be the airport having all 47 on the one arbitration which (indistinct) single merits one way or the other.

**MR CULBERT**: I think it would be difficult for all 47 airlines to enter into a single agreement. What we see is a very complex environment where you have very strong incumbent airlines, remembering of course that between Qantas and Virgin they currently occupy around three-quarters of all the slots at Sydney Airport. So they have a very strong and entrenched position, and we see competition between the airlines in relation to that aspect. So I think it would be very difficult to get all 47 airlines to agree to a negotiate-arbitrate position holistically, but that's something I think you have to ask the individual airlines as to whether or not they are prepared to do that.

**COMMISSIONER LINDWALL**: And in terms of the investment strategy at Sydney Airport if you did have negotiate-arbitrate what would you expect would be the impact on your investment plans going forward and what do you think an arbitrator would end up (indistinct words)?

**MR CULBERT**: It's a really important point, because we can only invest to grow the airport, to grow capacity, to bring more airlines in, to provide more choice for the end customers if we have got certainty of investment, and the only way we get certainty of investment is if we have agreement with the airlines. So if we're caught up in a negotiate-arbitrate process that is being gamed, that is resulting in outcomes that are very difficult for us to reconcile, it does actually operate as an inhibitor to our ability to invest in the airport, and this is a really important point.

The other point I would make is throughout our history we have never failed to reach an agreement with the airlines. These are robust commercial discussions between two very sophisticated commercial entities who know how to look after themselves, and there's a lot that's actually discussed in these arrangements. Arrangements are complex, they're detailed, there are multiple trade-offs, and ultimately we get to commercial outcomes. It would be very difficult for an arbitrator who doesn't understand the aviation industry to really appreciate all of those complexities and come up with an outcome that would be suitable for both parties. My view is that it would delay investment, it would delay our ability to grow capacity at the airport, which would be harmful for the end consumer because ultimately that reduces competition and reduces quality of service.

**COMMISSIONER LINDWALL**: So to be clear negotiate-arbitrate from your perspective will almost immeasurably lead to less investment or a slower path of investment (indistinct) status quo and couldn't lead to (indistinct).

**MR CULBERT**: That is our concern, yes.

**COMMISSIONER KING**: Just to clarify one thing. You said you never fail to reach agreement. Can I just confirm you've got active agreements with all 47 airlines at the moment?

**MR CULBERT**: Yes, we do.

**MR WEHBY**: The only exception is that due to the regulated nature of regionals, it’s not possible to have agreements with regional operators - outside of the regional pricing we have commercial agreements for airlines.

**MR CULBERT**: And individual - - -

**COMMISSIONER KING**: When was the most recent (indistinct) agreement concluded?

**MR WEHBY**: We did an agreement with the domestic Tiger business at the end of 2017. We did all our international agreements, Qantas Terminal 3 Agreement and Qantas Domestic Runway Agreement in mid 2015.

**COMMISSIONER KING**: Actually just on the background on those, the negotiation process, did it take a long time, a short time? Were you looking at months for these agreements overall, years, what sort of background can we have?

**MR WEHBY**: Sure. I will provide it separately because it's quite a different story for the International and Qantas Agreement. The Qantas agreement was a voluntary agreement on taking control of T3, in 2015. It was a bring forward of the lease expiring over the terminal from June 2019 to June 2015. So it wasn't an agreement we had to do, and therefore it took some years actually to get to a position where everyone was comfortable with the outcome. It was still four years ahead of its schedule and drove a half a billion dollar cheque for Qantas and ongoing aeronautical charges for Sydney Airport, but actually because there was no expiring agreement, I think we spent a lot of time getting that exactly right for all parties and bringing in the International and Domestic Runway Agreement into a pool of compromises. So that was it.

On the international side it was probably around a year and it was primarily negotiated with BARA, the representative for most of our international airlines. They are not a counterparty to the agreements, we then go and contract with each of the airlines, but that would have been close to a year where we were talking everything from a building block model through to an investment profile, a charges profile, and ultimately even beyond the agreement the setting up of a KPI framework which we are measured against. So closer to a year in total.

**MR CULBERT**: The thing I've noticed as well as I have come into this role is it's not as though you talk three months out from the expiry of the agreement and then start negotiating. We have daily interactions with all of the airlines where we are constantly talking about what's going on in the precincts, the capacity that we need to build to create more opportunity for airlines to fly into the airport, to improve customer service, and so these conversations are ongoing and it tends to coalesce around an agreement to be closer to the expiry of an existing agreement. So the conversations are very detailed, complex, and are happening the whole time.

**COMMISSIONER KING**: Let's take some of those negotiations. Presumably some of them hit road blocks at various stages. Surely at some of those stages access to an arbiter who would have been able to deal with some of those specific road blocks would that have sped up the negotiation process?

**MR WEHBY**: We actually did bring a party in between us on the terminal 3 negotiations. We outlined that in our first submission. They provided a recommendation for the deal which was rejected, and the terms on which they proposed it were rejected by both parties. So it was an unsuccessful use of a, I think more like a conciliator rather than arbitrator to be perfectly fair, but trying to seek that middle ground. So we have used voluntary third parties from time to time. They have not been successful, and it was really for a voluntary single airline agreement. It really doesn't reflect the ordinary course of business.

We have done two terminal transactions; terminal 2 from the Ansett administrator in 2002, and terminal 3 from Qantas in 2015. We now own all three of the terminals. So it's quite a unique set of circumstances, and it didn't actually end up capturing the detail that we needed to bring in the international charges, the domestic runway charges. The reason we got an agreement in my opinion is it was a multifaceted agreement where we could have compromises on both sides.

**COMMISSIONER KING**: You mentioned the airlines gaming negotiator or a negotiate-arbitrate system. We have heard that from a number of parties, but we haven't actually heard any details about what that means. I mean what is meant by gaming the system; can you give us any examples of what you think they would be doing?

**MR** **CULBERT**: Our concern is that - is that you would be incentivised just to put a low ball offer in, on the table, and then maintain the negotiations have broken down, and then you'd put it to the arbitrator. So, just to use some examples, if you were say negotiating an airline agreement, and an airline might come in and say, well, "We'll pay 50 per cent of the current charges. That's our offer," and then you go into negotiations, it's very difficult to even perceive that kind of discount, and so the negotiations immediately break down, you go to the arbitrator, the arbitrator comes in, if they were picking the midpoint, say 25 per cent, the airlines are still substantially better off than they otherwise would have been if you started from the base principle that you negotiate from the previous price. That is our concern.

**MR** **WEHBY**: I would also add, on the investment side, each airline has actually very different requirements. We're going through a process of consultation now, when you get to the international terminal. For the same project, we're getting criticised for gold plating our terminal, and for under investing in our terminal. So, I think you've got to be very careful about the background to each area. What capacity there is for what products, and reconciling between regional, domestic, international, or between low cost and full service international airlines is incredibly complex.

We actually rely heavily on groups like BARA to help us navigate that process, and to develop a set of compromises even on the investment plan, let alone the pricing. So there is potential for gaming on the investment plan as well.

**COMMISSIONER** **KING**: Can I just - can I just follow that up. Concerns that you've got about gaming, and arbitrator or a negotiate arbitrate solution, which would be a regulatory (indistinct), the arbitrator would presumably have a set of guidelines, and have his guidelines, for example, in (indistinct). Could those guidelines, in your opinion, deal with the sort of gaming that you've raised? Would you - would you be able to set up an arbitration system that had appropriate guidelines to be able to get to a mutually beneficial outcome for the airport and the airline?

**MR** **WEHBY**: I think when you're entering 47 agreements at different times, noting that all our expiries are different, it would be incredibly complex. I think you could achieve that on a single airline agreement. I think balancing the needs of 47 different airlines, with different products, different services, different passengers, and different growth profiles – it would be almost impossible to even structure around.

**MR** **CULBERT**: And that's our bigger point. I don't want to overstate the gaming point. It is a point. But our bigger point is the inability, or difficulty, to reconcile outcomes, amongst the 47 airlines all looking for different outcomes at the airport. And as Hugh said, we have arguments from airlines that we're gold plating, on the same assets that our other airlines are arguing that we're under-investing. So the difficulty of reconciling outcomes between all those airlines is the bigger point. It's a bigger point than the gaming point.

So even if you had guidelines in place to try to manage the - the gaming issue, you're still asking an arbitrator, who's not an expert in operating airports, doesn't understand the history and the complexity of these arrangements, and doesn't understand the complexity of the common use infrastructure, the common use assets, to try to come up with outcomes that can be reconciled amongst all 47 airlines, and those arbitrations would be taking place at different times in the calendar. It makes life extremely difficult and complex.

**COMMISSIONER** **LINDWALL**: When we - unless you have any (indistinct) negotiate-arbitrates, I mean I just want a quick question before I move on to some other topic, it seems like you think there's a significant advantage of having individualised agreements with different airports as - airlines, as opposed to, say, New Zealand, where it's a common agreement for all the airlines?

**MR** **WEHBY**: There's certainly some advantage for both parties. I think sometimes there's specific product requirements that you could never provide, or contract, with all airlines. Sometimes, people are looking for bespoke legal changes, that might not work in the jurisdiction. More importantly, though, people are generally looking for different products. Whether that be because they're serving different markets like regional, domestic or international or whether they actually want different standards of product within it, a boiler plate agreement certainly is facilitated by BARA, including things like KPIs and that's an incredibly useful document.

But then it is our requirement to go and contract individually to make sure the individual requirements are overlayed, and we think there's value to that, for both the airport and also the airlines.

**COMMISSIONER** **LINDWALL**: Can I mention, while we're on that topic then, about negotiating, there have been some thoughts that we should provide some guidelines, either the government should or the Productivity Commission, or the ACCC or some other body, provide guidelines or whether (indistinct) of BARA already does, obviously, (indistinct) and structure of contracts, do you see advantages or disadvantages of that?

**MR** **CULBERT**: In our second submission, we actually put that forward as - as a potential proposal. We said some negotiating principles may help. And we thought that would be useful in two respects: (1), from the airports perspective, it could create a set of guidelines that would create a standard around which airports operate, when it comes to their discussions with the airlines. And what we were talking about there in our submission was the willingness to decide about SLAs, and KPIs, commitments around customer service levels, and infrastructure development.

That's something that we've done at Sydney Airport in our most recent agreements, and we feel like that's actually been a really positive step forward. We are now committed, there are objective measurements in place, and they really drive our behaviours. And that was consistently applied across airports in Australia, we think that would be beneficial. But we also thought negotiating principles would operate effectively in relation to the way that the airlines approach negotiation, and we were arguing, or asking, that they come to the negotiating table with a fair and reasonable position, because we do see evidence of things like short paying, non-paying, infrastructure blocking that actually gets in the way of constructive negotiations.

And so, the negotiation principles are not just to tie airports to a set of outcomes, but also to ensure that the airlines themselves come to the negotiations with a fair and reasonable position.

**COMMISSIONER** **LINDWALL**: The risk, I guess, and I do see some (indistinct) in the principles (indistinct), spoken there as parties, but is there not a risk that you could end up with the (indistinct) if the government decided you were (indistinct) principles and so on?

**MR** **CULBERT**: There's no doubt about that. And it kind of goes back to my original comment that we seem to be grasping for a new regime, when the existing regime is working really well. And you only have to look at the industry as a whole to see that, you've got airports are doing well, and we're incentivised to invest, and we are investing, customer service levels are going up, competition's increasing, we're attracting more competition in the market from an international perspective. Airlines are doing well. Qantas is posting record profits.

But most importantly, the end customer is doing well. They've got more choice. They're enjoying the better quality of service. The prices are lower than they've ever been before, on the international side. So, we're grasping for a view as to what needs to change, and the answer, as I said in my opening, is actually nothing. This is a really efficient market, with a light-handed regulation that's doing its job. So, any changes to the system are unnecessary and threaten that. There's no doubt that the negotiation processes are robust, and challenging, and time-consuming and drawn out.

That's the nature of any complex, difficult, commercial negotiation, between two sophisticated counter parties who are capable of looking after themselves, and who have a very clear view of what they're trying to seek out of the negotiation. But we always reach agreement. We've always been able to reach agreement, and the end beneficiary of that has been the customer.

**COMMISSIONER** **LINDWALL**: Now, can we move on to another - - -

**COMMISSIONER** **KING**: Sorry, before we move on. Just to clarify, because you did support the -the AAA and BARA proposal on the overarching principles, I still don’t understand the argument as to why it needs government's involvement. So, everything that you've talked about having (indistinct) to discuss issues, why is there a view that government, some part of government, needs to be sitting at that table?

**MR CULBERT:** I'm not sure we were suggesting that in our report - I'll have to take that on notice, as to whether or not we were actually, in our submission, suggesting that the government would have to be involved in that process. I think where we were going on this is that as you come to the ACCC monitoring report, every year, and as you come to the PC every five years, you can assess whether or not the airlines and the airports have been behaving in a consistent fashion with the negotiation principles, as a way of determining when the parties are acting appropriately.

Asking a government agency to come in and assess performance against these negotiating principles on a deal by deal basis, I think would be challenging for the reasons that you're pointing out.

**COMMISSIONER LINDWALL:** Now, could we move to a different direction, (indistinct). When we looked at exercising market power, and analysed the benchmarks at major airports of Australia against those and overseas, comparatively, we found that we had a bit of a concern about

potentially, the international services at Sydney Airport seeming to be somewhat high. Could you explain perhaps is that true, and if so why they might be higher than the international comparators?

**MR CULBERT:** Yes. So our international charges were set by the ACCC when we were privatised back in the early 2000s, and as we pointed out in our most recent submission, our prices were higher, substantially higher, than all of the other capital city airports. The ACCC set those prices substantially higher than all the other capital city airports at that time which is a consequence of a number of factors. It was the cost of land, we’re in Sydney where land prices are high, we’re 8 kilometres from the CBD, we have three runways, two terminals separated by the runways, a high percentage of international long haul flights and then significant investment in the airport in the lead‑up to the Sydney Olympics, so the prices were set at that level for that reason.

If you look at how the prices have increased since then you see that they actually have increased at a very moderate level, they’ve increased at less than one per cent per annum in real terms over the past 17 years. The ACCC, in their own report, stated that the revenue for a passenger at Sydney Airport has increased at the lowest level of all of the monitored airports over the past decade. So the international charges are a product of the initial setting by the ACCC and we don’t believe there’s been any evidence of exercise of market power since then that’s reflected in the moderate increase in prices since then.

**COMMISSIONER LINDWALL:** In the way the ACCC assesses Sydney Airport’s asset base for the long‑term report affects reporting good terms on aeronautical services, or assets I guess, what are the (indistinct words)?

**MR WEHBY:** The magnitude grows over time and it’s reasonably complex. We have an indexed asset base with a real vanilla WACC at privatisation which was the opposite of all the other major privatised airports. We estimate that the ACCC overstates our returns by between one‑and‑a‑half to two per cent relative to the other airports today. It’s very hard to determine that without the background detail for the calculation the ACCC does, that’s our estimate, we’ve provided some follow‑up data to the PC to support that but we also note that it will be exacerbated over time.

**COMMISSIONER LINDWALL:** So, what should be done about that if you think that’s wrong?

**MR WEHBY:** We think we should be measured relative to the way we were privatised and relative to the way the regulation applied when the ACCC initially set charges, which is how we’ve continued to operate, as Geoff said.

**COMMISSIONER LINDWALL:** Now, obviously Sydney is a unique asset, Sydney Airport is a unique asset in terms of its location as you were saying, with the land values and so on, the returns can be also affected by congestion and regulations which make it difficult to expand the general capacity (indistinct), how much do you think that has an effect on price and cost?

**MR WEHBY:** I think when you look at the InterVISTAS report (that’s part of the AAA submission), it looked at the average asset base per passenger and Sydney is, by global standards, at the top. There’s really two reasons for that in my opinion. One is that we sit on reclaimed land in a very constrained environment close to the city, the second is we’ve had to build to a super peak, we have a very busy period from 7 till 11 each morning and a reasonably modest busyness in the international terminal in the afternoon.

You actually, generally, in infrastructure, have to develop close to your peak infrastructure and it might not be utilised as effectively throughout the day. That’s a product of geographic location and our own choice but, practically, it has resulted in a higher asset base, so the peak and the location and the congestion certainly drive higher pricing. Over time we have managed to grow the off‑peak, we have managed to stretch the peak and that has ameliorated those impacts somewhat. But we are still, at the end of the day, a very peaky airport with a 7 to 11 period, particularly in the international terminal, that drives a huge amount of investment.

**COMMISSIONER LINDWALL:** How do you expect the effect of Sydney Airport from the opening of Western Sydney Airport (indistinct)?

**MR CULBERT:** We think it’s definitely going to provide competition. If you look at our Master Plan that we submitted last year which we’re in the process of now finalising, we estimated that in 2039 we would have 66 million passengers passing through Sydney Airport. In the master plan 2034, the previous master plan, we estimated that that would be 74 million passengers, and the material difference going from 74 to 66 is the introduction of WSA. For the first time in our master plan we factored in WSA being an operating airport.

**COMMISSIONER LINDWALL:** Now, could we move on to some of the movement capping issues, in particular how often do you think aircraft are delayed due to the cap, what is the length or extent of the delays (indistinct words)?

**MR WEHBY:** Sure. I guess without being specific, because I’d have to take that on notice, it’s very regular, particular in cases of disruption for either weather events or east coast general airport airspace issues, so there are generally daily delays in relation to the operation of the cap. One of the issues there is we are measured on both the scheduled movement cap and an actual movement cap, in particular the use of that actual movement cap does tend to create ongoing issues.

That primarily, again, occurs at the morning peak and the evening peak, but we have shown in our most recent submission, I don’t think that’s published yet, that the time to recovery can actually stretch beyond the day of operation, even from morning disruption. So, flexibility in the operation of those operating restrictions, without any extra aircraft, would actually allow recovery and minimise the economic impact, make the asset more efficient, make the east coast airspace more efficient in general.

**MR CULBERT:** Our biggest challenge is the lack of flexibility. We’re not asking or arguing for a change to the curfew, we’re not asking for an increase in the overall envelope in respect of flights, what we are saying is that a lack of flexibility is providing us with real operational challenges. Recognising that these regulations were set in the 1990s when we were handling 21 million passengers a year and we’re now handling 44 million passengers, so the whole nature of the airport has changed and the lack of flexibility is what is really providing the change.

So we asked Airbiz to do some analysis, which is actually in our latest submission. Their analysis concluded that a three hour disruption starting at 3 pm in the afternoon, based on the current operating restrictions, doesn’t get cleared until 11 am the next day. If we were to even measure the movements on a daily basis then we would be able to clear that disruption before curfew, before 11 pm. So going over into the next day creates 90,000 hours of passenger delays and gives rise to 8000 overnight stays for people who are trying to get home that night, so that’s a sense of the impact in relation to flexibility.

**COMMISSIONER LINDWALL:**  Now, I should say that PC wasn’t able to and on no occasion have we ever said that the curfew was to change, nor have we proposed any changes to the removal of cap with minus any possible options for that to be spread out or changed in some way that might be actually levelled. If you were to change the movements in peak periods to other parts of the airport to off‑peak periods within that, or shifted somehow, what effect would that have on other operations of the airport such as baggage handling, car parking, et cetera?

**MR WEHBY:**  If we were to take movements from the peak to the off‑peak it would alleviate some of the congestion issues we see, particularly probably around the roads, somewhat in the check‑in hall. Our biggest criticisms currently from BARA relate to baggage and to bussing, so it would potentially reduce the bussing and maybe reduce the number of gates you would need to deliver. In terms of baggage, it would hopefully make our baggage system more efficient, it is at peak loads at the moment and we are actually looking at developing a new bag room to accommodate those loads. So, once again, it may reduce the need for that investment or, at the very least, improve the operational performance of our current baggage system.

**COMMISSIONER LINDWALL:** Now, if we look at the other way where there was some flexibility and you increased it in some of the peak hours say, what’s the maximum number of movements that you could handle given the current infrastructure do you think?

**MR WEHBY:** Current infrastructure would need to be expanded. We don’t, at the behest of airlines and from economic practicality, we don’t build beyond the peak. So we would need to build gates, we would need to be build aircraft stands for parking areas and we would need to extend the baggage system probably more aggressively. We could practically accommodate a number, more than 80, on the airfield in terms of air space, air services estimates with the current mix of aircraft that’s probably closer to 90 an hour but it does depend on the mix of aircraft as well, and that may change over time, but we would absolutely need to invest immediately to accommodate the aircraft. And it’s worth noting that when slots are allocated, they’re not just allocated on whether a movement is available according to the operating restrictions, they’re allocated on whether the infrastructure is available. So those slots could not be allocated until we develop the infrastructure that was required to accommodate those services.

**COMMISSIONER KING:** There are a number of alternatives suggested in regards to allowing more flexibility in the movement cap. Has Sydney Airport done any work on which of those would be the most appropriate (indistinct) in the short term where investment in other infrastructure would be in issue? And also, does Sydney Airport look to any of the effects on the noise that may be generated to the local residents from (indistinct) those movements?

**MR CULBERT:** The answer is – is yes. When we’ve looked at this, we’ve tried to balance the operational needs of the airport with the needs of the local community and that’s why, in our submissions, you’ll see that we’re not –arguing in favour of a change to the curfew. We’re not suggesting a change to the overall envelope. We’re just suggesting that more flexibility is required because of the fact that under the current regime, we’re limited to 80 flights an hour and it’s measured on a rolling hour basis every 15 minutes. So 20 flights every 15 minutes. It makes it really challenging to try to catch up in the event of disruption.

So if you look at global benchmarks, Heathrow Airport also have an envelope that they work against. But they’re measured on an annual basis. So they have around about 500,000 movements a year and they’re measured on an annual basis. They get to the end of the year. If they’ve exceeded that envelope, then their envelope next year goes down by the amount that they exceeded times two. So if they go down by 20, then they have 40 less movements in the following year.

Obviously any period of time that provides for the greatest amount of flexibility would be beneficial. Heathrow are a yearly measurement, a monthly measurement, a weekly measurement, a daily measurement. Anything would be helpful for us to be able to manage the restrictions that we have and the inflexibility that prevents us from recovering from disruptions. Anything less than a day, we think, would be less beneficial, particularly as you get towards the end of the day.

If you have a storm occurring at 8, 9 o’clock at night, naturally, you’re going to go into the next day. And therefore, greater flexibility is beneficial. And the next morning, you start with the morning peak, where we’re pretty full and it’s hard to recover until you’re getting to around about 11 am the next day.

**COMMISSIONER KING:** Sorry, because I’m aware of time, but just briefly, it has been put to us in some of our discussions with groups representing residents that increasing the flexibility even on, say, an 80 per hour over a day type of approach, so that would simply mean that it would be gamed to use a word you’ve used earlier on in this discussion. It would end up with more airlines and more flights being put in the peak periods, because they’re effectively the most valuable, so yes, the total number of flights may not change, but you start getting more concentrated noise and more loss of amenity for local residents in the peak periods which also of course overlap with times when the residents tend to be home.

So the idea there is that it would be an undesirable thing. So what’s your comment to that?

**MR WEHBY:** I mean, one of the issues that we would have to look at with any change is the slot allocation procedures as well. Whether you allow airlines that are not operating the peak to move into the peak or whether they’re preserved for new airlines, for instance. We saw precedent in something like that when Ansett collapsed. Whether slots were actually preserved for new carriers to come in and utilise those. So you didn’t see a mass shift of an incumbent airline into an existing peak slot for instance.

So actually, any changes to flexibility around the operating restrictions, must be accompanied with a review of how the slots are the allocated. And that could lead to the addressing of some of those issues that the communities rightly bring out. We understand those issues. We’re concerned about those issues as well. And we’d need to look at the slot allocation procedures, along with the operating restrictions to get a holistic view of noise.

**COMMISSIONER LINDWALL:**  Now, we’ve got not much time, so I’ll just ask about landside access. Do you use take it or leave it contracts and how do you set the price for landside access?

**MR CULBERT:** So the short answer is no we don’t make take it or leave it offers. The landside access that we have at the airport covers a range of different modes of transport but firstly, 37 per cent of all trips that are made to the airport are made in private vehicles where the consumer doesn’t pay a cent, so we have free drop off and pick up, so 37 per cent of trips are completely free on drop off and pick up.

Train is now at 24 per cent of total trips to the airport. Sydney Airport has no economic interest in the train that’s owned and run by a private operator and run together with the government. And then you have two other categories. You have rental cars and you have what we call ground transport operators. The rental car agreements are negotiated between once again, sophisticated commercial counterparties. We’re talking the likes of Avis and Hertz, who are global companies. They operate in airports around the world. And we enter into negotiated agreements with them.

We have agreements at the moment which average seven year terms. And those agreements have agreed price escalations in them that are agreed upfront. We have consultation with the rental car companies. We have a bi-annual industry association consultation process but we also have daily and weekly bilaterals with our relationship managers on the airport.

So no take it or leave it offers being made there at all. In relation to the ground transport, we have two categories. We have those who require access agreements and those who don’t. So access agreements are required by the likes of buses, limousines and shuttles. We have over 3000 of those. And so, the way it works with that category is that if someone wants to get access to the airport, then they’ll sign up to an access agreement. And that’s to ensure that they actually are a reputable operator, that they’ve got the right insurances in place. There’s a due diligence process that happens there. And then they’ll sign up to a schedule of fees which are published on our website and are available to everyone.

And the fees that they pay vary depending on which category you’re talking about. Limousines have, at their own request, a site very close to the front of the terminal and therefore, they’ll pay a higher access fee than say, cars that are further back from the terminal. And we also set those prices to motivate the parties to reduce congestion. So the longer you stay, the higher the charge is because we’re trying to get people through and reduce congestion around the airport.

I should say the biggest single complaint we have at the airport is road congestion. And so we’re very conscious of trying to manage that. We have quarterly industry association catch-ups with that category of ground transport operators. We have regular ad hoc meetings and those conversations are ongoing.

The second category of ground transport operators are taxis and rideshare where no access agreement is required. Taxis pay an access fee to get to the airport. Rideshare are able to use our priority pick up which is behind the taxi. So taxis have a preferred position over the rideshare, given their incumbency. And once again, we have regular industry association catch-ups with them and we have relationship managers at the airport who are available to speak to the likes of taxis and rideshare on a regular basis.

**COMMISSIONER LINDWALL:** Well, in the interests of time and I – we can talk about other things like jet fuel, car parking, yes, regional access and so on, so I think we’ll have to call it quits there. But one quick final question. Why do you use the building block technology in air service agreements?

**MR WEHBY:** Primarily because of precedent. The airlines generally like us to share a building block model to start their negotiations. What we don’t go and do is agree the elements of the building block as part of the pricing arrangements. So we generally share a financial model. It sets the basis for the negotiation from the airport side. The airlines get access to that and can use that as the basis for their discussions as well. So I’d say it’s a springboard, but we pretty much agree a price, a price path and an investment profile. Outside of that, there’s no agreement on the elements of the building block.

**COMMISSIONER LINDWALL:** Yes. Well, thank you, Gentlemen. Thank you (indistinct).

**MR WEHBY:** Thank you.

**COMMISSIONER LINDWALL:** We’ll go straight in now to Brisbane Airport. So I invite our Brisbane participants to appear. Then we’ll have one more participant and then we’ll have a little morning tea break. We do have another slot at 2 o'clock if anyone wants to use it, by the way. We may as well use it efficiently. So once again welcome and if you could state your names and positions and then you give us an introductory statement as you see fit.

**MR DE GRAAFF:** My name is Gert-Jan De Graaff. I'm the Brisbane Airport Corporation CEO and I'm joined by David Malek who's CFO of Brisbane Airport Corporation.

**COMMISSIONER LINDWALL:** Thank you. Yes. Do you want to give an introductory statement?

**MR DE GRAAFF:** Yes, please. I'd like to thank the Commission for the opportunity to appear at this hearing. These regular reviews by the Productivity Commission is an important process that recognises the significance of the Howard Government's decision to privatise Australia's major airports in the mid-90s. That privatisation has been a resounding success. Obviously that's our view and I daresay it's even the view of the majority of our customers, both airlines as well as the travelling public.

The evidence is clear that privatisation and the light-handed regulatory regime, has delivered to the Australian people and to the airlines significant benefits and a more stable aviation industry than is enjoyed in many other countries. The ultimate success of privatisation which was motivated by the government's desire to see our industry grow, our airports improve and the public benefit, can be seen in the fact that Australia's major airports are regularly ranked in the top 100 airports in the world, many of them in the top 50 and at least one or two in the top 20.

Brisbane Airport has been considered Australia's best in all manner of global rankings, and later this week at the annual world airports' awards in London, I hope to see us again crowned the best in the country and one of the best in the world. That Australia's airports achieve these rankings despite their relatively small size compared to the other international ports, and in the absence of government subsidy, which in some countries have seen investment, utterly unrelated to any need for a financial return, is a testament to the system as it stands today.

The system contains within it the necessary checks and balances, including these regular reviews by the PC to ensure that private ownership recognises its responsibilities to the consumer and to the nation, whilst also allowing the profitability to encourage and ensure investment in the growth that drives economic benefit across the country. In the years since 1987 when Brisbane Airport Corporation took control of Brisbane Airport, the number of travellers using the airport has grown 167 per cent to more than 23 million. The number of airlines accommodated has grown 20 per cent to 35.

The number of businesses on site has nearly quadrupled to 420, and the number of people employed on site has grown around 260 per cent to around 24,000, or one in every 100 jobs in Queensland, and importantly this growth has also facilitated the growth and profitability of our partners in the aviation industry, and in Australia's and the world's airlines.

Over the past three reviews by the PC of the economic regulations of Australia's airports, the analysis has been consistent and the conclusions have been consistent. This consistency has provided confidence to our investors, enabling them to sink more than three and a half billion in capital into Brisbane Airport in the last 21 years, and another 2.2 billion in the coming years. Without this level of confidence we would not be building our new runway, a piece of infrastructure of national importance.

We are grateful to the Commission for its fidelity to the original principles of its reviews and for the thoroughness of its analysis. We recognise, too, that whilst a draft report of this review is largely favourable to the positions we have taken in our submission, there are always areas for improvement. We have in our written supplementary submission provided additional information to the commission in response to a variety of information requests. I won't detail those in this statement, but we're happy to discuss this request further this morning.

Whilst the Commission has rightly concluded that Brisbane Airport Corporation has not misused any market power it holds, it has highlighted a couple of potential areas for attention, notably our international charges and our quality of service agreements with our airline pilots. I'm happy to address these now, though further details are also included in our supplementary submissions.

International charges. The quantum of the international charges at Brisbane Airport primarily reflect the significant investment in the expansion of the international terminal building itself in 2007 and 2008, and more recently in 2015 and 2018. It also reflects major investment in the associated aprons in the international terminal, and the runway system. The capacity investments we have made reflect the peaky-ness of the international demand at Brisbane Airport with most international services landing during the morning peak. Whilst it is certainly our desire and intention to encourage growth into the shoulder periods, the reality is that Brisbane is an O and D (origin and destination) airport and arrivals into Brisbane are overwhelmingly dictated by departure slots at origin airports, particularly in Asia and the Middle East.

In contrast, our domestic terminal has had relatively low investment over the same period as more than two-thirds of the building was, until the beginning of this year, subject to leases to Qantas Airlines and Virgin Australia, and of course domestic demand is more evenly spread across the day. Our published international charges for both the runway and the terminals are based on the building block models and reflect the forecast capital expenditure for the respective services.

The building block models which were shared with our airline customers as part of the negotiation process provide visibility of the proposed capital expenditure projects, operating costs and demand forecasts. It is important to note that the investment side was also reflected in the price path for the international terminal. These charges are remaining flat or falling in real terms over the next few years. As noted by the Commission, the level of charges in itself will not necessarily reflect abuse of market power and the level of the charges should be considered in the context of the investment cycle, service quality and the overall returns to BAC.

In summary. The international terminal has been subject to significant investment in the past 10 years. Service quality remains good and overall returns are moderate and the lowest of the monitored airports. Taking all these factors into consideration, it is clear that the level of charges for international passengers does not reflect the use of market power. Rather, it reflects the relative investment in the international terminal.

With regard to service quality, the Commission also flagged service quality at Brisbane Airport as being a potential indicator of the use of market power at BAC. We are unsure of the rationale behind this and note that it would appear to be at odds with the subsequent observations and comments in the draft report. Specifically the Commission notes that Brisbane Airport performs better on other indicators other than the high international charges discussed of, and then noted the consistently high service quality ratings at Brisbane Airport relative to other airports.

The presentation of service quality at Brisbane Airport as amber on the traffic light chart is also at odds with the subsequent statement that there is not a problem with service quality at monitored airports. As detailed in our earlier submission to the commission, Brisbane Airport has consistently ranked highly on the quality of aeronautical car parking and landside access services provided at the airport.

This is reflected in the monitoring reports published by the Australian Competition Consumer Commission as well as external rankings such as those produced by Skytrax and ACI. The quality of service at Brisbane Airport has been consistently good without being excessive and does not reflect a potential abuse of market power. Commissioners, we are more than happy to explore these questions through you now.

**COMMISSIONER LINDWALL:** Thank you very much. Could I just start, you've said there are 35 airlines. How many of the airlines do you have agreements with?

**MR MALEK:** Currently there are some airlines which are represented as non-signatories, so of the 35 airlines, there are 29 which are signatories, and of those, we currently have 28 airlines who have either signed commercial agreements, commercially agreed terms or are currently paying the new charges. There's one airline that we have not been able to agree commercial terms with.

**COMMISSIONER LINDWALL:** One still outstanding?

**MR MALEK**: Yes.

**COMMISSIONER LINDWALL:** Would you care to say which one?

**MR MALEK:** Qantas.

**COMMISSIONER LINDWALL:** Yes. Okay. Now, what was the most recently signed agreement apart from - which is the most recently signed agreement?

**MR MALEK:** So we currently have two agreements, one is a runway agreement which spans 11 years. The price was reset in 2017 and another price reset is coming in 2021, with expiry in 2023. The terminals agreement actually expired in December 2018, so that's the most recently agreed.

**COMMISSIONER LINDWALL:** All right. Now, you did touch on obviously international charges and quality of service, so I'll the latter first. You do rate very highly on quality of service from – as measured by passengers, but less so the airlines. We’ve been told by other participants that the Quality of Service Rebate Scheme covers a narrow range of issues and the airports that place commercial accountability because the rebates are factored into the higher prices to airlines.

How do you try to meet the demands and wants of the airlines and improve the service for airlines, in other words?

**MR DE GRAAFF:**  Well, to be really honest, I don’t recognise the comments made about quality of service for airlines, because we have continuous discussions with airlines about quality of service through our airline operators’ committee. I think for airlines as well as passengers, because we have before us a very good service, well, excellent service. So we were a little bit surprised about those comments made.

The fact of the matter is that we have a very peaky demand for the use of our facility, so in the morning peaks there is quite some activity, there’s a little bit of congestion, especially in the government-managed areas of the airport, and there we’re working together with the airlines to improve throughput and the quality of service.

**MR MALEK:**  I’ll also elaborate on that. As part of the most recent negotiations for the terminals agreements we’ve worked quite closely with BARA, who represents the international carriers, on adopting a service level agreement and KPI framework. That again will draw to the fore - a baseline of certain service levels, that airlines and airports can work collaboratively together on to ensure and agree where capacity is required, but also keep to account not only the airport operator but also the airlines. So that certain behaviours are enforced - to ensure check-in desks are clean, on time performance is maintained, and if the – and of course, if one carrier is late, the challenge of course is then getting that airline off the gate to provide access for the incoming one as well.

**COMMISSIONER LINDWALL:**  So in other words, the agreements have some incentives, or this is your desire, that you perform to a certain standards and that the standard is agreed with the airlines and measured against that standard.

**MR MALEK:** That's correct. At this stage there are no monetary incentives, or penalties, so to speak. We have a 12 to 18 month transition period to determine whether or not it is working. Currently at this stage airline operators have not raised major concerns, so therefore we’d like to see a transitory period of testing this KPI and SLA framework and therefore agreed to revisit penalties at a later date.

**COMMISSIONER LINDWALL:** And therefore quality servicing. How about we move on to what we started with in Sydney Airport about negotiate arbitrate. Could you – I won’t go through the same type of questions, but it’s more about what would you see the impact of it, how would you see it operating, what would it do to your investment strategies, do you agree with what Sydney said about it leading to gaming and, if so, how would that be manifested, that type of thing?

**MR DE GRAAFF:** Yes, I think we’re very much looking at this topic in the same way as Sydney Airport Corporation is doing. We don’t see a need for arbitration and especially negotiate – arbitrate regulation, because we’ve always been able to reach agreement with the airlines. The 21 years of history by the organisation proves that in the end airlines and the airports are able to work it out and come up with an agreement that works well for all parties involved.

**COMMISSIONER LINDWALL:**  Is that one that you mentioned before?

**MR DE GRAAFF:** Well, that’s still a work in progress. These negotiations, and there was an earlier question from yourself, these negotiations are very complex and very difficult. To give two examples of that, in this particular contract we’re talking about right now, one of the most complicated pieces is that our domestic terminal lease has expired at the end of last year, so we are taking back those parts of the domestic terminal that were managed before by Qantas and Virgin, and there is quite a bit of work to do to get them up to the standard we require, as we call the Brisbane Airport standard.

While we’re negotiating with those airlines who’s going to pay for what and the break in the trend we had over the years. So we need to understand the airport capacity, the quality of service, but also the issue of the building and the quality of the facilities, to be able to decide what the appropriate level of investment is. So that’s what we’re working for, and as David already indicated, with one of those airlines, we leased agreement, and with the other airline discussions are still happening, but it requires a little bit more time.

**COMMISSIONER LINDWALL:**  Anyway, go back to negotiate arbitrate then, yes.

**MR DE GRAAFF:**  Yes, so I think we’ve always been able to reach agreements and I agree with Sydney Airport Corporation that there’s currently an incentive to reach agreement, that won’t be the case with arbitration in place. And there’s risk for gaming, as I agree with Sydney Airport Corporation. And once more, I think especially the knowledge and expertise required to make a decision is incredibly important because you need to understand the history, complexity and in-depth knowledge of the capacity and operation of the airport to do so.

So that requires time and I’m saying the current negotiations take a bit of time as well, but if it’s third parties going to – to be part of that, it will even extend that timing. So we believe that the current system is working and will resume should it be necessary to again reach agreement with airlines.

**COMMISSIONER LINDWALL:**  So do you agree with Sydney that there would be likely to be gaming of the - - -

**MR DE GRAAFF:**  Well, there could potentially be gaming involved in having an arbiter, but I’m not saying that it’s going to happen. But there’s potentially that risk.

**COMMISSIONER LINDWALL:**  But what about the other side which says that there’s been interest for the east coast gas market and after 18 months there hasn’t been any arbitration, it hasn’t gone to arbitration, that in the end they’ve all settled, the agreements have been made, and each party have been satisfied.

**MR MALEK:** Commissioner, that’s a good question, but our view is similar to the thoughts shared with Sydney Airport. The challenge is these are very different markets. I mean, for us the complexity of having 29 carriers in agreement, some of them who are low cost carriers, some are international, some have a much larger presence at the airport. So therefore the complexity of that is quite challenging.

But also in terms of the gaming element, I think for us it’s – given the different needs of the airlines, whilst they are common user facilities, there are some things that airports do for specific airlines and commercial agreements are reached with them specific for certain developments regarding gates, facilities, operating procedures and the like. Having overlaying that an arbitration and negotiation framework potentially defuses the negotiation tension, whilst it is over a protracted period, by having something at the end of it potentially leapfrogs that process, and if the arbitrator makes a call for a particular airline, that potentially has a flow-on impact to other airlines who of course have different needs.

**COMMISSIONER LINDWALL:** How do you visualise or consider the National Access Regime of Part IIIA as a restraint or a threat or a - - -

**MR MALEK:** Well, we believe it’s a very credible threat, that framework has been in place really since inception, since privatisation of airports, so we see it as a very credible threat. As is the price monitoring regime looking at whether or not airports are making excessive profits.

**COMMISSIONER LINDWALL:**  But isn’t the A4ANZ proposal simply just skipping the declaration phase of the Part IIIA? Is there anything else that’s different from what you – how it panned over the Part IIIA do you think?

**MR MALEK:** We’ll take it on notice, but I know there’s a fair amount of substantial input from the AAA industry body of the airports and the submission.

**COMMISSIONER LINDWALL:** No, that’s all right. Shall we move on to the international?

**COMMISSIONER KING:** Sorry. Yes, just before we do that, Sydney Airport mentioned that they had on occasion used outside conciliation or arbitration during contract negotiations. Has Brisbane Airport, to your knowledge, ever used similar conciliation or arbitration during your contract discussions?

**MR MALEK:** So I can speak to this. Thus far and as agreed on our lines, we’ve actually reached the negotiated outcomes with all of our agreements, however, in that price reset in 2017 runway agreement, we actually have a dispute resolution clause, which states there is a list of key experts or specialists for both parties to exchange and agree. Now, we actually went through the process and we actually found commercial resolution prior to actually engaging an arbiter, or a mediator, to go through the prescribed process. So yes, we have sought extra assistance through a process.

**COMMISSIONER KING:** Because it does lead very much - - -

**COMMISSIONER LINDWALL:** I just want to very briefly then look at the AAA BARA approach of having boilerplate clauses and having Government in there. Again, can I put to you the same questions I put to Sydney Airport, I can see potential benefits of that approach, except I don’t understand why the AAA and the BARA approach seems to feel that they need to have a Government department or some other Government representation when establishing those boilerplate agreements.

Are you able to enlighten me on that?

**MR MALEK:** Yes. As far as the most recent negotiations for the terminals agreement, we have worked extensively with the airlines, and in particular BARA, on standardising our contracts. Again, across the network we understand the agreements are quite different, so we’re very supportive on doing that, and believe that could progressively happen over the course of a number of negotiations or price resets.

We would have to take it on notice, I don’t recall the recommendations for a Government intervention, I think more so oversight from the perspective of price monitoring and - - -

**MR DE GRAAFF:** Yes, and I’m going a little bit further with your answer, I think we appreciate standardisation of contracts, and I think that’s in the benefit for all parties involved, provides transparency. I don’t think this industry needs the Government to be part of that, I think we’re perfectly capable of working that out ourselves and, what David already indicated, that we’re trying to standardise clauses as much as possible.

But although we’re providing common user facilities, it’s not one size fits all, there’s always differences in what certain airlines require and others don’t, so we need some flexibility in our contracts as well.

**COMMISSIONER LINDWALL:**  Which is why you’re reluctant to (indistinct).

**MR DE GRAAFF:** Yes, but they’re not significantly or substantially different but with the clauses that - - -

**COMMISSIONER LINDWALL:**  They basically have a number of common clauses and then you have targeted things.

**MR DE GRAAFF:** Absolutely.

**COMMISSIONER LINDWALL:**  Now, could we move on to the international again and gold plating, claims that the airport might be gold plating some of the infrastructure. Of course, you’ve also got the pre-finance thing of your new runway. Now, we go across to some regulated industries, such as electricity in New South Wales has been gold plating of transmission (indistinct). Would you accept the claim that there’s been some gold plating of investment at Brisbane, and if there hasn’t been, how could you justify that there hasn’t been any?

**MR DE GRAAFF:**  Well, I strongly disagree with the fact that there’s gold plating happening in Brisbane. Yes, we provide a high quality operation, high quality service and high quality products to airlines and passenger customers, and that’s how we like it to be. But everything that’s been provided in terms of infrastructure and all the products and services are based on consultation with the airlines, and there’s a very thorough process defining what investment levels are and what products – what infrastructure would be delivered throughout our investment plan.

So that’s not gold plating, that’s an agreement between airport and airline.

**COMMISSIONER LINDWALL:** So given you actually did, hypothetically, gold plate it, you’re saying that you wouldn’t be able to pass that cost to your customers, they would have to bear it themselves.

**MR DE GRAAFF:**  Well, I think ultimately our investment program is something that is based on thorough consultation and negotiation with airlines. So I disagree with whether we’re gold plating it. I think we both agreed that a high level of service is essential for a customer at Brisbane Airport, especially because we compete with airports all over the world, nationally, we complete with airlines in the nation, but also locally and, as you know, we share some customers with a few other airports.

So there’s no incentive to gold plate or to drive costs up, because I believe that would lose customers to those other airports.

**COMMISSIONER KING:** Can I just clarify? So the upgrades that you did to the international terminal and the other investments for international carriers, they were made with the agreement of the relevant carriers or how did that work?

**MR MALEK:** So, Commissioner, actually the process that we’ve gone through to give you an outline - is through consultation. The final agreement reflects the agreed projects that actually do go into the underlying asset base. The price path that’s generated from those reflects the capital program of existing assets but also a prospective new investments in particular for the international terminal and associated infrastructure.

**COMMISSIONER KING:** Can I just follow up one of the things you actually said on the domestic side of it, which I’d just like some more details on. You said you’ve taken back the relevant domestic terminals, but they were not up to standard and you mentioned, I think, the Brisbane Airport standard. Presumably those terminals were satisfactory for the carriers before they handed them back to you, so how do I interpret your statement there, other than being that you’re about to gold plate the domestic terminal?

**MR DE GRAAFF:**  Well, that’s a bit of a trick question, I have to say.

**COMMISSIONER KING:** I need to understand your points.

**MR DE GRAAFF:**  There was no incentive for the two major airlines operating in the domestic terminal to invest in the last few years of their lease agreement, so we believe that they’ve waited until we took over and that means that together with the airlines and in consultation with the airlines we’re investing currently in very basic things like redevelopment of one of the areas for about $40 million, we’re fixing up the bathrooms, carpet, seating, those kind of things.

So although perhaps the airline thought it was acceptable, we both agree there’s room for improvement.

**COMMISSIONER KING:**  So just to clarify, so it was that end of terminal lease you think that led to them running down the asset?

**MR DE GRAAFF:** Well, I can’t talk for the airlines, but I think, reading between the lines, you could read what my personal opinion about that is.

**COMMISSIONER LINDWALL:** On the international charges being relatively high, your explanation is that there’s been a significant amount of investment and it’s all lumpy. Does that mean that in five or so years’ time if you were to repeat this analysis your – the international charges are more likely to be in line with the other airports?

**MR DE GRAAFF:** Yes and no. When you look at our international charges, the terminal share of those international charges is actually more or less flat over the years, for the last eight years it has been flat, and that means that the terminal investments were absorbed in that charge by the increase in volumes. The increase in our international charges are driven by the new runway, and as you know we started the development of that runway in 2013, and we’re still investing. So that part of the international charge, the runway share of that is still increasing.

**COMMISSIONER LINDWALL:**  That will go up.

**MR DE GRAAFF:**  And there’s no better example of one view of investment in the runway, because from the day we’re opening, it’s not going to be fully used, and that’s pretty obvious that it will take us 25, 30 years. So that’s one of the examples that we’ve seen.

**COMMISSIONER LINDWALL:** And your new runway is particularly expensive given the geology of the area.

**MR DE GRAAFF:** Yes, well the land where the runway is being built has the consistency of toothpaste, so we needed I think 12 million cubic metres of sand, initially this had to settle for three years, and this was financed by Brisbane Airport Corporation. We only started the real construction of – we started the project in 2012, with only starting the real construction of the runway about 18 months ago. We still have about a year to go before we can use it. So all in all, it’s almost a cattle prod project that’s 10 years in the making from the first dollar spent to the last dollar spent.

**COMMISSIONER LINDWALL:**  Shall we move onto a different topic. Landside access. Now, as you know car parking, access to your terminal by taxis and off airport car parking and so on, how did you determine those agreements and what kind of price? Some people would say they might be too hard and parking’s too expensive, that type of thing. How would you justify it?

**MR MALEK:** Sure, I can talk to that. Just in terms of landside access at Brisbane Airport, I might just speak to the composition of it - they are different across all airports. Given the vast road network that we’ve invested in over the past decade, we have a much higher percentage of drop off, there is lack of congestion, so its closer to 60 per cent at Brisbane Airport.

In terms of ground transport operators, we have close to 17 per cent. Air Train, which is our train operator, is actually a much smaller percentage than some of our southern airport peers - at 8 per cent. With the balance of course being parking and other operators in the airport.

In terms of how we determine pricing for access - in 2013 Brisbane Airport went through a process of changing our access charging regime, which went from a charge – an access charge for operators irrespective of volume. Given the vast road network and, our obligation to ensure that we provide all people that access to the airport from transfers, pickup and drop off area at the terminal face for passengers, we changed our charging regime to focus on the number of the vehicles, vehicle type, as well as length of stay. The pricing regime that was rolled out in 2013 and has escalated predominantly by CPI. All of our operators have signed up to and agreed to the charging regime.

In 2018, we actually did have a slight increase - really to then standardise the charging framework to be in line with where taxis are. The operators on airport do have standard forums, which meet on a quarterly basis or annual basis, to raise any concerns. In the contracts, they do have – sorry, whilst there’s actually no dispute resolution within contracts, we do formally engage with operators to escalate issues internally and, of course, they go externally if and when required.

**COMMISSIONER LINDWALL:** Did you have anything on landside access?

**COMMISSIONER KING:** No, I think at the time I wouldn’t mind changing the schedule.

**COMMISSIONER LINDWALL:** Yes, go ahead. Well, I think we’ll move onto jet fuel given the time.

**COMMISSIONER KING:** So just to clarifying background a bit, Brisbane Airport, your fuel throughput levy; that’s no longer in existence?

**MR MALEK:** That’s correct, Commissioner. That ceased in 2011, I believe, as the throughput levy.

**COMMISSIONER KING:** Why?

**MR MALEK:** That predates both Gert-Jan and I so I won’t ‑ ‑ ‑

**MR DE GRAAFF:** No, I was there.

**MR MALEK:** He was there, yes, sorry.

**MR DE GRAAFF:**  No, we came to another commercial arrangement with JUHI and so that’s the one and only reason to simplify things.

**COMMISSIONER KING:** So from the airport’s perspective was the fuel throughput levy was part of a – was it JUHI charge or was it ‑ ‑ ‑

**MR DE GRAAFF:**  It was, yes, it was a JUHI charge. It was not significant in the scheme of things so we tried to simplify the relationship between the airport, the JUHI operator and the oil companies that are part of the JUHI. So that’s the reason why we decided to get rid of this charge.

**COMMISSIONER KING:** On the JUHI structure you have the jet fuel companies obviously owning or controlling I should say some critical airport infrastructure. We’ve had complaints from the airlines that this is leading to overpricing for jet fuel in Australia and you’d be aware of BARA’s information that they’ve provided to us and it was in our draft report. What’s Brisbane airport’s view on the JUHI arrangements that you have? Do you feel that that’s leading to be an appropriate level of pricing of fuel for the airlines or do you think other action is needed in that space?

**MR DE GRAAFF:**  Yes, well, BAC understands that the JUHI arrangements are effective at Brisbane Airport. So we’re not aware of any issues regarding the access to the supply chain, nor the cost of the JUHI operation. We’ve got several leases and licences in place to allow JUHI to operate and provide services at the airports and it’s a commercial agreement we have with them. We don’t own any of the infrastructure. That’s all owned by the JUHI organisation. But if JUHI wouldn’t invest in the infrastructure based on our contracts, we could step in at any time and do that ourselves and so that’s what we have in place.

But at Brisbane Airport, historically we never had real issues. Well, there’s enough fuel storage capacity which is usually critical issue at airports. JUHI is actually investing based on their contract in more fuel storage capacity and, again, we are not aware of any issues with regards to pricing at Brisbane. We’ve got a pretty good arrangement with multiple oil companies being part of JUHI and with access to the JUHI infrastructure.

**COMMISSIONER KING:** So just a follow up on that last point. So you’re happy with access to the JUHI infrastructure; do you mean third parties getting access just to provide jet fuel?

**MR DE GRAAFF:**  As far as I know that’s possible. We recently had a biofuel pilot and it’s a good indication that a complete alien partner by the way supported by Virgin and Brisbane Airport Corporation had access to JUHI installation to use the infrastructure for biofuel capacity.

**COMMISSIONER KING:** We have heard that there were a few hiccups, if I can put it that way, in that access arrangement and getting that fuel.

**MR DE GRAAFF:**  Yes, well, and that’s a fair point and biofuel’s an innovation; it’s new. So the concerns were predominantly about safety. When you put biofuel in your hydrant system it mixes with everything else, so you cannot say, “Well, this one single aircraft, I prefer had biofuel (indistinct) all the others.” So we had to convince all the users of the hydrant installation that it would be a very, very tiny point of the fuel that would be tanked would be biofuel.

**COMMISSIONER LINDWALL:** But my understanding was that Virgin Airlines was quite satisfied. Since they’re the ones operating the planes, one would think they had a better idea and, in fact, a greater desire to ensure the security and safety of the fuel than even a fuel company since they’re the ones actually very exposed if something happens.

**MR DE GRAAFF:**  That’s correct. Yes, no, that’s correct.

**COMMISSIONER KING:** Well, to put Paul’s point the other way around, we know in other infrastructure such as gas pipelines, which seems to be coming up a bit today, that claims about substandard quality can and have been used to prevent access. It’s an easy way for incumbents to say, “Ah, well, we can’t give you access,” substandard product and it comingles with the existing product safety problems. Does Brisbane Airport have any concerns that, whilst obviously safety is a pre-eminent issue that it can be used by JUHI incumbents by the fuel companies to prevent competitors in?

**MR DE GRAAFF:**  No, as I said before, I’m not aware of any issues with regard to the JUHI operation at Brisbane Airport, nor did I receive any claims or remarks about it from our airlines.

**COMMISSIONER LINDWALL:** Okay, well, given the time, we’ve got a couple of things quickly. To what extent do Sydney Airport’s regulatory constraints affect travellers to and from Brisbane Airport?

**MR DE GRAAFF:**  Well, Brisbane Airport on-time performance has been traditionally very high, except in the year 2013 when we dropped below the 80 per cent on-time performance. But on average, on-time performance at Brisbane Airport is between the 82 and 85, 86 per cent over the last few years. In February of this year we were close to 90 per cent on-time performance. So that’s a very good result.

The most important reasons that we’re not closer to the 100 per cent is weather. But the second one is the knock-on effects of capacity constraints at Sydney and Melbourne Airport. If their on-time performance has been hit by either weather and any other reasons, we see knock-on effects at Brisbane. So the lack of service recovery opportunities at Sydney Airport will have an effect on Brisbane as well.

**COMMISSIONER LINDWALL:** Going back to the commercial negotiations, you used the building block method. Why?

**MR MALEK:** The building block methodology is, in essence, something that’s been known by airports and airlines since privatisation. It really is something that is used for the basis of pricing discussions. It starts with the capital plan, the operating costs and all other variables that are actually put into it. However, that is only the basis for pricing discussions as there’s a lot more that all leads to ‑ ‑ ‑

**COMMISSIONER LINDWALL:** But let’s say that you decided, “Well, we’re going to move away from the building block methodology and we’re going to set prices a different way, with different quality standards,” how do you think your airline customers would think about that?

**MR MALEK:** Commissioner, the ‑ ‑ ‑

**MR DE GRAAFF:**  I think the airlines are predominantly interested in what it means for the outcomes of the other calculation. I think the methodology as such might be less important. I think the good thing about the building blocks methodology is that there’s history, there’s trends, there’s knowledge being built up, there’s like for like comparison with before. So I think that’s a strength of the system.

**COMMISSIONER LINDWALL:** Anything else you want? Yes, one other question, just a final question about car parking. We did say in our draft report that the underutilisation of the car parking might be indicative of the exercise of market power, since it’d be high prices. Do you want to comment on that in particular?

**MR DE GRAAFF:**  Yes, well, we have included quite some space in our supplementary submission on car parking utilisation because you raise the low utilisation and relate it to possible use of market power and what we believe is that the average occupancy of our car parks is not a very good indicator of the actual use because of the increase, for example, the night and we don’t do that much short term parks at night.

So we think the peak utilisation is a better indicator of how well the car parks are used. We included an overview of those peak users in our submission and you will see that we actually, for all of our car parks, have peak utilisation of well over 50 per cent and fewer car parks are reaching or actually exceeding 100 per cent. And that means, for example, that from our international car park we’re actually actively, during peak seasons, move cars. So our valet operation remove cars from that car park into another car park to make sure we’ve got enough capacity in our international precinct.

So I think they indicate that peak use is much more important and our peak use of the car park is very high.

**COMMISSIONER LINDWALL:** All right.

**COMMISSIONER KING:** Sorry, just to clarify on that. So you actually use -valet car parking enables you to have more flexible use in peak periods of the car parks?

**MR DE GRAAFF:** Yes. We use our valet operation to relocate cars and park them in other car parking precincts.

**COMMISSIONER LINDWALL:** Well, yes, David, thank you very much for seeing us.

**MR DE GRAAFF:** Thank you.

**COMMISSIONER LINDWALL:** Thank you. Now, could I invite John Clarke to appear, if he’s here, for the Sydney Airport Community Forum? Hello, John.

**MR CLARKE:** Hello. So I’m not actually appearing of the Sydney Airport Community Forum.

**COMMISSIONER LINDWALL:** Yes, that’s fine.

**MR CLARKE:** I’m a long-standing member of the Sydney Airport Community Forum.

**COMMISSIONER LINDWALL:** Well, if you could identify yourself for the record and perhaps give an introductory statement that would be fantastic.

**MR CLARKE:** So I’m John Clarke. I’m here appearing as an individual, not as a member of the Sydney Airport Community Forum. But I have been a member of the Sydney Airport Community Forum since its inception in 1996. So I’m here to talk to you about the regulation Sydney Airport as it relates to aircraft operations and in particular about aircraft noise pollution on the residents of Sydney.

To borrow a real estate saying, in Sydney it’s all about noise, noise and noise. You only have to look at the press that followed the release of your draft report and the view of that in Sydney. It was all about the impact of those operations and what that was going to have on people.

Now, I’m not going to rehash my written submission; I assume you’ve read it. But I do want to just run through a couple of the, sort of, key points. So the first one is that you need to consider the impact on people. The Commission’s draft report in my opinion was grossly inadequate. It showed little understanding and little knowledge of the background of the regulations or indeed any regard for the impact of aircraft noise on the residents of Sydney.

It really just regurgitated the views of Sydney Airport and the industry which seek to benefit from the relaxation of any regulations. You need to understand that this is not an academic exercise. That aircraft noise has a very real and personal impact on people. It affects their physical and psychological health, their amenity, their ability to productively go about their day and their general well-being.

To understand the impact of aircraft noise in Sydney on the people, you need to read the 1995 Senate Select Committee on Aircraft Noise report which is called ‘Falling on Deaf Ears’. I have provided a copy of that. So basically following the huge public outcry with the opening of the third runway and the operational changes, there was a regulatory regime that put into place three things. And those were: the Long Term Operating Plan for Sydney, in order to share the noise; the Sydney Airport Demand Management Act of 1997, which was to put a definite limit on the number of aircraft that could cause aircraft noise in any one hour; and, the Sydney Airport Curfew Act, which was to protect the ability of people to sleep free from aircraft noise. Now, these regulations are a necessary consequence of the airport’s location 8 km from the centre of the city and the impact that aircraft have flying over tens of kilometres of suburban Sydney, impacting hundreds of thousands of residents, some of whom experience in excess of 400 aircraft a day.

Now, the question is, are the regulations working as intended? The Productivity Commission makes the point in its report that it assesses regulations as to whether they’re fit for purpose. And it says, “Any regulatory regime should achieve its intended objectives and do so in a way that is targeted and proportionate to the policy problem.

Well, the policy problem is aircraft noise pollution. The Demand Management Act, in particular, is intended to draw a line in the sand to recognise that a major determinate in annoyance is the number of noise events and it seeks to put a limit on that. In fact, you only have to read the Act itself to understand that, because it actually states its purpose. It says, “This act is to provide for the limitation of aircraft movements of Sydney Airport, otherwise than during curfew periods.” I mean, that is its purpose.

Similarly, the curfew is intended to allow people to sleep. It provides very strict limits on the number of aircraft and the type of aircraft that can operate during the curfew period. So it’s quite wrong for the Commission to suggest that the existing movement cap and curfew are not targeted at noise outcomes directly. They are.

It’s similarly quite wrong to suggest that the balance has not been considered when these regulations were put together. They certainly were. In fact, the cap and the curfew regulations are working as intended. And I think it’s a bit rich for the airport and the industry, who until recently have lobbied very strongly that we didn’t need a second airport in Sydney, to now start complaining about capacity problems at Sydney.

If anything I think I would argue that the cap indeed allows for too much capacity at Sydney Airport, such that the third leg of the regulatory regime, The Long Term Operating Plan, is failing to meet its noise objectives -fairly sharing aircraft noise. Because basically the demand is such now, being close on 350,000 movements, that it’s resulting in the noise sharing modes as they’re known being used much less, and an over-reliance on the parallel runway operations.

So in fact, the balance of regulation in my opinion, and in fact in the opinion of many others, is far too heavily weighted in favour of the airport and the airlines.

Now, of course, one of the reasons we have economic regulation is due to market failure. And the problem here is that there’s no cost to the airport or the airlines for the aircraft noise pollution they cause.

Aircraft noise is a ‘free good’ to be consumed at will. There’s no cost to the airport or airlines. The people impacted are not compensated in any way. So the proposals put forward in the Productivity Commission’s draft report are all about creating more airplanes, which equals more profit, but it also equals more noise. So it’s not surprising that the airport and the airlines are arguing to increase the number of airplanes.

So there are a number of proposals in the Productivity Commission’s draft report, such as: making the cap apply to scheduled not actual movements, spreading the measurement of the cap over a longer period, creating extra slots for regional airlines, and a curfew noise budget. But let’s be very clear about all of those. They’re not targeted at achieving noise outcomes. They have one purpose only and that’s to increase the number of airplanes able to use the airport at a time when they want to use it. That’s the sole purpose of those proposals.

The Productivity Commission puts arguments to change the cap to allow more aircraft to take off and land based on efficiency. But this ignores entirely the economic, social and health costs of the aircraft noise pollution on the community. And until these economic externalities as they’re called, are properly costed, then discussions about the efficiency and the costs to the industry of meeting the current noise objectives are simply not valid. The cap and curfew are a cost of doing business in Sydney.

So, just in conclusion, the current movement cap and curfew are working as intended. They put limits on the numbers, types and times that aircraft can operate at Sydney Airport in order to provide some balance between the aviation industry and the community’s health, welfare and amenity.

The airport and the airlines asking for more movements is not Oliver Twist asking to supplement his meagre rations by saying, “Please sir, I want some more.” It is more like Augustus Gloop. Now, he’s the obese kid in Charlie and the Chocolate Factory who wants to gorge himself on ever more free chocolate despite the protestations of those around him that tell him that he’s had enough. That’s the consequence of asking for more movements.

**COMMISSIONER LINDWALL:** Thank you, John. I mean, I think it’s indicative of problems with noise, the fact that there’s been considerable resistance over decades to the creation of other airports. I mean, by the people who live around where Badgerys Creek, the councils there for example, the – have been – had resistant (indistinct words) that airport.

**MR CLARKE:** Yes, of course.

**COMMISSIONER LINDWALL:** So I mean, that supports your case, but I mean, you did say that there’s been no compensation. I thought there was a Sydney Airport noise insulation program.

**MR CLARKE:** There was. The Sydney Airport noise insulation project insulated a small number of houses, I can’t remember – about 1000 or something and some churches and other public facilities under the 30ANEF zone. So only under the most extremely impacted zone at the end of the runways. There were also some houses that were bulldozed and knocked down. In fact, there’s a complete suburb that no longer exists in Sydney. I can’t recall its name – now, that’s now been overtaken by the airport. But in essence, it was only limited and it was actually done as a levy that was put on top of the ticket price collected by the airlines and went into essentially a pool to pay for that insulation. And indeed, there was actually money left over and this just went back into consolidated revenue.

**COMMISSIONER LINDWALL:** What about, you know, you said that it’s all about benefiting airlines and airports. What about the 69 million people who visit and travel to Sydney Airport? I think it's 66 million each year. Don't they count when the designers count as well? Shouldn't there be a balance that the fact that (indistinct) - - -

**MR** **CLARKE**: But isn't there a balance? Isn't there a balance? Isn't the fact that there's already 80 movements an hour a balance? I mean, that was way back in, you know, 1997, or '96, when the regulations came out. I mean, that balance was considered and allowed up to 80 movements per hour, needed in 15 minute - rolling 15 minute increments. It allowed for that, in order for that balance. The problem here - and it drew that line in the sand. It says "That's enough. There ain't no more." But of course, what's happened is in the absence of any action around the second airport, we've got closer and closer and closer to that figure, to the extent that, I understand, it's causing some inconvenience to the airlines, and potentially to the travelling public.

But you know, you've got to remember, every single aircraft flies over hundreds of thousands of people. As I said, there are some people, impacted in excess of 400 times a day.

**COMMISSIONER** **KING**: Can I just follow up on the 80 movements an hour.

**MR** **CLARKE**: Yes.

**COMMISSIONER** **KING**: I'm not aware of any cost-benefit analysis, or noise-based work that was done leading up to work out that it was 80, rather than say, 85 or 75, and in fact, as an outsider - I'm not an airport expert, but it almost seems like 80 was a fairly arbitrary number. Are you able to help me understand where that 80 came from. I mean, is it just arbitrary?

**MR** **CLARKE**: It's sort of arbitrary. But it's not. So, as I understand it, amongst other things, when the long term operating plan was done, they modelled the capacity and concluded that the parallel runways could operate, if I recollect correctly, 87 movements per hour. Now, the Sydney Airport will argue that it can actually operate more than that. There were people arguing that the cap should be less than - well, less than that. One of the problems is that the noise sharing modes, as they are called - so those modes that are the combination of the north-south, and east-west runways, in different combinations have a lower capacity.

But, probably of those - 14A, in fact, is probably the highest capacity, which is at about 75. The others max out at - at a lower capacity than that. So, I suppose 80 was chosen insofar as it wasn't 87, it was less than that, so it provided for a little bit of flex there, but indeed it was actually more than the noise sharing modes. So, there was a lot of discussion at the time about what that should be, the government concluded, for a number of reasons, 80.

**COMMISSIONER** **KING**: Was there any noise evaluation work that we can go back to look at, to understand better the 80 number from a noise perspective?

**MR** **CLARKE**: Not that I am aware.

**COMMISSIONER** **LINDWALL**: Are you aware - - -

**MR** **CLARKE**: (Indistinct) was a regulatory thing done by the - by the department, in support of - of the politicians that first was put forward as a private member's bill by Anthony Albanese, that then got picked up by the Coalition and was put forward by the Coalition at the time.

**COMMISSIONER** **KING**: Has anyone actually - as far as you're aware, has a government body or any other body actually done what I'd call the hard yards, for want of a better word, on actually measuring that. As heard you correctly say, it's an economic externality. Is anyone actually measuring the externality?

**MR** **CLARKE**: The 80 movements and the aircraft noise that is caused by that?

**COMMISSIONER** **LINDWALL**: And the cost of that to local residents?

**MR** **CLARKE**: Well, no. No one has ever thought to cost that for the local residents. There's no - no one has ever done the economic analysis for that. Associate Professor Ernestine Gross, who was at the Macquarie Graduate School of Management did write a paper, in the, mid-90s. I know Ernestine Gross, but I haven't seen her for some time. I may be able to get a copy of it. She wrote a paper that did look at - at some costs, and essentially creating a potentially a compensation regime around this. She is an economist.

To be honest, at the time I was opposed, because my view was, we just need to get rid of the problem, not compensate people for it. I think, you know, 20-odd years after the event, I think she was actually, probably right, and I'll - you know, I'll tell her that when I next see her. Because, you know, because it's led to this current situation. If I recall correctly, she basically - her paper essentially looked at the fact that the RMS, or whatever they called themselves at the time, Department of Main Roads and Transport, that they have an economic model for the cost of traffic, you know waiting times for traffic, and they costed essentially what that waiting time was, and she applied that to the duration of noise events, and said, well, you know, here's at least some dollar figure, to be allocated to - to that.

That is, to the best of my knowledge, the only economic analysis that's been done on that. But I mean, you know, if you wanted a cost, you'd need to cost the loss of amenity, property values and health consequences, and all of those other sorts of things that actually result from the impact of aircraft noise on people.

**COMMISSIONER** **LINDWALL**: When, obviously since the creation of the runway, there's been an increase in the number of planes.

**MR** **CLARKE**: Correct.

**COMMISSIONER** **LINDWALL**: But hasn't a lot of planes actually become quieter over time? So, you've had an increase in number, but a reduction in the noise per plane?

**MR** **CLARKE**: So, firstly around the increase in number. Around 1995, the number of aircraft operating in Sydney was 262,000. And last year it was, for all intents and purposes, 350,000. So, you've had a very significant increase in the number of aircraft. There is essentially what's called - what's being known as the quiet plane furphy. There's no doubt, planes are getting quieter, and I absolutely endorse that. But they're not that quiet. I mean, there is no such thing as a quiet aeroplane, and so, you know, that an aircraft that is three, four decibels quieter when it's measured in ideal conditions, doesn't actually translate into a great benefit to the community.

Three decibels is considered about what is just perceptible by the human ear, right? In terms of a change in noise. So, you know, the reality is, if you're getting a three or four decibel reduction, it's barely perceptible. Despite the fact that, you know, from a noise measurement point of view, in terms of measuring noise pressure, that's a very significant change in the noise pressure. It's actually not a very significant change in the perception of noise. The other thing about it, to remember, of course, is that, you know, these aircraft are causing noise just not as a result of their engine noise, there's also air frame noise.

You know, you can hear the change in the noise of an aircraft when it puts down its wheels and the flaps. You know, it’s quite distinct.

**COMMISSIONER** **LINDWALL**: I think you said that we've been - you didn’t liked our recommendations, but we didn't actually make recommendations - - -

**MR** **CLARKE**: Your conclusions.

**COMMISSIONER** **KING**: We never have argued that the curfew should go. We've not argued that there should be an increase in the cap as far as I remember, but could I - - -

**MR** **CLARKE**: But that's a consequence of - I mean I'm not saying you argued - I'm not saying you're saying that the curfew would disappear. I'm saying you'd loosen it. You want to loosen the regulation.

**COMMISSIONER** **KING**: Well, let's explore that a little bit, because I mean, some people would say that in Sydney, noise regulations are stricter than any other airport in the world.

**MR CLARKE:** Yes.

**COMMISSIONER** **LINDWALL**: Airports like Heathrow which are surrounded by many more homes than Sydney, and they have a form of restriction, of course, on airport noise, but it's less inflexible. Why shouldn't it be a bit more flexible? Now let me give an example.

**MR CLARKE:** Yes.

**COMMISSIONER** **LINDWALL**: Technically, the period is in curfew where there are, I think, (indistinct) planes, or BAe-146 planes, which I've been told - we've been told are noisier and smaller, and that Australia Post testified in a meeting, or told us in a meeting, that they would prefer to have fewer planes, say a 737, which they say is quieter. So I would have thought some mutual gain. You get fewer movements in the curfew period, and it's quieter.

**MR CLARKE:** So as I - said in my submission, and I know as a member of the Sydney Airport Community Forum, I will be quiet happy to endorse, you know, reviewing the types of aircraft that operate during the curfew more frequently to enable quieter aircraft to be used. I'm not suggesting otherwise. My issue is not - is not the review of the type of aircraft. My issue is, you know, increasing the number, allowing more aircraft to operate in that curfew period. You've got to remember that curfew period only operates for seven hours. The World Health Organisation recommends that you get between seven and nine - an adult, gets between seven and nine hours of sleep.

So, the reality is, you know, even if the last plane flies over at 11 o'clock at night, you know, it's probably 10 or 20 minutes until you get to sleep - you're not getting seven hours' sleep. That ignores, you know, children, the elderly, and teenagers who might actually need more.

**COMMISSIONER** **KING**: Well, on another subject then, we've received a submission, and the gentleman's appearing later today on this, from the Australian Business Aviation Association who says that they would like business jets to be able to operate more freely during the curfew period. What would you say to that?

**MR CLARKE:** I've got a problem with it, because you know I mean the reality is there's a whole lot of people in Kurnell who get woken up several times a night by aircraft flying over them, so the idea of putting another aircraft over people and waking them up for the convenience of some businessman who wants to land in Sydney Airport at 2 o’clock in the morning, I don't think is good policy.

**COMMISSIONER LINDWALL**: What about in terms of – so we're speaking about during the curfew period for like the Australia Post example. What about increasing the flexibility during the normal operational period. Now, the 80 movement cap, for example.

**MR CLARKE:** Yes.

**COMMISSIONER LINDWALL**: Couldn't there be some mutual gain where that shrinks by a little bit and yet you can allow flexibility so some hours might be more than 80 but some a lot less, and wouldn't you get the total noise as less because of fewer movements.

**MR CLARKE:** But I mean the problem is that's not going to happen. I mean, the Sydney Airport has been expanded incrementally right? You know, it's death by a thousand cuts.

**COMMISSIONER LINDWALL**: (indistinct) has been (indistinct).

**MR CLARKE:** So what are you saying? We should say, "We'll let in 85 here because that's going to mean that at another time it reduces from 75 to 70," or "from 80 to 75" or whatever that number actually is. What will happen is very soon that will be taken up by somebody else.

**COMMISSIONER LINDWALL**: Why do you suspect that since it hasn't happened in 25 years.

**MR CLARKE:** But of course it's happened. That's why we've got 350,000 movements.

**COMMISSIONER LINDWALL**: But that limit has been set in stone for all period so I don't see – - -

**MR CLARKE:** Because, you know, what's happened is – - -

**COMMISSIONER LINDWALL**: The government sets a regulation which says, hypothetically, "We're reducing the cap from 80 to 78."

**MR CLARKE:** Yes.

**COMMISSIONER LINDWALL**: "But we'll allow a little more flexibility over the hours." Then by definition you've got less than 80.

**MR CLARKE:** So are you proposing to – so we'll reduce the cap to 75. Is that what you're saying? But we'll allow the measurement over – - -

**COMMISSIONER LINDWALL**: Well, where would you agree there could be more flexibility? Do you say 80 at the moment, there shouldn't be any flexibility. If you took it down a little bit, how much lower would it have to go before you would allow some flexibility?

**MR CLARKE:** Well, I'm of the view that the cap – and indeed, you know, you only have to look at the modelling undertaken for the Long Term Operating Plan where they modelled 360,000 movements, that in fact the way to get that is indeed to have a lower cap during the non-peak periods of the day, a cap that is set at a level to allow those noise-sharing modes to be used. Now, you might want to – I'm trying to think what that number might be, but, you know, 60, 65 should allow those to be used most of the time.

**COMMISSIONER KING:** So actually on the – - -

**MR CLARKE:** As long as there's an incentive that will also create an incentive for the use of the non-parallel modes, because at the moment it's really – there's no carrot and no stick to not use the parallel runways, right, so it's very easy when, you know, things are going on. "Well, I'm not going to actually delay that plane for another, you know, minute flying, you know, 100 kilometres off the coast. What I'm actually going to do is I'm going to change to parallels," right? And that happens today, all the time.

**COMMISSIONER KING:** So can I just follow up on that, because you say or you mention in your submission that current regulations work as intended, but then when I look at the Long Term Operating Plan, and you also point out that the percentage of movements to the north, the target on that, so the Bennelong funnel was a term sometimes used to the north of the airport. But those percentage movements haven't been met, so why do you think the current regulation is working well when you have targets not being met

for – - -

**MR CLARKE:** Well, as I say, within the purpose of the current regulation – the current regulation is 80, right? And in that respect it's working well. You know, it's actually putting a limit on the number of aircraft. Is it supporting that third leg of the regulatory regime? No, but, you know, the reality is that it is not required by law that the Long Term Operating Plan achieves targets. So, you know, I mean, regrettably they're aspirational targets. The Long Term Operating Plan was implemented by ministerial directive, but one of the points in there is that capacity isn't to be compromised. So essentially it allows the door to be opened and for those aircraft to be spread throughout, you know, the peak periods to enable, you know, 80 movements per hour, well outside of the peak periods throughout most of the day.

**COMMISSIONER KING:** So you've said that one way perhaps to help the targets be met would be to have a lower cap outside peak.

**MR CLARKE:** Correct.

**COMMISSIONER KING:** The body of course that in a sense runs the LTOP from a practical perspective is Airservices Australia.

**MR CLARKE:** Yes.

**COMMISSIONER KING:** It's not the airport that decides which runways will be used.

**MR CLARKE:** Of course.

**COMMISSIONER KING:** So is there an issue with the incentives or the directives provided to Airservices Australia at the moment, and if so how do you think that should be changed?

**MR CLARKE:** Well, as I say, what I would do is I would provide a directive that said firstly that, you know, you have to use the noise-sharing modes, as they are known, in accordance with the priority as set out in the Long Term Operating Plan. You'll see that reflected every month in the Airservices Monthly operating statistics for Sydney Airport, and you'll see there's a nice table there that shows the hierarchy of modes, and so, you know, the idea would be was that you have to use the non-parallel modes during those times, you know, in that priority. So the only time you'd be allowed to use parallels would be as a consequence of weather, not as a consequence of capacity.

**COMMISSIONER KING:** Would that raise any safety issues?

**MR CLARKE:** No. No. Why would it raise a safety issue?

**COMMISSIONER KING:** I'm just thinking of how there might be pushback against it.

**MR CLARKE:** Well, I mean, the pushback will be that they want to land more aircraft. They want to take off more aircraft. That's where the pushback would be. So instead of spreading them throughout the day in a manner that allows those noise-sharing modes to be used, instead what you do get is you do get bunching, you get planes showing up or wanting to depart. You've got to take them off those noise-sharing modes into parallel operations. That is in accordance with the way the slots are allocated and the way the airport is regulated to operate today. I'm not suggesting otherwise. But the consequence of that is that those noise-sharing modes are not used and there's an over-reliance on parallels.

**COMMISSIONER KING:** So it's been suggested to us that the sort of flexibility that we've been talking about, having 80 for the cap spread across the day, will lead to more movements in peak and an associated lower level of movements off peak. So in some ways would that start actually achieving your objective? In other words, have we potentially got a win/win here of removing aircraft out of – - -

**MR CLARKE:** If you want to regulate – if you want to regulate, and I mean, you know, so that it's not optional, you want to regulate that there are less movements during other times of the day to enable those noise-sharing modes to be used, then I'd be all for it. But that's not what's been proposed, right? This is all about incremental growth. This is all about allowing more than 80 movements, at any time throughout the day. None of these proposals that were put forward in the Productivity Commission’s draft report said, "Yeah, don't worry, we'll be happy. What we'll do is between 6 and 7 in the morning we'll restrict that to 45 movements an hour so you can use simultaneous opposite directions," which are the ones coming in and out of the Bay that cause really very little noise problem, right? "We're going to do that," right? But meanwhile at 9 o’clock we're going to allow you to do 85. No one is proposing that. What's being proposed is 85 at 9 o’clock in the morning, but we'll just keep 80 available between 6 and 7 as well.

**COMMISSIONER KING:** And this is your personal view. I understand that, but would you personally favour an approach that said, "Well –" or do you believe it would be desirable to do the sort of thing you just mentioned, which would be to say, "Well, you can have more movements in that peak, but the quid pro quo has to be explicitly less movements off peak," and that would actually – may or may not be desirable from the airport's perspective, I don't know, or the airlines, but that would potentially be a better noise outcome for the residents.

**MR CLARKE:** I think it would be, so long as it was regulated that there was a, and it's been put forward previously, a ‘variable cap’, and as long as it was regulated in such a way that the capacity – sorry, the number of movements was no greater than the capacity of the noise-sharing modes.

**COMMISSIONER KING:** Okay. If you had a variable cap type approach but there were weather events that led to delays.

**MR CLARKE:** Yes.

**COMMISSIONER KING:** And again, from your personal perspective, do you think it would be reasonable or desirable to build in some flexibility there? So, yes, if a thunderstorm happens to have come across and prevented movements of planes during the peak, then for that one day, there could be catch ups in the off-peak periods?

**MR** **CLARKE**: To an extent. If you got - if what you - if what you are able to achieve was, you know, fair sharing of aircraft noise throughout other periods, then the idea - that has some merit to it, I can understand why that would want to be achieved.

**COMMISSIONER** **KING**: Yes.

**MR** **CLARKE**: But again, the point is that it can't be just aspirational. Noise sharing and a variable cap actually has to be regulated. Because at the moment, this is the problem. At the moment, there is neither stick nor carrot. Right?

**COMMISSIONER** **KING**: Yes.

**MR** **CLARKE**: For it to actually achieve the noise sharing objectives. Now, don't get me wrong, I'm not suggesting that Airservices are out there trying not to today- that is not the case, all right? But I'm just simply saying there is no incentive to achieve noise sharing objectives today, and that's a problem, because you're seeing the consequence in that on the people of Sydney.

**COMMISSIONER** **LINDWALL**: So, I do understand now that you're basically saying then, that you can perceive some flexibility, as long as it is regulated flexibility.

**MR** **CLARKE**: It's got to be.

**COMMISSIONER** **LINDWALL**: And that airports, obviously, as governments have to balance the needs of the people who are affected by the noise, versus other community members who want to travel to Sydney. But how do you see technologies at Airservices as deploying over time, like it's OneSKY, and so forth, with a change in (indistinct) eventually. Is there any (indistinct) to noise outcomes (indistinct) that?

**MR** **CLARKE**: Well, as I understand OneSKY, it's really about - and I don't have any particular expertise on this, but as I understand it, it's really about coordinating different air traffic control systems nationally.

**COMMISSIONER** **LINDWALL**: But it is also about how players move across the lanes, rather than the formal lanes they used to have.

**MR** **CLARKE**: Yes, but once they get - once they get into the, sort of, terminal airspace in Sydney, that's an entirely different issue. It's really that that's the concern there, you know? But they can certainly - aircraft flying at 10,000, 12 - 20,000 feet don't really create much of a disturbance. Aircraft flying at 3,000, 2,000, 1,000, you know, 300 feet, they're the ones - they're the ones that create the disturbance. One of those new technologies, Airservices are euphemistically calling "Smart Tracking".

Now, "Smart Tracking" - the real, proper name for Smart Tracking is a collection of technologies that come in under this umbrella, is PBN, Precision Based Navigation. All right, now, precision based navigation is - or, well, could, on the one hand be, very useful, because it allows the aircraft to fly very accurately within a wingspan, right? So, if in fact what it is used for, is keeping those aircraft over water, over non-populated areas, good to go. The problem is, that's not the way it's necessarily used. So, if it's used for example, for landings over the north of Sydney, then what you've got is, is you've got aircraft flying within a wingspan over the same houses every single time.

So, the concept of spreading them is the response to the issues that arose from the opening of the third runway. There were two aspects, one of them was a whole bunch of aeroplanes were put over areas- new areas. But the other one was, was that they made operating changes .They introduced the narrow flight corridors, which are concentrated corridors. And they became known as the Bennelong Funnel. So, instead of aircraft - in the old days, aircraft would basically come in quite close to the airport, they'd land, and were good to go. And what happened was that they - these aircraft were now pushed further and further north, and then came down in very narrow corridors.

Now, one of the consequences of the implementation of PBN to the north of the airport would be just that. You would go back to the concentrated flight corridors that were one of the first things that were disbanded, after the Coalition were elected in 1996.

**COMMISSIONER** **LINDWALL**: It could be that, or it could be in a different direction, it spreads it out more evenly?

**MR** **CLARKE**: Well, it - what do you mean by that?

**COMMISSIONER** **LINDWALL**: Well, I mean - - -

**MR** **CLARKE**: So, what do you mean by that? So, yes I mean - so, one of the - - -

**COMMISSIONER** **LINDWALL**: It should almost have individualised approaching patterns. Rather than the standard (indistinct).

**MR** **CLARKE**: You could. So, one of the things that the Long Term Operating Plan recommended - well, one of its modes is what's called mode 10, which is landings form the north, and along with that was a procedure, called trident. Trident provides for multiple flight paths to the east and the west of the centreline for aircraft landing from the north. The problem is, trident has never been implemented, and one of the reasons that's constantly been put forward for that is that the technology is not there to enable it to be done, and that technology is probably a couple of things.

One of it is sequencing, and the other one is the ability to accurately direct all aircraft. Now, one of the issues, of course at the moment, is potential conflict with Badgery’s Creek. And so, whether trident is ever able to be implemented with the airspace design for Badgery’s Creek is an issue which remains to be seen.

**COMMISSIONER** **KING**: All right. Did you have any final points?

**MR** **CLARKE**: No.

**COMMISSIONER** **LINDWALL**: Can I just finally ask then, John, how do you see the community and Sydney Airport in 20 or 15 years? How do you envisage it, in terms of good outcome from - - -

**MR** **CLARKE**: Well, you know, I mean, there's sort of two views here. One of them is, you know, in reality is, in a great many first world countries, city airports have basically been moved, because - and, the land has been repurposed to higher and better use. Because the reality is that an airport is not a good use of real estate. That's the reality of it. The airport will bang on about all the money it brings to the economy, and all the rest, but that is not location dependent. You know, people still fly to Narita, in Tokyo, but it's still 67 kilometres from the outside of the city, right?

So, the airport and the city it serves, you know, they don't have to be, you know, close, geographically close, right? So, in, in an ideal world, you'd say, "Really, that land ought to be repurposed, it ought to go, you know to higher and better use," and away you go. Now, the problem is, is that there's a whole bunch of people out here who have a financial interest in its retention where it is. So, is that - is that likely? Probably not. I'd like to think it is. I mean, economically it's a rational thing to do. But politically, I don’t know whether you'd get away with it.

So, you know, the reality is that caps need to be put on and retained on Sydney Airport that enable it to exist in the manner that is not entirely destructive to the community, in fact it serves – (indistinct)

**COMMISSIONER** **LINDWALL**: I think that's the time, thank you.

**COMMISSIONER** **KING**: Thank you very much, then, John.

**COMMISSIONER** **LINDWALL**: Now we've got a little morning tea break, and I believe we're taking off at 11.55 with Qantas.

**SHORT ADJOURNMENT [11.37 am]**

**RESUMED [11.57 am]**

**COMMISSIONER LINDWALL:** So I’d like to welcome Qantas to speak to us. And I’d invite you all to introduce yourselves.

**MR PARKER:** I thank you, Commissioners. Commissioners Lindwall and King. My name is Andrew Parker, I am the group executive for government industry international and sustainability. I am joined today by my colleagues, a few of us, Rob De Bella who is the executive manager of finance, Matt Hudson who is the head of commercial airports, Moksha Watts, head of sustainability and industry affairs, Michele Laidlaw, at the end, the head of legal. Jackie Quang, our senior legal counsel and Rick West, our manager of airport commercial relationships.

**COMMISSIONER LINDWALL:** Before you go on, Andrew, could I say that when you all speak at various times.

**MR PARKER:** Yes.

**COMMISSIONER LINDWALL:** It’s probably good to just say your name just for the transcript. But please, if you want to give an introductory statement, thanks, Andrew.

**MR PARKER:** Thank you. Thanks, Commissioner. We are perplexed and disappointed at how easily the draft report has, in our review, dismissed critical independent evidence, accepted airport claims without question and disregarded the everyday realities of air travellers and others who need to use our airports. To Qantas, this process and review has been about fairness. Is $6 for an airport coffee fair? Is $90 for airport parking fair? Is $34,000 to land and depart a Qantas A380 fair? And how is it fair that parking at an airport can cost more than the Jetstar flight itself?

And on this question of fairness, we would consider the statement of five years ago to be particularly pertinent. Privatisation without competition risks turning a public monopoly into a private monopoly. The owners may change but the public will get ripped off just the same. What is the second option? If competition is not possible, then the privatised business needs to be regulated so that it cannot exploit its market power. It’s a fine sentiment from Commissioner King in 2014.

So it is a genuine mystery to us that the Commission now thinks that regulation in its mildest of forms of a privatised monopoly business is somehow unfair or unreasonable. And it is a shame in our view that the PC has essentially endorsed the exorbitant airport and car parking charges and green lighted monopolistic behaviour to the detriment of our passengers and the Australian community.

The enthusiastic endorsement by the Australian Airports Association in rejecting fair and reasonable reform to airport commercial behaviour for the sixth successive time should also provoke reflection and concern. To this end, Qantas is of the view that future reviews of airports by the Commission should be abandoned given their lack of rigour analysis and unfortunate predictability regardless of evidence or changes in the external environment.

And whilst the Commission states in its draft that it will consider regulation for more extreme examples of a clear abuse of market power in your final report, we remain sceptical. Hence our position that an expert open-minded body should assess this matter in future, in the future, or that parliament given the weight of evidence should directly legislate to government.

We believe also the Commission has ignored the abundance of compelling evidence provided to it by the Australian Competition Regulator, multiple airport users and credible experts, such as Michael O’Brien QC, Margaret Arblaster, Frontier Economics and the National Competition Council. These experts may be dismissed by the Airports Association, but consider their credibility versus that of a lobbying group.

And we believe the facts speak for themselves. The lowest car parking profit is earned by Perth Airport which more than 50 cents out of $1 spent goes in profit and 70 cents at Sydney. Airports earn 25 per cent more revenue per passenger in real terms since a decade ago and their margin is double the long-running international average. And meanwhile, airfares, best measured by best discount economy fares have declined 40 per cent.

Seven Australian airports charge hidden fuel throughput levies. A fee for no service extracting over $20 million a year from airlines and their customers. And nine out of 10 of the most expensive airports in the world for car hire are in Australia. And the number of airports, a number of airports are even brazen enough to profit from aviation security. Their public conditions of use assert the right to extract a return on their investment in security. In plain English, that means profit.

And don’t just believe us. Consider their investors. Sydney Airport has an unregulated revenue stream in a monopoly environment. That was UBS last year. Ongoing myths, such as effective regulatory oversight exist today, profits by monopoly airports are reasonable and airlines have countervailing power, seem to be swallowed whole by this draft. And opportunities to uncover the truth of super normal profits have, in our view, been passed over. For instance, not determining airports cost of capital or their overall profit margin, is intellectually lazy.

Like drop bears and Lasseter’s Reef, airline countervailing power is a myth. A tall story told by airports to distract from their monopolistic behaviour such as denying us the right to fly Johannesburg to Perth or holding our aircraft to ransom at Canberra Airport until a diversion charge eight times higher than other airports was paid by credit card.

In a fiercely competitive Australian market, airlines have almost no countervailing power. Network airlines like Qantas or Virgin cannot credibly threaten to withdraw their services. This can be demonstrated through a simple real life example at Newcastle Airport last year. The Qantas Group was forced to withdraw services from Newcastle due to pilot shortages. Frontier Economics found that Virgin was able to respond almost immediately to backfill this lost capacity.

Frontier Economics also looked at the relative cost faced by the Qantas group and Perth Airport from the threat of a withdrawal of a single daily return flight between Melbourne and Perth. It found that the airline would have more to lose, up to 10 times more than the airport because of Perth’s critical importance to our customers, our broader network and operations. Reducing or withdrawing services in response to airport behaviour is simply not feasible and the airports know this. And which market will we give up? Is it Qantas to Perth? Is it Jetstar to the Gold Coast? Is it QantasLink to Tamworth.

It deeply concerns us that the Commission has chosen to believe this fiction as fact and yet the Commission presents no evidence of countervailing power anywhere in its 367 pages. The Commission’s suggestion that airlines can refuse to pay charges at the level determined by an airport when an agreement expires is to us extraordinary, as is the implication that the payment delaying tactics to Australian charges are a normal and adequate bargaining tool. These extreme measures are indicative of a broken system that offers airlines few options to moderate airport charges at reasonable levels.

The fact is, while negotiations were underway with Perth, the Qantas Group agreed to play – pay what we believe in good faith to be a fair and reasonable charge. And we continue to pay it. We ask Perth Airport to resolve the dispute through binding expert determination. They refused and yet our offer still stands. But instead we now face a long retrospective court case that will cost millions of dollars and destabilise that market.

As privately owned monopolies, Australian airports have the economic advantage of falling costs per passenger as output increases. But despite significant increases in passengers and freight from airlines, monopoly airport charges continue to rise well above inflation. And while Australian monopoly airports’ revenue has soared 25 per cent over the last decade, airfares continue to decrease as a result of airlines focussing on all aspects of their cost space.

On this point, I’d like to briefly address the false claims perpetuated by the airports about the cost of airfares. The AAA claim there has been an increase in real domestic airfares over the last seven years. This is simply wrong. The reality is that real restricted economy airfares which have been used as the base of its entire argument, make up less than 2 per cent of airfare inventory sold.

In real terms, best discount economy airfares which is what the majority of economy passengers purchase, are 40 per cent lower today than in 2003. It illustrates the AAA’s ignorance of competitive airline economics. The Commission and the AAA view that aeronautical charges make up only a small proportion of the total cost of an airline and that is wrong. Airport fees, levies and charges at as much as 20 per cent to the cost of an airfare.

In fact in some regional routes, airport charges are higher than fuel, aircraft costs or flight crew. So in conclusion, we believe the current regime of oversight is ineffective and gives Australia’s privately owned monopoly airports carte blanche to increase airport charges and sting air travellers as much and as often as they wish. To call it light handed regulation is a misnomer. A more accurate term is non-regulation.

The ACCC has consistently argued price monitoring is not regulation. Monitoring alone is not enough to constrain the behaviour of airports with significant market power. And declaration under the National Access Regime is time consuming, expensive and difficult, if not, impossible. The solution: efficient and timely reform through deemed declaration of major airports and access to independent and binding arbitration are essential in our view to deliver true and effective light-handed regulation. As A4ANZ has pointed out, the advantages of such minimal reform include at least $445 m in net savings and efficiency benefits with a benefit to cost ratio of 14 to one. And like arbitration, the wider economy, parameters can and should be set for efficiency and fairness.

Arbitration is part of the aeronautical pricing principles. The Airports Association also say they can do better and want to talk to us airlines after the PC process has finished. This offer should of course be viewed with cynicism. Instead, while doubtful, we urge the Commission to reconsider its findings in the final report for the benefit of all Australians and not singularly for monopoly airports.

Thank you, Commissioners.

**COMMISSIONER LINDWALL:** Thank you, Andrew for that comprehensive presentation. Can you hear me now? Sorry. Thank you for that, Andrew. I’d like to just start by saying that the teams and the commissioners for the four now PC inquiries have all been different, and the PC doesn't take a different approach each time to how we analyse the problem. Now, I know that you have suggested that perhaps the ACCC should be involved in that, but there is a very fundamental regulatory system structure that has been long held as a principle in government that a regulator should not, should not be involved in the declaration of their own policy, because there's a major conflict of interest, and that's why there has always been a structure where an independent agency may not think the PC is the right agency, but some agency that doesn't actually implement the regulation. That's where the principle of that comes from. So I wanted to put that out.

Now could I turn to negotiate-arbitrate. If there's a problem with Part IIIA surely the best solution is to make Part IIIA more efficient. Why does there need to be a specific regulatory regime for airports compared to any other types of organisations and sectors of the economy?

**MR PARKER**: You're certainly right in the sense that we have very little faith in declaration and Part IIIA of having effectiveness, and that is why we are calling for that to be absolutely part of the solution, but we have tried to be as practical and as pragmatic as we could in finding a solution, and that is why we believe a concept like final offer arbitration is the most light-handed way, and we strongly disagree with a rhetoric of airports that say it will have a significant impost or gaming of the system when it is used efficiently throughout the rest of the Australian economy, and there's examples of energy, of gas and others we can talk to where these are brutally efficient processes, and I would again reference in contrast the counterfactual, which is the Perth court case which we envisage to take many years at huge cost and which will be retrospective.

So we have not looked at models like Heathrow where there are pricing arrangements agreed as regulation, and I would point out despite that Heathrow has had a bountiful assurance of investment capital flow to it. Even under a heavier handed regulatory model we've tried to be pragmatic, we've tried to be reasonable to find a compromise. So I think it's both those options on the table. I don't know if anyone wants to jump in.

**MS LAIDLAW**: Yes. Michele Laidlaw. The only other point I'd make I guess is that the Part IIIA process also contemplates arbitration within its structure. So arbitration is already there once you cross the threshold of declaration as the commissioners already know.

**COMMISSIONER LINDWALL**: Yes. Can I just follow up on that. I think the words "deemed declaration" were used by Andrew. So I wonder why given that there is a declaration procedure, the NCC are one of the experts that you have argued we haven't paid appropriate attention to, they manage the declaration process. It has certainly been put to us by the NCC that the declaration process is certainly fit for purpose across a wide range of industries. Given that background why does Qantas say let's ignore the NCC and deem declare the airports?

**MS LAIDLAW**: I think the principal reasons within a legal perspective is that in our view the declaration process is perhaps a particularly difficult one for non-vertically integrated monopoly infrastructure, and particularly the change to criterion A that was the result of the 2013 Productivity Commission review, in our view has raised the threshold that needs to be clear before declaration can be found. It may be the case that that is the right outcome, but nonetheless if you take the Virgin Blue position, the Federal Court view of criterion A prior to 2013, which had a much lower threshold of access materially promoting competition in the downstream market, and the amendments to Part IIIA now which solidify the test of criterion A to be the effective declaration in promoting competition in the downstream market, I think we feel that that has raised the bar that needs to be crossed.

**COMMISSIONER KING**: Just to clarify my understanding is that the original NCC decision and a tribunal decision on appeal for Virgin Blue in Sydney was on an equivalent test to A, so - - -

**MS LAIDLAW**: That's correct.

**COMMISSIONER KING**: - - - so my understanding is the original declaration there occurred on what would now be equivalent law. That's your understanding as well?

**MS LAIDLAW**: Yes. We certainly don't suggest that it's impossible to clear the threshold of criterion A. What we say is that it has been made materially more difficult, particularly in circumstances where we have a non-vertically integrated piece of infrastructure with perhaps not the incentive to deny access that you might see in a case of vertically integrated monopolies.

**COMMISSIONER KING**: So Qantas disagrees with the National Competition Council who to the best of my knowledge the NCC has said that the current tests are fine and fit for purpose.

**MS LAIDLAW**: I think what I would say is that the threshold has been raised and that if the Part IIIA process is designed to provide a credible threat of an effective remedy for the use of market power there may be a question mark as to whether Part IIIA really does that, because by increasing the threshold it has perhaps increased the time, cost and resources involved in pursuing a declaration to its natural conclusion.

**COMMISSIONER KING**: Despite the fact that there was effectively a declaration at Sydney Airport on the current criteria.

**MR PARKER**: It's not the current criteria.

**COMMISSIONER KING**: The Virgin Blue original declaration was under a test that - Part 1 which is the one that I think we're arguing about, or discussing, Part A - - -

**MS LAIDLAW**: Yes.

**COMMISSIONER KING**: - - - which was very similar to the Part A that's currently in place, unless Qantas believes that's an incorrect statement.

**MS WATTS**: We would argue that it isn't similar given that the criterion A test has changed, and the - - -

**COMMISSIONER KING**: No, but it's changed twice. The determination of the criteria as put forward by the Full Federal Court in Virgin Blue appeal was a different interpretation than had been given to criterion A up to that time, which included the NCC and tribunal decision to declare Sydney Airport in the Virgin Blue case. The recent change has then been to return the interpretation of criterion A back to the interpretation that was used by the NCC and the tribunal when Virgin Blue was successful in declaring Sydney Airport.

**MR PARKER**: I think answering your question as directly as we can we are pessimistic on the declaration process in its current form, and I think it is worth reminding that the Virgin Blue process took five years, it cost millions of dollars, and as the ACCC has said we need a more direct and efficient and productive access to a dispute mechanism like final offer arbitration instead of a process that is wholly inefficient and with real ambiguity on its potential for success, would be our summation.

**MS LAIDLAW**: Sorry, Andrew, and just to add that the NCC - there's been an application to revoke the declaration of the Port of Newcastle as a result of this change in criterion A, or following on from this change in criterion A. Now, whether that revocation process will be successful is still an open question, but it seemed a reasonable conclusion to draw that that process was kicked off post a change in the law, a change to criterion A.

**COMMISSIONER KING**: Although I would note that the NCC did not recommend declaration Port of Newcastle prior to the change of law either.

**MS LAIDLAW**: No. The Competition Tribunal did though.

**COMMISSIONER KING**: I understand, but you put forward the NCC as an expert that we have not paid appropriate attention to. It appears that Qantas's view is they prefer the ACCC as the regulator rather than the NCC. Is that a reasonable approach or a reasonable interpretation of your comments, Andrew?

**MR PARKER**: I think we're trying as I said to be as efficient and light-handed in having a commercial practical solution, which is why a model like final offer arbitration is our preference.

**COMMISSIONER LINDWALL**: Could you contrast final offer arbitration with negotiate-arbitrate, or are they basically the same things?

**MR PARKER**: I think they're the same things, and I think in Graeme Samuel's testimony he will go through in greater detail, but the fundamentals are the same, and I think that speaks to the fallacy of gaming. There is inherent risk for both parties in such a model, and we accept that and we have stared into that risk profile of what a final offer arbitration could mean for the Qantas Group, and it must by its nature bring parties closer to a more acceptable common commercial position. It will only be used, we believe, in those extreme examples where you are unable to reach a commercial agreement, and again I think Perth is a live example of this of instead we have to go to a retrospective court process that we think is wholly inefficient versus an independent expert arbitration model.

**COMMISSIONER LINDWALL**: There are 47 airlines at Sydney Airport if I remember from the Sydney Airport testimony this morning. Do you envisage if there was a use in negotiate-arbitrate that let's say Qantas was in dispute with Sydney Airport that the other 46 airlines would want to be part of that too?

**MR PARKER**: I don't know, but I certainly have some doubts as to the validity of that argument. As I say I think these are extreme examples. Many airports have given testimony today and in their submissions about most negotiations in their view are wholly satisfactory and dealt with in an expedient manner, but we believe an arbitration model will be used infrequently. Most international airlines are collectively represented through BARA, but I think we can only speak to Qantas and our position, which is this would be an outlier in its used, but a really important tool, because we certainly believe the airports don't consider the national access regime as a credible threat to regulatory intervention.

**COMMISSIONER LINDWALL**: How should an arbitrator view the desires of the travelling public, the community at large, potential new airlines when determining an arbitration process between say Qantas and Sydney Airport or some other airport? I mean you don't know who these potential airlines might be, and they could result in a requirement with the law, the investment then say is currently planned, who knows.

**MS WATTS**: A couple of points, Commissioner. Firstly, the arbitration is, as Michele Laidlaw has said, is currently part of the regime, so the national access regime already enables arbitration to be activated, although we believe that it's incredibly difficult, and secondly the arbitration is also envisaged in the aeronautical pricing principles. So it's not - I suppose it's unclear if it's arbitration that's being challenged in this questioning, or if its used in some particular hypothetical scenario. If it's the latter, well we would submit that things such as the gas code have demonstrated that you can set the conditions for arbitration. You can have a pool of arbitrators who are asked to consider a number of issues, including competition from other entrants. So we're not the regulatory experts, but we would say is that in our experience it is possible to construct an arbitration system in such a way that it would not stifle competition, if anything the way that many monopoly airports behave now that would be stifling the competition.

**COMMISSIONER LINDWALL**: Is it the fact of an airport being a monopoly that's a concern or the market power that it possesses, because I've got a friend who owns a bakery in Braidwood which is a monopoly by definition since there's no other bakery there. Doesn't that mean that it's exercising market power that's the important issue?

**MR PARKER**: Is the bakery charging $12 for a loaf of bread?

**COMMISSIONER LINDWALL**: It charges a fair bit, the bakery for its loaf of bread and I'm sure it's making a decent profit actually.

**MR PARKER**: I think it's a combination of those factors. Monopolies without regulation we concur with many voices on this topic, including one I quoted earlier, but particularly the ACCC, who I think it's worth pointing at from the earlier line of questioning, similarly said they don't believe that arbitration would be used in a large number of negotiations. But I think it is a combination of absolutely our view that there is an exercising of market power and that is evidenced through a range of matrix items including their margin and profitability, the international comparison, and the lack of any competitive threat or countervailing power by an airline like Qantas.

**COMMISSIONER LINDWALL**: I think you're coming down to the fact there's market power in the exercise of it. If you have a monopoly or if you have an organisation without the exercise of market power, but it has market power, or it is a monopoly, would you agree that it shouldn't be subject to additional regulations, or are you saying that because it's a monopoly or/and because it's got market power ipso facto it should be regulated?

**MS WATTS**: Commissioner, again the UK CAA has taken the view that having market power is sufficient to have a regulatory regime that is able to adapt to constrain that market power. We also note that the ACCC has said that regardless of the size of a buyer market power - it's not an effective constraint in and of itself on market power. So we would submit that there's a number of factors that need to be taken into account that come with being a privatised monopoly, and that there is a level of regulation that is required of a privatised monopoly which doesn't exist at the moment.

**COMMISSIONER LINDWALL**: Does Qantas have market power?

**MR PARKER**: As we said in the submission we don't believe there's countervailing market power in this debate of a network airline like Qantas, and as - - -

**COMMISSIONER LINDWALL**: Not countervailing, it doesn't have market power.

**MR PARKER**: Well, I think there is competition in the Australian market, and we have used many examples to demonstrate what happens in a competitive market when even if we have 60 per cent market share, and there's erroneous information that we have claims of 80 per cent market share in markets, which is completely incorrect using the Canberra example that was quoted, that through the combination of existing competitive entrants there are no barriers to entry in the Australian domestic aviation marketplace, which is almost unique in the world. If you want to start an airline in Australia tomorrow you can. So in its whole we believe there is not market power in definition or in practice by Qantas.

**COMMISSIONER LINDWALL**: But if there was then by your testimony or Moksha's testimony we should regulate Qantas on that basis. It's the mere possession of market power that should be regulated is what I'm hearing.

**MR PARKER**: But I haven't agreed to your - - -

**COMMISSIONER LINDWALL**: No, obviously you don't agree that you do have market power.

**MR PARKER**: Correct.

**COMMISSIONER LINDWALL**: I am just saying if it were the case.

**MR PARKER**: Yes, well I don't think anyone has called out reasons or given evidence of how or why we have market power, so I'm a little perplexed at - - -

**COMMISSIONER LINDWAL**L: It's an airports inquiry.

**MR PARKER**: They argue countervailing power.

**COMMISSIONER KING**: I think what Paul is getting at is perhaps a philosophical difference between regulators. Some regulators believe that if a firm has market power then ipso facto it should be regulated. Other regulators believe that a firm that has market power should only be regulated where there is evidence that that market power has been used or abused against it in their interest. We are simply asking which of those two camps does Qantas fall in.

**MR PARKER**: Yes, well I would just come back to the philosophy of we are not a monopoly.

**COMMISSIONER KING**: No, claims that you're a monopoly or you have market power, we are just interested in what is Qantas's view. Regulators that fit in the first camp are correct or the second camp. That's all we're asking.

**MR PARKER**: Jackie, do you want to comment on that one?

**MS QUANG**: Jackie Quang from legal. Only that in our submission and in our response to the draft report, we feel we demonstrated that, even putting aside the economic philosophical differences that we've demonstrated, that the airports have misused their market power.

**COMMISSIONER** **KING**: I understand that submission. Could I just follow up on understanding Qantas' behaviour and strategy. So, aero prices change all the time, around Australia, different negotiations are entered into and concluded. What strategies does Qantas have when, for example, charges may go up at one airport, they may go down at another airport, there are changes in demand, obviously, by passengers - there's a range of things that effects Qantas' behaviour. How often, or how does Qantas change its strategies, it's route scheduling, networking, its use of its expensive aircraft equipment across Australia?

**MR** **PARKER**: Matt, do you want to respond to that?

**MR** **HUDSON**: Hi, it's Matt Hudson here. From a Qantas perspective, obviously, we'll take into account the performance of our - of our network. What we take into account as well, our corporate customers who require us to maintain a network offer, regardless of - of the demand of the day, which is critical for us. We can't just provide part of a network, or most of a network, we have to provide a full network. So then anything we do, we need to -to take that into account, to how we operate our network on a day to day basis.

We also have large, long-term investments in fleets. So, multi-year, 10, 20 year investments in the fleet. So once we've made those decisions, we need to operate those aircrafts, and as any airline we need to fly those aircrafts as far as we can, and get as much utilisation out of those aircraft. So, those two components mean that as a starting point, we do have a strategy around how we, obviously, how we operate out business. But they are two constraints on what we can actually do on a day to day basis, or on a seasonal basis. Those two factors always mean we fly to every airport in the country, we need to provide a network, and we need to fly our aircraft as far as we can.

From time to time we might make adjustments due to market forces, or market conditions, or profitability, but they'll be around the edges, and I think, as an example, I think Jetstar, in any one year, has never changed its network by more than 1 or 2 percent. So anything we do is around the edges. So our strategy is around with those fixed investment, so fixed, long-term investments in aircraft, the real strategy is to get as many, to fly those as hard as we can, and get as many passengers on those aircraft as we can to maximise the work we can get.

**COMMISSIONER** **KING**: So, I understand the constraints, and I understand the importance of keeping network, but presumably, Qantas does, for example, change a number of flights on the Melbourne-Canberra route in the morning, because you've done that very recently, as I understand, which is why (indistinct) has disappeared. That would be a response, and maybe a response to demand changes, it may be as a response to price changes, but Qantas does have some flexibility. It's not like the aircraft, you know, it always has to be a 737, or that always has to be a whatever on particular flights.

**MR** **PARKER**: I was just going to add, I think there is a misnomer here that somehow an aircraft down gauge could be in a response to a commercial negotiation, or commercial pricing behaviour with an airport. That is a fallacy to us, and a really good example is Townsville. We are in a difficult commercial dispute with them, and yet, there have been claims that, well, as a result, Qantas has reduced market share, and yet if you look at the available data, again, some seasonal and some market-based and operational-based reductions were captured fully and more by Jetstar in the group.

So we do not allocate aircraft based on a commercial negotiation. It is based on supply and demand, and it is based on operational requirements, because, as we've given examples of, the Frontier Economics Perth study, the Newcastle airport study, with competitors, if we remove your 7 am Melbourne-Canberra sector, and there's a glaring hole now emerging in the market, we know that Virgin will fill that very quickly, or Tiger.

**COMMISSIONER** **KING**: So just to clarify, because it seems to be a very strong statement you're making, so I just want to make sure that I understand it, if I understand you correctly, you're saying that Qantas cannot, does not, has never threatened to withdraw or reduce services at any airport in response to a change in aero charges? Is that your statement?

**MR** **PARKER**: No. You have - - -

**COMMISSIONER** **KING**: Okay. Please - - -

**MR** **PARKER**: I am saying, on a day to day basis, we do not allocate aircraft differently because of a commercial dispute. We will, in the case of Perth, and the court case, we have stated clearly on the public record that the domestic operation will continue as business as usual. But until we have clarity, and because of the complex nature of the litigation involved in terminals, we have no certainty on how to grow the international business out of Perth. So that, for example, is on ice, until we have clarity and resolution on that particular court case. But what I am saying is that on a day to day basis, it is a fallacy to argue that we somehow move our assets around based on commercial negotiations.

**COMMISSIONER** **KING**: No, I don't think that's what I'm saying. Let me put it in the positive. Has Qantas ever threatened to withdraw, or reduce services at an airport in response to a change in aeronautical charges?

**MR** **PARKER**: There certainly are examples where, in a commercial negotiation, we will look at the economics of a route. And if the economics of the route are impacted, as they often are, by extreme commercial behaviour, of course that is the demand argument we're talking about. Jetstar, for example, is extremely exposed to small, incremental rises in price, and if airport charges, as part of that compilation, are going to have a material impact, then absolutely that is going to be part of our consideration on whether the economics are viable.

But all things being equal, we - we don't, and again I use the Townsville example, which has been quoted by some, we don't consider aircraft allegation in and around a commercial negotiation.

**COMMISSIONER** **KING**: So I think I take that as a yes.

**MR** **PARKER**: If you wish.

**COMMISSIONER** **KING**: You will make, in your terms, commercial decisions, but they amount to the potential - maybe I won't use the word "threat", because "threat" sounds like a - making (indistinct). But you've (indistinct) a notice of airline, at the airports, the potential for Qantas to withdraw or reduce services, if aeronautical charges change. And that's a - and that is a real consequence of changes in aeronautical charges.

**MR** **PARKER**: Absolutely. That's a fact of life, that we routinely have 40-5- per cent price increases lobbed on us as an airline, and in the evidence we gave, where we talked about, particularly for some routes, how exposed they are to a cost impact like that, we would make it abundantly - abundantly clear the impacts that could have on an operation.

**COMMISSIONER** **KING**: Just to clarify, also, in the Townsville example, am I to understand that Qantas' reaction, then, has been to reduce its full service operations and to increase its low-cost carrier operations through Jetstar?

**MR** **PARKER**: No, that was a temporary arrangement, when the pilot shortages - we went backwards for a short period of time. Jetstar backfilled the capacity, as did Virgin, and Qantas is now growing again in the Townsville market.

**COMMISSIONER** **KING**: I just wanted to understand.

**COMMISSIONER** **LINDWALL**: Now, I'm much enjoying this conversation, but time is getting through, so I've got to get through some other questions that we haven't been talking about.

**MR** **PARKER**: Yes. Please.

**COMMISSIONER** **LINDWALL**: One of our recommendations was that a number of anti-competitive clauses be removed from contracts that have been mentioned in submissions. One of them seems to benefit airlines, one of them seems to benefit airports. We recommended that they be put in the aeronautical pricing principles. Would you accept that if that was adopted by the government, or - because pricing principles are voluntary, as far as I understand.

**MS** **WATTS**: Sure. We have no objection to such a recommendation, we would simply submit that the problem with the pricing principles are that they are not enforceable, that - that airports, in our experience, don't take them very seriously.

**COMMISSIONER** **LINDWALL**: We've also discussed a - well, let's talk about a status quo, because it was spoken about in negotiate-arbitrate enough, and now, I think, we welcome your thoughts on that, obviously. But the building block methodology has been used for a long time in - in working out the costs, and for investment, which of course is a lumpy and quite high cost, in particular, putting new runways in. How do you envisage the use of that in the past? Has it been useful to you to use that type of model?

**MR** **HUDSON**: All right, so, it's Matt Hudson here. I think - we would say we think it's essential to use that model. In markets around the world, that model is used in other industries, in Australia that model is used. We think it’s a critical statement that we should use as an industry. We would say that we don’t think the model has been consistently used over time and that’s where the challenge is; that’s what we think needs to be addressed.

**COMMISSIONER LINDWALL:** But wouldn’t the fact that airports are using building block methodology suggest that they don’t have the market power you might be suggesting? For example, you know, in another industry they just tell you the price and you take it or leave it, and that’s the way it is and the fact that you do manage to get a building block methodology might suggest some sort of ability to negotiate.

**MR HUDSON:** I would say we don’t consistently get to use the building block model. So we have some airports when we engage in conversations on the building block model will say to us things such as, “We understand Qantas. That’s what you’re doing and here’s the price,” so that’s not consistently applied. Indications where it is applied, we think that there's a lack of transparency of information shared between the airports and Qantas which makes it a difficult conversation for us to have without the information available to us.

**COMMISSIONER KING:** Just on that. Sorry, just to make sure we’ve got all the information. So the airports that don’t use the building block approach or give you a “take it or leave it” offer, is that any of Perth, Melbourne, Sydney or Brisbane?

**MR HUDSON:** Yes, I’d say definitely, in the case of Perth. I’d say definitely; Perth’s view is that the building block model does not apply.

**COMMISSIONER KING:** And Qantas’ view is that Perth effectively made it a take it or leave it offer.

**MR HUDSON:** That's right.

**COMMISSIONER KING:** I understand that there's a court case going on here and I don’t want to - - -

**MR HUDSON:** Yes, that's right, correct, that’s right.

**COMMISSIONER KING:** No, thank you.

**MR HUDSON:** Yes.

**COMMISSIONER KING:** I just wanted that clarified.

**COMMISSIONER LINDWALL:** Now, another issue that was raised this morning and is by submissions, and we also talked about aircraft noise, is the movement cap at Sydney airport. Have you got any thoughts about that you’d like to share and any of the reform options mentioned, palatable or not?

**MR PARKER:** Yes, we think obviously there’s an enormous – many decades’ work has gone into trying to solve the complexity of Sydney Airport. We are big supporters of Western Sydney Airport because we think it will add, we certainly hope, a competitive element to aviation in the Sydney basin.

We don’t, in all intents and purpose, have a view that an increase in terms of movements per hour or the curfew is politically realistic. We do like a couple of things; which is flexibility within, particularly the 15 minute windows, so that we can catch up after a weather event and, importantly, we operate a very small number of overnight freight services and there's some legislative arrangements proposed in terms of introducing the ability for us to use quieter aircraft which we would like to do than the law currently allows for. So there's a few areas we are supportive of, but we’re not overly confident on the appetite for other more significant changes.

**COMMISSIONER LINDWALL:** Now, the other thing of course that you’ve mentioned in your submission is about what you’d say is “excessive security costs” to a number of airports.

**MR PARKER:**  Yes.

**COMMISSIONER LINDWALL:** Of course the government determines the amount of security, the minimum security at an airport. I guess, well, to articulate, are you claiming that the airports are deliberately having more security than required or is it that the cost of the security is too much for a given level of security, and why is that so? What would be the incentive for an airport to gold-plate security, if you like?

**MR PARKER:**  Moksha?

**MS WATTS:** I think – sorry, Moksha Watts. Commissioner, our concern with the security pass through charging model is that the definitions have slipped over time that, as it was originally envisaged, it related to direct costs of security; costs such as passenger and baggage screening, counter terrorist security, and it has, now, expanded to include indirect costs such as administration fees, return on capital investment and a range of other overheads.

So, although there is an umbrella of government mandated charges, the concept has significantly expanded and because it is a pass through charge model, there is, not only very little scrutiny that we’re able to apply to what is in those costs, but it fundamentally does not incentivise an airport as a security operator to be efficient. So they simply pass on whatever the cost is to airlines who then pass that onto passengers.

**COMMISSIONER LINDWALL:** Would you prefer the New Zealand approach where the government provides the security and then charges airlines for the security that the government is actually providing?

**MS WATTS:** So we’re open to considering a number of reform options. There are challenges with the New Zealand model as well. We believe it could be more efficient and cost-effective. The Canadian model is another example; that’s slightly different again.

But we believe that there are some simpler more light-handed options that are available for government before it considers something so different as bringing security in-house and some of the ones that we have suggested include introducing efficiency obligations on security operators, introducing appropriate boundaries on the concept of what is a recoverable security cost, amending price monitoring to consider security charges so to provide additional information that we currently don’t have and also implementing some pricing principles on the infrastructure costs around security. There are some simple things that could be done initially before some of those other options are considered.

**MR PARKER:**  If I could just quickly add.

**COMMISSIONER KING:** Yes.

**MR PARKER:**  I think it is the pass through charging model that we think acts as a disincentive for efficiency, and if I could just quickly give you the example of Perth Airport. So when we constructed our T3-T4 new international operation, Perth quoted circa $40 million of which security was an essential element of that capital build.

We proposed, and it was ultimately agreed that we would develop and implement the new terminal arrangements, including security, and we did it for almost half and the Commonwealth itself noted how more efficiently, because of incentive, that the airline was able to operate versus an airport that has no real incentive in a pass through model when they simply pass on that cost, or in the case of some airports, seek to be rewarded with a margin on top of the investment.

**COMMISSIONER KING:** Do you want to do – I’m happy to do jet fuel or you are?

**COMMISSIONER LINDWALL:** Yes, you do jet fuel.

**COMMISSIONER KING:** I’ll do jet fuel.

**COMMISSIONER LINDWALL:** We’re going to talk about jet fuel, obviously.

**COMMISSIONER KING:** Jet fuel: Qantas’ view on whether there's appropriate competition in jet fuel and do you see significant differences in the prices of jet fuel between either Australia and overseas or between different airports in Australia?

**MS WATTS:** Jet fuel, as you would have come across in your inquiry, is an area where information is incredibly difficult to find. So there's a number of commercial confidentiality constraints around the supply of jet fuel.

What we would say is one of the issues of concern to us is the application of fuel throughput levies which operate at seven airports, five of which we operate to, and to the best of our knowledge we cannot find an additional service that those levies fund.

So if you took the example of the joint user hydrant installation at Sydney, the JUHI pays that a license fee and a leasing fee which (indistinct) should cover all of the costs to the airport of hosting that facility, regardless, the airport charges a 5 cents a litre levy which has increased in – well, it was introduced in 2012 and it’s increased since then, to airlines for the passage of that fuel.

We believe that represents a windfall gain of approximately 17 million to that airport and probably of those seven airports nationally, we believe that the gain would be around about 20 million a year. So that’s certainly an efficiency that we would suggest is worthy of consideration.

**COMMISSIONER KING:** Do you see any systematic difference in the total fuel price, in other words, including the throughput levy at airports that have that levy versus not? So in other words where there's a 5 cents per litre throughput levy, do you tend to pay 5 cents per litre more for fuel than you would otherwise be paying?

**MS WATTS:** So there's two ways to respond to that question. So at Sydney if the 5 cents didn’t exist, we would pay 5 cents less and so that would be obvious. The case of Melbourne Airport its, as you know, is an open access arrangement but the infrastructure at Melbourne is incredibly constrained. So the access fee is actually quite high because there is an infrastructure constraint there.

So there can be a number of factors that will, beyond the actual price of the crude, come into the ultimate price we pay. The three most crucial factors would be fuel throughput levies, the access arrangement – the ability to get alternate access where there is a price constraint and an infrastructure provision along the jet fuel supply chain. So that’s off and on airport.

**COMMISSIONER KING:**  Qantas is in a slightly unusual position because you are obviously equity holders in the JUHI. It’s been put to us that these fuel throughput levies are simply part of a negotiation for JUHIs so they’re actually just part of a contractual agreement between the airport and the JUHIs for the JUHI lease. So does Qantas believe that if the 5 cent throughput levy disappeared, then, at the next contract negotiation with the JUHI and the airport that the 5 cents would simply reappear somewhere in there as a direct charge to the JUHI?

**MS WATTS:** It’s a hypothetical in the sense that the levy was introduced in 2012, you know, the year of the last inquiry. In our experience, we would, through other airport negotiations which my colleagues can enumerate in additional detail, where an input cost is challenged by us, an often equivalent appears elsewhere in the building block methodology or in the OpEx cost.

So the fuel throughput levy is a great example of the way we see some of the gaming behaviour of airports where costs are simply shifted the moment there is some scrutiny. So throughput levies might’ve been seen as an opportunistic way of raising money. If the Commission were to make a finding against them, it’s not possible to say if that cost will not simply disappear and be put into another input that the airlines pay and that’s, I suppose, why we’re here to argue for more effective light-handed regulation in order to provide greater scrutiny and transparency of the entire airport operation because we believe there is a risk of these things.

**COMMISSIONER LINDWALL:** Getting to that, and I’m conscious of the time. Do you believe that the profits made by an airport, say from its DFO operation, should be used to cross-subsidise aeronautical services?

**MS WATTS:** So more broadly there is a range of non-aeronautical revenue that airports earn because of the symbiotic relationship they have with airlines. There's no one to buy a cup of coffee if there isn’t someone travelling on your plane, to be really simple about it. So there's a range of aeronautical revenue that is directly linked to the aeronautical revenue of an airport. You know, whether that’s a DFO or not is another matter. We would suggest that’s more an issue around what’s permissible and not permissible under an Airport’s Act airport rather than the material of a question.

**COMMISSIONER KING:** Yes, so just to clarify. I mean, essentially we’re only talking about hybrid till or a dual till or some sort of – where should the boundary be? So should it include all airport profits under any sort of regulatory approach of airports, regardless of where the profits have come from, what operations? Should it include those that are only in the terminal and therefore you can say directly related to passengers? Should it include business parks where arguably, you know, some of the rent of those business parks is related to its proximity to the airport, but others are simply a commercial rent? So if there was a broader approach to airport profits, where would be draw the line?

**COMMISSIONER LINDWALL:** I’ll let Jim - - -

**MR HUDSON:** Yes, I think from our perspective there's two things we would want, before I get to the question of where we would draw the line. We want airports to earn as the monopoly asset to earn a return that’s a reasonable return in accordance with the building block model; a WACC framework. We also want airports to be incentivised to invest efficiently and invest efficiently in the right sort of investments. So whether that’s aeronautical or not aeronautical, drive right long term outcomes for the airport and airport community. I don’t know what the specific answer is around where you draw the line. What I will say is that hybrid till models, single till models can act as incentives to get the right efficient investment. They can also operate as a right framework to ensure an airport receives an appropriate return on a building block framework.

I would say that the current model where you do have a dual till often ends up where retail or non-aero investment is prioritised over aero investment or even worse, is categorised as aero investment and so I think that’s the challenge that we would face.

**COMMISSIONER KING:** Sorry, I do want to just sort of push this a little bit further because I want to understand Qantas’ position. So let’s say there is a retail outlet – we won’t mention a specific brand – which is built on an airport but completely separate from the terminal; may have a different access road – and if you’ve got one in your head, it’s in Brisbane – maybe highly profitable, perhaps, because of tax rules or, perhaps, because of the original lease conditions meant that the government may not have got as much money as it should’ve when renting it out and simply a better use of land.

But if there is evidence that there is little, if any connection, between the use of the retail precinct and the aeronautical services, would Qantas say those windfall profits associated with a retail centre, “Yes, no, they’re separate. They’re not regulated. It’s the aeronautical, broadly speaking, relating to passenger transport services that need to come under that single till”?

**MR PARKER:**  We would certainly encourage the Commission to look at this more deeply because I think it warrants a debate to our philosophy that Matt mentioned earlier of the passengers we bring to an airport, and if you reverse engineer it, it is also the extraordinary margin of airports in Australia, compared to their international peers that suggests there is something fundamentally wrong with your making an 80 per cent margin or a 70 per cent margin on car parking.

So the answer to your question is “not perfect”, but we do think it warrants serious examination, if not by the Commission, by others and we have always said that there is much evidence of a hybrid model elsewhere in the world where it’s a more harmonious economic arrangement in how airlines and airports are sharing growth.

**COMMISSIONER LINDWALL:** I think I’ve got one final quick question.

**COMMISSIONER KING:** Sorry, for those of you who are getting hungry.

**COMMISSIONER LINDWALL:** Yes, well, we’ll get going. This’ll be the last question and it’s a quick question. How many agreements have been agreed since our draft report has been released?

**COMMISSIONER KING:** By Qantas.

**COMMISSIONER LINDWALL:** By Qantas I guess, yes.

**COMMISSIONER KING:** Or Qantas group.

**MS WATTS:** You take it.

**MR PARKER:**  We might take it on notice but - I don’t think any. But we’ll take it on notice.

**COMMISSIONER LINDWALL:** Take it on notice.

**MR PARKER:**  Yes.

**COMMISSIONER LINDWALL:** All right, well, despite the vigour of our discussion, I would like to say that I’ve been a regular user of Qantas’ services over many years. You provide a perfect air service and I enjoy it very much and I will continue to use it.

**MR PARKER:**  We appreciate that very much.

**COMMISSIONER LINDWALL:** Thank you, and we’ll have a break here for lunch.

**COMMISSIONER KING:** And thank you for that.

**COMMISSIONER LINDWALL:** Thank you.

**LUNCHEON ADJOURNMENT [1.00 pm]**

**RESUMED [1.18 pm]**

**COMMISSIONER LINDWALL:** Welcome. If you could both introduce yourselves for the record and just make an introductory statement, that’d be great.

**COUNCILLOR BYRNE:** Yes, I’m Darcy Byrne, I’m the Mayor of the Inner West. Thank you very much for the opportunity to attend the hearing today. In essence, I’m here to present the council’s submission to the inquiry which is that, whilst we appreciate the benefits of living in close proximity to Sydney Airport, and unlike some elected representatives in the inner west, I certainly can support it continuing to function as an international airport, we do believe that the cap and the curfew are essential component of the compact that exists between Sydney Airport Corporation and the people of the inner west, which enables us to coexist.

I do want to begin by just elaborating a little bit further on our support for the airport as a driver of economic activity and an important part of our region. So we acknowledge its importance to the economy of Sydney, New South Wales and Australia. We acknowledge that changes may need to be made over time to the operation of the airport to achieve the objectives outlined in your inquiry to make it more efficient and economically viable. We think it’s legitimate to maintain the balance of impacts on local residents and businesses against the economic viability of the airport, but that reviewing or lifting the cap and the curfew would put that balance out of whack.

Currently, half of our population in the inner west local government area are already badly affected by aircraft noise, Australian Noise Exposure Forecast, ANEF, of 20 contour or greater. And our contention is that the impacts on those existing households and businesses would be greatly increased, but there would also be a whole new cohort of local residents and property owners who would be impacted were the curfew to be lifted.

The proposal to reduce or review the curfew and the cap for the Sydney airport would have a particularly devastating impact on people in the inner west and those impacts would include that of community wellbeing, property values, general health and wellbeing, and I'd invite anyone who was to propose the lifting of that curfew or cap to visit places like Tempe public school, Tempe high school, any household in Sydenham, St Peters or Tempe. You can come over to my home, just off Norton Street in Leichhardt which is one of the flight paths that the planes use to line up their landing and you can meet my seven year old daughter whose first word was plane because she'd spent so much time pointing up at the very loud noise coming out of the sky.

So we're not unused to the impacts of aircraft noise and I think lots of our local residents have made a decision a long time ago when they moved there or chose to remain there, that that was part of existing in the inner west and that that's traded off against the enormous benefits of living in such a fantastic place, but we do want to see that balance maintained.

There are specific, perhaps unintended consequences that we wanted to highlight which you should be wary of. Firstly in relation to zoning and conflicts with residential premises. All of the surrounding council's planning controls reflect aircraft noise within the current legislative framework. Extended noise footprint would place many residential dwellings within unacceptably high ANEF contours. Current land use zoning would need to be altered. In other words, there are lots of existing residences that don't have any protection against aircraft noise but would need some subsequently, and I think it is highly unlikely 20 years on, that there's going to be another round of Federal government funding for the insulation of homes and there would be enormous opposition from residents who would be on the receiving end of that impact.

We do question the need for increased airport movements. The draft report admits that Sydney airport already has best operating cost per passenger of all of the airports examined in the study. The whole of airport operating costs are very low in comparison with many overseas airports, and proposed changes to the cap and curfew would provide only limited economic benefit to the airport, and we do think that it could potentially be the thin end of the wedge, and I know that there are advocates out there who suggest that we shouldn't just lift the cap and the curfew, but we should operate the airport 24-7.

I hazard a guess that none of them live in any of the suburbs that I've outlined to you. Residents were promised a long-term operating plan, introduced in July 1997, the stated target was for there to be no more than 17 per cent of aircraft movements to be going over Sydney's inner west. In reality we're experiencing between 25 per cent and 28 per cent of the air traffic right now.

Sydney Airport Corporation master plan promised the status quo and showed no need for the proposed changes to the cap and the curfew. The master plan was prepared in 2018. The plan guaranteed adherence to the existing curfew and aircraft movement cap, and this indicates that the operator believes that Sydney airport operates efficiently with the existing curfew and cap.

The plan indicates the aircraft movements at Sydney airport over the past three years have been relatively stable and currently the cap is only approached during super-peaks, like public holidays and the start and finish of school holidays. And there doesn't appear to be any consideration of how a lift to the capital curfew would affect the future Western Sydney Airport. We've been advocating for the Western Sydney Airport to be built for a very long time now, and as an indication of my credentials as an Anti-NIMBY, I have very publically advocated to some of my colleagues of the same political persuasion in Western Sydney that their objections on the basis of aircraft noise to Western Sydney Airport are unfounded.

There are people in the Blue Mountains who are saying, "Oh, no, we can't have a Western Sydney Airport because it will affect us. The noise will affect us". It is actually quicker to get from the inner west to Parramatta than it is from Western Sydney Airport to the Blue Mountains. So I don't think there's anyone in Australia who has a more intimate understanding of what aircraft noise is or a greater tolerance for aircraft noise than people who live in the southern part of the inner west municipality.

So we are not opposed to airports. We're used to living with one. We're opposed to the agreement that was reached all those years ago and which has been infringed upon in practice, being torn up and the curfew and the cap being permanently undermined. So I might leave it there.

**COMMISSIONER LINDWALL:** Thank you very much. Do you mind if I call you Darcy?

**COUNCILLOR BYRNE**: Not at all. My technical title is Your Worship but I've been trying to convince people to go with that for many years and no one will.

**COMMISSIONER LINDWALL:** Rather good. Could I just clarify the Inner West Council distinct? Where does it extend compared to the airport itself?

**COUNCILLOR BYRNE**: It is bounded by Balmain and Birchgrove in the north. Ashfield in the west, Ashfield and Croydon in the west. Marrickville, Tempe, St Peters and Sydenham in the south and Newtown in the east. So it is kind of ground zero.

**COMMISSIONER LINDWALL:**  Yes. There's no other council's area that would ‑ ‑ ‑

**COUNCILLOR BYRNE**: No, the three form a constituent councils that make up the inner west council were Marrickville, Leichhardt and Ashfield and they were also the three councils that were most affected by aircraft noise in the past.

**COMMISSIONER LINDWALL:** And you would acknowledge that we haven't said in our draft report that curfew should be removed or that there should be an increase in traffic, we were just exploring options with some level of flexibility in this.

**COUNCILLOR BYRNE**: Well, I was first made aware of it when I was contacted by Channel 7 to say that it had been suggested in your draft report that maybe the cap and curfew should go, and so I made my views clear on the television program that night and I've come here today to respectfully engage with you on the issue as well.

**COMMISSIONER LINDWALL:** Yes, I don't think you'll see us making any such recommendations.

**COMMISIONER KING:** There certainly aren't any such recommendations in the draft report – I would be extraordinarily surprised if they ‑ ‑ ‑

**COMMISSIONER LINDWALL:** I'd be surprised.

**COMMISIONER KING:** I suspect the current Commissioners would have to walk under a bus.

**COUNCILLOR BYRNE**: Right. Well, that's very reassuring.

**COMMISSIONER LINDWALL:** But can I talk about the operations during curfew period.

**COUNCILLOR BYRNE**: Yes.

**COMMISSIONER LINDWALL:** We are told that if Australia Post and other freight companies have told us that they'd have to have more movements of noisy aircraft and they're prohibited to use fewer movements of the large area (indistinct) . Is that somewhere that some flexibility could be agreed?

**COUNCILLOR BYRNE**: I think we'd want it to be very clearly demonstrated that any change to the cap or the curfew was not going to have any detrimental impact on the quality of life of residents living in the immediate vicinity of the airport, and it seems clear to me that if you increase the number of movements that there will be an increase in noise.

I understand that the technology is changing and that the aircraft that are coming online now operate very differently to those that were built 20 years ago, but people in our community are pretty cynical about any suggestion that we should have to put up with more aircraft noise. We're already dealing with more of it than anyone else in Australia, so I think the onus is really upon Sydney Airport Corporation or any of the operators making use of the airport to demonstrate very clearly that there won't be additional impacts through any change.

**COMMISSIONER LINDWALL:** So this thin edge of the wedge you mentioned, how would it be demonstrated credibly to you as the Mayor, that this change would be of mutual benefit, if you like or in fact it could reduce noise or lead to a better outcome and also allow greater levels of freights.

**COUNCILLOR BYRNE**: I think I'd just have to return that question to you. How would you demonstrate it to us? I don't think the onus is upon us to come up with a set of criterion ‑ ‑ ‑

**COMMISSIONER LINDWALL:** I am just asking for any suggestion, that's all.

**COUNCILLOR BYRNE**: Yes. We've got two very important protective measures in place and we're determined to maintain them.

**COMMISSIONER LINDWALL:** You've got this close association with Sydney Airport in many ways, obviously over many years. And in our inquiry we did look at a bit about the planning and master planning approach and interaction between the roads and rail and so on and the airport - and obviously, the airport does communicate with the state government. How happy are you with the relationships at Sydney Airport, in terms of your day-to-day interactions?

**COUNCILLOR BYRNE**: Well I think you have to understand the political context of our area, so there's - I am a member of the Labor Party. The Greens political party have significant representation across inner western Sydney and their policy is to close Sydney Airport. They are also opposed to the Western Sydney Airport, so I understand how people would get into Sydney under the Greens administration which is by parachute but I just don't understand how they would get back out. So I've always tried to have a very constructive relationship with Sydney Airport Corporation. They undertake a lot of community development work and grants programs, charitable giving, there's lots of good people who work there, we consider them a very significant employer. There's lots of our local residents who work there and so we recognise all of those benefits and have always tried to have a constructive relationship. Obviously, as you'd already be aware from your investigations, accessibility through the local traffic networks, into and out of the airport is very poor.

**COMMISSIONER LINDWALL**: The congestion must be painful, yes.

**COUNCILLOR BYRNE**: Yes and the planning around Westconnex hasn't solved that. The original premise would be that it would create a direct link to Port Botany and the airport; it's still not entirely clear how the two - how Westconnex will be connected to the airport. There is this Sydney Gateway project which is proceeding but I think the planning around that entire project, in relation to the airport, has been shambolic. That has created a lot of cynicism and distrust. One of the other factors that you might want to consider is that the existing impacts on places like St Peters, from the Westconnex project and now the construction of the Metro, have been very, very significant in terms of dust, air pollution, noise pollution, traffic disruption. So it's all sort of tied into one sort of tsunami of infrastructure impacts, which local residents are up in arms about.

**COMMISSIONER LINDWALL:** So this is really a sense that a government, of whichever persuasion, make a promise in some area and it's not fulfilled through noise, through dust and other impacts and that makes the community distrustful of promises or even resistant to change that might be helpful?

**COUNCILLOR BYRNE**: Yes, the government's inability to ensure that contractors associated with the Westconnex project have complied with their conditions of consent, has engendered a lot of anger and were you to have obviously, disowned any suggestion that you would propose lifting the cap or the curfew but I could certainly attest to the fact that were that to be proposed now, that that would be conflated with the existing impacts that people are experiencing and it would result in very strident opposition.

**COMMISSIONER LINDWALL:** I should let Stephen ask some questions.

**COMMISSIONER KING:** So just to - I guess what we were trying to explore in our draft report was sort of the potential for win/win type of situations, where the local community is better off and the travelling public are potentially better off as well. I am happy for - these are theoretical but I am interested in exploring whether some of our suggestions could potentially do that. So for example, you mentioned LTOP targets not being met. It has been put to us that if we reduced the number of movements off-peak, then that would help achieve the targets in the long-term operational plan. Now obviously, that would be a loss for the airport, so what we were wondering is, if you then had more movements in the peak - and I understand there's a bit of flexibility there from the airport's logistical perspective - would that be overall a benefit? So concentrating the noise, in a sense, in the two peak periods, with perhaps lower noise in line with long-term operational plan in the off-peak periods. Is that something worth considering or not - and I'm happy either way.

**COUNCILLOR BYRNE:** I might ask our strategic transport planner, Ken Welsh, to address that question.

**MR WELSH:** The issue with concentrating the noise over the peak periods is that the morning peak, in particular, is still a sensitive period for the residents and for the schools. So you would have a much more intense period for say three hours in the morning, where at the minute the cap is 80, whereas you could push it all the way to 100. That would have the potential of yes, depleting the need for the off-peak period but putting a very intense period of noise from six until nine and that, I consider that quite a sensitive period.

**COMMISSIONER KING:** Okay. One of the other possibilities then - so I take that as a trade-off and it's not clear. Is that a reasonable summary?

**MR WELSH:** Yes, you would need to do a full noise analysis on it. The other issues we have is the current method of analysing noise is about 35 years old, so we're not convinced that the system is ‑ ‑ ‑

**COMMISSIONER LINDWALL:** Just a quick one. I don't think it was 100, I don't think even think that Sydney Airport has the capacity of managing 100 movements in the tower. I thought maybe 85 might be something ‑ ‑ ‑

**MR WELSH:** At the minute you have a cap of 80 but the joint study into the operation of the airports back about five years ago, five to seven years ago, estimated that your absolute capacity would be 100. Whether that capacity is achievable or not in terms of operation, I'm not convinced ‑ ‑ ‑

**COMMISSIONER LINDWALL:** So to go along with Stephen's point, if you were able to make a significant reduction in the off-peak but also have a limit in the peak period of course, so some increase in the peak - I'm not saying go to 100 - is that something that worth considering?

**MR WELSH:** I think in terms of the off-peak, the off-peak isn't the really sensitive time. A large proportion of our residents are actually at work during that time, so by softening the blow between ten o'clock and three o'clock, I don't think it would really benefit the residents.

**COUNCILLOR BYRNE:** If that does come under serious consideration, I'd like to re-extend my invitation to hold a hearing at my place, between 6 am and 9 am and we can get a really good understanding of what the impacts would be.

**COMMISSIONER LINDWALL:** I bet you.

**COMMISSIONER KING:** If you could put on a sausage sizzle for breakfast that would be fantastic.

**COUNCILLOR BYRNE:** Absolutely, the hospitality will be very good.

**COMMISSIONER KING:** One of the other suggestions or proposals was to allow more flexibility in the cap, so rather than the rolling 15-minute, to say well you can't increase the number of movements - scheduled movements per hour - but that only needs to be met over you know, say a day or a shorter period or as some people put, a longer period. So there wouldn't be a change in the total number of movements but simply allow the airport flexibility; when there's say, a weather event, that they can catch up more easily. The view from the local council, is that something worth considering or again, are there immediate problems with that sort of approach?

**COUNCILLOR BYRNE:** I can only really restate our position, that we're here to assert the need for the cap and the curfew to remain unamended and that it would be, the onus would be on the proponent of any minor change that you're alluding to, to demonstrate through evidence that there would not be increased impacts on people's amenity via that change. I'm certainly not going to put forward a policy position from the council here, that any suggestion that you put forward that weakens or mediates that as our policy position.

**COMMISSIONER KING:** No, I understand that. Just a couple of things on the evidence background. The 80 movements per hour, it is far from clear to us that there was actually any great science behind it when it came in, rather than 85 or 75 or whatever. Is that the case or are we missing something, was there a study done at the time to justify the 80 movements as a reasonable level?

**COUNCILLOR BYRNE:** I was in Year 10 at the time, so I might defer to our strategic planning officer again.

**MR WELSH:** I wasn't in Year 10 but I wasn't in the country. I am not aware of any study that definitively said 80 was the point but some of the representatives from organisations like SACF may have the history on that.

**COMMISSIONER KING:** Okay. Are you aware of any studies since then, which have actually properly evaluated the cost to community around Sydney Airport of the noise pollution, the economic externality, to understand both the direct economic and just the health and other costs associated with the airport noise. Has anyone in a sense popping it back to you, Darcy, you said that evidence would need to be shown to you. Has anyone actually done the evidence in the last whatever, 20, 30 years to actually show the impacts and how those impacts are changing, what the impacts are? Whether the impacts currently are satisfactory or not?

**COUNCILLOR BYRNE:** Well, I think that’s very enlightened to hear the Productivity Commission looking at the issue in that way. It was an enormous political issue at the time that the cap was introduced, but huge in the same way that Westconnex has been now. There was huge community opposition, all of the local councils were involved in arranging protest rallies against the changes that occurred. At Sydney Airport, at one stage (indistinct) council was driving their waste and recycling trucks around the airport blockading it. And the settlement that was reached did not satisfy a significant proportion to population but people have moved on. And so if you’re still living in the inner west or you’ve moved to the inner west since, you’ve made a decision that you’re going to live in a community where there are pockets or extensive areas where there are significant impacts from aircraft noise.

We know from the data that that has certainly not been reduced over time, but people accept that that is the status quo. That’s the decision that we’ve made. So if Sydney Airport Corporation or the Productivity Commission were to come and ask us that – to cooperate with them in a study to quantify the impacts on people’s health and well-being of aircraft noise, we’d participate, but we’d also just settle for an acceptance that the curfew and cap need to stay and move on with the reality of the situation.

The only other thing I had was on the zoning.

**COMMISSIONER LINDWALL:** Yes, that’s (indistinct). (Indistinct) you do that?

**COMMISSIONER KING:** All right. So, sorry, slight change of tack, then. The council zoning, as you said, any changes would obviously have zoning implications which is a very good point, so thank you.

Exactly how a zoning decision is made by the council, is it based on the Australian Noise Exposure Forecast corridors or, and if so is that the only tool that’s used? Is it the broader group of tools? Are you restricted by some sort of legal constraints on your zoning decision? So just so that we can understand that a bit more?

**COUNCILLOR BYRNE:** Well, I think the crux of the issue – so we’re governed by a range of state and federal regulations and controls and our own local environment plan and development control plan. But the crux of the issue is that any significant change would result in properties that are currently not impacted by aircraft noise being so. And I don’t think there’s any likelihood at all that a Federal Government or State Government agency is going to provide significant funding for the retrofitting of those properties with glazing or insulation.

There was great dissatisfaction in the late 90s at the insulation program that occurred then. It certainly wasn’t perfect and it’s been expired for a very long time now. So, we will not be looking at amending our zoning in any way. We’re pointing out to you that there would be a significant structural problem with the existing adopted zonings endorsed by both the council and the New South Wales Government if you were to make a significant change to the cap or the curfew.

**COMMISSIONER LINDWALL:** Now, I think you also said in your submission that there’s a case for moving onto land and transport (indistinct) the station access if we put a train to the airport which goes through I think (indistinct) onwards. What would you say to that?

**COUNCILLOR BYRNE:** Well, if you make public transport more affordable and accessible you’ll reduce the necessity for parking at the airport, so like everybody else in Sydney, we would like to see that reviewed. And for public transport to be a more viable option for commuters who are travelling to the airport and to be frank, everyone I speak to about the parking fees at the airport thinks that it’s exorbitant or wrought and you’d be, I think, well-placed to direct your energies towards that rather than reviewing the capital of the curfew.

**COMMISSIONER LINDWALL:** And a final question before we move on. It’s about the (indistinct) bus, suburban bus, networks, maybe cycle parts and so on. What type of links are happening on – in that space, to the airport or around the airport.

**COUNCILLOR BYRNE:** Well, that’s really tied in with the planning of Westconnex and the Sydney gateway, which as I’ve stated previously, has been in our view shambolic. Still really unclear to ask exactly what the connectivity will be between Westconnex and the airport and it’s been a moving feast. The planning around that seems to change, the route, the ingress and egress, all of that seems to change on a month by month basis.

We would be completely open to sitting down with the government, with RMS, with Sydney Airport Corporation and looking at creative ways that we could pool our money together to create better cycling and pedestrian connectivity between Tempe and Sydney Airport which would be a great thing to do because we do get a lot of people coming and parking sort of long stay parking in and around local residential streets there. So we’re open to that, but our experience so far from RMS has been less than collaborative.

**COMMISSIONER LINDWALL:** I think we might finish on that, thank you, Darcy and thank you, Ken.

**MR WELSH:** Thank you.

**COUNCILLOR BYRNE:** Thanks very much for the opportunity.

**COMMISSIONER LINDWALL:** Could I now invite, I think, John Alexander, Jonathon Ward and Maria Patrinos? If you could go and just introduce yourselves for the record and I’m happy to listen to statements that you want to make and then we can ask some questions. Would you like to introduce yourself first, Jonathon?

**MR WARD:** Jonathon Ward.

**MS PATRINOS:** Good afternoon, everyone, I’m Maria Patrinos and I’m a community representative on the Sydney Airport Community Forum that’s chaired by John.

**MR ALEXANDER:** I’m John Alexander.

**COMMISSIONER LINDWALL:** You might have to speak up because the microphones are purely for recording the transcript.

**MR ALEXANDER:** I see, okay.

**COMMISSIONER LINDWALL:** So yes, they don’t amplify.

**MR WARD:** Sorry. I’m Jonathon Ward.

**MS PATRINOS:** And I’m Maria Patrinos a community representative for the west on the Sydney Airport Community Forum which the Federal Government committee feedbacks to the Federal Minister for Transport.

**MR ALEXANDER:** And I’m still John Alexander. And have been for a long while.

**COMMISSIONER LINDWALL:** Indeed. Welcome. Do you want to make a statement?

**MR ALEXANDER:** Sure. I’m the Member of Parliament for Bennelong and chair of the Sydney Airport Community Forum, or SACF for short. I’m joined here by Maria Patrinos and Jonathon Ward. Jonathon is a member of my staff. I believe the inquiry will also be hearing from John Clarke who is also a member of SACF, but we’ll be presenting his submission separately.

SACF has already provided a written submission to the inquiry and we will speak to this today. Firstly, we should mention a bit about who we are. SACF was set up by the Minister for Infrastructure and Transport in July 1996 to address the impacts from Sydney Airport in the wake of the huge public outcry over aircraft noise with the opening of the third runway.

It includes representatives of the community, local councils, industry, State and Federal Parliaments. The full membership of SACF is available from the website. The role of SACF is to provide advice to the Minister, Sydney Airport Corporation and aviation authorities on the abatement of aircraft noise and related environmental issues at Sydney Airport and provide advice to aviation authorities to facilitate improved consultation and information flows to the community about the airport’s operations. We hold quarterly meetings with local residents and their representatives put their concerns particularly about aircraft noise to industry and the department who in turn give regular updates.

Meetings are fully open to the public. Because SACF’s terms are related mostly to noise concerns, we will be limiting our discussion to this element of the inquiry. As Sydney Airport is in the middle of the city and while this is advantageous for access from the CBD, it is disadvantageous to the liveability of the many surrounding suburbs. But this is area of concern in parts of my electorate, in north-western Sydney, demonstrates the wide breadth of Sydney suburbs that are effected by aircraft noise. I would draw the committee's attention to the N70 diagram in our submission, to see the full size of the impact of aircraft noise.

It is impossible for a plane to take off or land in Sydney, without travelling over suburbs. Even to the south, Kurnell lies right under the flight path. Additionally, parallel runways suggest most flights should take off to the north and south of the runway, if one was to simply to consider productivity. But if - but it was the outcry to this concept, back in 1996, that created the need for SACF in the first place. The solution to this problem was the LTOP, the long-term operating plan. To quote from the SACF website:

*Airservices Australia developed a report setting out options for operating the Airport in a way that shares the noise as fairly as possible. This document effectively put forward the draft Long Term Operating Plan for Sydney Airport and was released for public comment in late 1996.*

*The LTOP has the following noise sharing targets for aircraft movements:*

*17% of movements to the North of the Airport; 13% of movements to the East of the Airport; 15% of movements to the West of the Airport; 55% of movements to the South of the Airport.*

*A key feature of the Plan is the runway rotation system. This system involves different combinations of runways (runway modes) being used at different times of the day to provide, as far as possible, individual areas with periods of respite from aircraft noise. Noise sharing modes must be used at the airport, except when weather or unusual traffic conditions prevent this occurring, during the following hours on weekdays:*

*6am to 7am; 11am to 3pm; and 8pm to curfew.*

*Longer noise sharing hours apply at weekends. Noise sharing modes should be used at other times if the conditions permit.*

If the Productivity Commission is seeking to change the cap or curfew, it is the LTOP that they are actually looking at. It's also something that SACF is against changing. The LTOP is not a perfect system. It regularly overshoots on its targets, particularly to the north. However, it enshrines, in a transparent method, the aspiration to minimise the effects of aircraft noise over our suburbs. The cap and curfew are key regulations that give some, albeit limited, protection to aircraft noise impacting community of Sydney by creating a ceiling on operations.

In this respect, they are working exactly as intended. Proposed changes to the cap and curfew are nothing more than attempts to increase the number of aircraft allowed to operate at the airport. Cities don't just need to be productive, they also need to liveable. One without the other is not a recipe for a successful, happy or productive city. Discussions around the cost of the airport, and industry, of addressing noise objectives, ignore the cost of aircraft noise pollution on the health, amenity and productivity of the noise impacted community. Until these externalities are properly costed, then discussions about the cost to the industry of current noise objectives lack validity.

Before we move to discussion, we'd also like to dispel a couple of myths that pop up in the draft report. Firstly, it states that planes can be forced to wait in the air because of the cap or curfew, which creates additional noise. On flight management systems can be used to very accurately time the arrival of aircraft. However, occasionally aircraft do arrive before the end of the curfew, or the availability of their slot, and are forced to hold. These holding patterns, by definition, have to happen at a height and distance well removed from the runways for operational reasons.

Airservices has informed us that if aircraft must be held, they are placed in one of seven locations: holding points east of Sydney, over water; holding points north of Sydney, Boree, 85 kilometres from Sydney, Sadlo, 130 kilometres from Sydney, Mehan, 220 kilometres from Sydney; holding points south-west of Sydney, Taral, 139 kilometres from Sydney, Culin/Makka, 185 kilometres from Sydney. Additionally, these planes are held a height which further reduces the noise impact. So to suggest that cap or curfew creates noise, is not right.

Secondly, there is a persistent method about aeroplanes getting quieter. What people forget is that while they may be getting quieter, they are not quiet. The different in decibel output of a so-called "quieter aircraft" is often not large, and often undetectable. Meanwhile, the (indistinct) of the future need for larger planes is likely to offset any benefit. A test in 2008 by Airservices Australia using its noise and flight path monitoring system on a Singapore Airlines A380, prior to its introduction as a commercial service demonstrated this.

It showed that on arrival, the A380 was only between 2.1 and 3.7 decibels quieter than a 747-400. Even Sydney Airport admitted, in its recent preliminary draft Master Plan, that a drop of decibels on landing is barely perceptible to humans, let alone when noise events are frequently between 70 and 90 decibels. The fact is, larger planes are generally noisier than smaller ones, and the pdMP predicts that trend to accelerate. Of course, any move to new generation aircraft will require - will take decades to fully replace the current fleet. The reliance on planes becoming quieter, is not going to make the difference the report is suggesting it will.

In concluding, I would like to reiterate the importance of this cap and curfew. The movement cap is a specific measure limiting the maximum number of movements, during a rolling 60 minute period. The cap reflects the recognition that an important aspect of the impact of aircraft noise on humans is the frequency of events even then, the current cap of 80 movements per hour means an aircraft movement over residents, every 90 seconds, resulting in almost constant aircraft noise.

Economic arguments to change the cap to allow more aircraft to take off and land based on efficiency ignore the economic, social and health costs of aircraft noise pollution on the community. Aircraft noise pollution is treated as a free good, to be consumed at will. As far as Sydney Airport and the aviation industry are concerned. Currently it's only through effective regulation that the community is given some protection.

We believe the draft report fails to consider the broader picture of productivity. Increasing the cap and reducing the curfew in particular may increase the productivity of the airport, but would likely be more than offset by the loss of productivity and health impacts, caused by the constant disruption and annoyance of aircraft noise as well as the many thousands of people who would suffer a broken nights' sleep. Existing cap and curfew regulations must remain. Thank you. And we would welcome questions.

**COMMISSIONER** **LINDWALL**: Thank you very much for that one. I just wanted to clarify one thing, just from the start. We had not made a recommendation to remove the curfew or increase the cap. What we tried to explore was some flexibility in those, and that's what I'll get to in questions.

Secondly, on the point about orbits, holding patterns at various parts away from population centres at a high altitude, I just note that about three or four weeks ago, I was in a dash eight from Canberra, and remember doing at least three left hand orbits around Sydney harbour bridge, and up through to suburbs to the north of there, and around, and while that was very nice and scenic, I don't think it was due to the weather. The weather was nothing inclement or anything, so it must have been due to some restriction in landing I would have thought. Anyway, that's just an observation.

So, can I ask, starting - since we had a testimony from John Clarke earlier, we also had council of Darcy Byrne, the mayor of the inner west council. They had slightly different perspectives on the long term future of the Airport. John Clarke said that he envisioned that the airport would cease to exist at some stage in the future, whereas the Inner West Council said that there should be a long term future for the Sydney Airport. Where does your group think it should - what is the future of the airport?

**MR ALEXANDER:** Well, I don’t think I could speak for the group, I could speak for myself, but it would have a very, very long future, indefinite, we don’t know what the future holds, que sera.

**COMMISSIONER LINDWALL:** Of course. But, yes, you don’t have a policy prescription on that obviously?

**MR ALEXANDER:** No. Our main objective is to be a voice for the community and express the concerns of noise pollution. There are probably others who would be better qualified to answer those questions.

**COMMISSIONER LINDWALL:** Okay. No, that’s good. Now, could I ask about the period during curfew where we received testimony that the types of aircraft that are allowed to land are small and relatively noisy and that there is restrictions, or in fact apart from emergency landings, but illegal to land larger planes like a 737 for freight purposes that would be quieter and result in fewer movements. So is that something you would be willing to consider, that in other words having somewhat larger and less noisy planes at less frequency than what is currently occurring?

**MR ALEXANDER:** I think our overall view always is to look at the reduction of noise. So I think that we should remain open to any prospect of advancing that cause.

**COMMISSIONER LINDWALL:** So you’re open to changing the parameters around things if it can lead to an outcome which is mutually beneficial if you like?

**MR ALEXANDER:** I am, but I just chair the place.

**COMMISSIONER LINDWALL:** Yes, that’s true, that’s fair. How about you go, Stephen?

**MS PATRINOS:** No, no, please, go ahead. All I’m saying is that there are a variety, there’s a plethora of views around the committee and so it requires a lot of debate to get to a joint position and to agitate for some change.

**COMMISSIONER KING:** I understand. But if things haven’t been discussed at the committee and the committee hasn’t reached a consensus and you can’t really give a forum view unless there is a forum. I understand.

**MS PATRINOS:** We can give individual views, of course.

**COMMISSIONER KING:** Of course, and we’ll take them on that basis.

**MS PATRINOS:** Okay.

**COMMISSIONER KING:** You may have heard my questions earlier on to the mayor of the Inner West Council relating to where the 80 movement per hour cap came from, why it was 80 rather than 85 or 75 or anything else, are you aware of why 80 was chosen, was there a study done into the noise and amenity, the cost to the residents, is there something that we can go and look at to say that’s why 80 was chosen, there is a science or a rationale behind this?

**MR ALEXANDER:** We did have a discussion about the origins of this, didn’t we.

**MR WARD:** Yes, I mean it wouldn’t have been a random number because we weren’t there when it was but I can take that on notice and find out.

**COMMISSIONER KING:** That would be fantastic.

**MR ALEXANDER:** It wouldn’t have just been plucked out of somewhere, nowhere rather, it must come from somewhere.

**MS PATRINOS:** Well, it definitely came from somewhere, it would have been predicated, I don’t know if it was legislated originally on some basis or whether it was part of the development of the LTOP, but I believe there are physical constraints as to how much an aircraft can use a runway under a defined, a predefined configuration, so it’s all configuration specific.

**COMMISSIONER KING:** Yes. My understanding though is 80 is under the capacity and was under the capacity at the time that it was brought in, which is why I’m sort of wondering why 80 wasn’t set at capacity, it was set less than that.

**COMMISSIONER LINDWALL:** There might be a (indistinct words) basis but there are many things in public policy that I have observed over time that are based on totally arbitrary numbers.

**MS PATRINOS:** Yes. But if you could find out the exact source.

**MR WARD:** Yes. No, I’ll definitely do that.

**COMMISSIONER KING:** If you could, yes. Again, one of the things that you may need to take on notice, and again this is something that I think would be important, if they exist, for our report to highlight, which is studies, if there are any, that have been done in recent years, and I’m happy to go back over the last two decades for recent years, into the effects of noise on the local community.

Again, I’m unaware of any person, I don’t claim to be an expert in this area, but for such an important issue to the Sydney community I would have hoped that somewhere, somebody has done the studies on, well, what is the cost of noise to the residents around the airport and even on the north shore with regards to not just the economic cost but the broader cost to their health, to their family life and so on. So are you aware of any of those being done, and if not I’m happy to take it on notice if you can do a quick check?

**MR WARD:**  Well, I mean there’s Professor Hede’s report, though I can’t remember exactly when that was, it’s probably pushing the two decade barrier.

**MS PATRINOS:** That was 20 years I suppose.

**MR WARD:**  But that was about the same time as when all this was being said at LTOP and that sort of thing, so the Professor ‑ ‑ ‑

**MS PATRINOS:** Robert.

**MR WARD:** Robert Hede, H‑e‑d‑e, did a report. We, SACF, actually wrote to him last year, maybe the year before, for looking to see if there had been any way to renew that sort of a study. He put out a scoping document which I can definitely get across, it wasn’t - he definitely didn’t do the full report but he set up what a new report might look like were the government to commission one, or anyone else for that matter, and sort of the frameworks. The report that he did back in the day, I note of interest it was a joint report with another person whose name escapes me. But the report didn’t just take in ‑ ‑ ‑

**MS PATRINOS:** I want to say Paul.

**MR WARD:** You think it was Paul?

**MS PATRINOS:** I think it was Paul, yes, I think it was.

**MR WARD:** The report took in sort of two aspects of it, because particularly with hearing and noise effects it’s not just a – in fact that one person feels that may not be the same way another person feels that, so it’s not a truly scientific thing of this aeroplane fits this amount of noise and this aeroplane noise will travel x amount of distance that will stop at this road, this house might affect it, it might have different cladding, that person might have more sensitivity.

So the two people that did it, one was more of the engineering side and plus was more social, behaviour psychologist I believe or much more of that side of the social aspect of it and it was a very interesting report, but it is also fairly dated. So I’ll definitely find out.

**COMMISSIONER KING:** Yes, it’s good to know.

**MR ALEXANDER:** Just I should add that the number one issue regarding the operation of the airport is safety and that figure of 80 movements per hour is probably well within a margin to provide us with probably, the airport, with as good a safety record as anywhere in the world, so the noise is second to safety.

**COMMISSIONER LINDWALL:** I understand that, yes.

**COMMISSIONER KING:** I was going to go onto the LTOP, that was the intent.

**COMMISSIONER LINDWALL:**  Yes.

**COMMISSIONER KING:**  All right, thanks. We made a number of suggestions as to possible reforms, Paul ran through one with regards to the post‑curfew, whether the planes should be evaluated on a noise basis rather than just a list of this plane and not others that may actually be quieter, so we’ve discussed that. One of the other ones that we looked at was whether there’s ways to provide more flexibility in the cap of potentially have a variable cap and one option there would be to have fewer movements off‑peak and more movements in the peak.

My understanding is that that would make it more likely that the sort of LTOP targets would be able to be met, but it has been put to us that that may be an undesirable change rather than a desirable change, there seems to be different views. So I’d be interested, again, if the forum has a view I’d be interested in the forum’s view, if the forum doesn’t have a view we’d be interested in your individual views.

**MS PATRINOS:**  Our view is against it I believe, the forum’s view is against it.

**COMMISSIONER KING:**  The forum’s view is against it, okay.

**MS PATRINOS:** I think that it’s important that the cap remains where it is, I think there’s always pressure whether the maximum of the cap is 80 or it’s 90 or it’s 100 regardless of the absolute value I think there will always be pressure to increase the cap. So in many ways it’s about what

 is acceptable to the community, what is acceptable to their amenity and lifestyle, because we know that the airport can operate at that cap but there’s still pressure to increase it.

So I think overall our committee has determined that it is only adding pressure to changing well‑entrenched modes of operations and also regulations for not any particular benefit, particularly given that we’re building a second airport. You mentioned earlier, Mr Clarke mentioned that he would like to see the airport, the Sydney Airport, closed down at some point. I would like to speak personally and say that my view very early on, was that would have been a wonderful thing for Sydney overall because the airport is so close to the CBD and so close, it's built essentially and has been allowed to be built up, right up until the airport precinct, which makes it very difficult for people to live. They do get benefits but there are major disadvantages.

Not naively, I think many of us thought that the Western Sydney Airport, yes would bring many benefits but also would come with the dovetailing and decreased use of Sydney Airport. But the reality of the situation, to me, is that actually all the business interests are such that both airports will want to be used and will be pushed to be used to their maximum capacity. So I can't realistically see that Sydney Airport will be closed in my lifetime.

**MR ALEXANDER:** Just to add to this, we've just completed an inquiry into mass transit autonomous vehicles and alternate (indistinct) which followed on from a previous inquiry, entitled: "Building up and moving out" which essentially argued for master planning infrastructure and having the purpose of infrastructure understood and therefore, the master planning of land use.

So if you were to contemplate the closing down of Sydney Airport, you would have to master plan the infrastructure in that we judge commutes not in distance but in time, so the supporting mass transit infrastructure from that airport to those who wish to access it, the possibility of high-speed rail, the Melbourne-Sydney air route is the third busiest in the world in terms of numbers of flights, fourth busiest in terms of the number of passengers and when you look at Sydney to the Gold Coast and Sydney-Brisbane, Sydney-Sunshine Coast, that's one of the most busy airport corridors also. Sydney to Melbourne is the busiest air route over land; that could be very much substantially offset with the advent of high-speed rail. So if and when these other modes of transport come into play, it may well be that Sydney Airport has less of a need - it may well be - it would be dependent on many other things.

**COMMISSIONER LINDWALL:** Anyway, that's not part of our inquiry.

**COMMISSIONER KING:** Is there any more that you want to ask because we are a bit short of time.

**COMMISSIONER LINDWALL:** That is all from me.

**COMMISSIONER KING:** We might have to finish it there.

**MR WARD:** Could I just add one thing really quickly?

**COMMISSIONER KING:** Please.

**MR WARD:** You were talking - sorry (indistinct words) but I remember seeing something online earlier. You were talking about judging aeroplanes by their sounds after curfew times. The curfew actually already allows for that. There is a list - it's part of infrastructure page about the curfew, a list of aeroplanes that are allowed to take out simply because they are quieter, so that is somewhat ‑ ‑ ‑

**COMMISSIONER LINDWALL:** We have received testimonies, I think it's a 737, 800 (indistinct words) isn't on the list but which was supposedly less noisy than a lot of those that are on the list.

**MR WARD:** I have no idea how that list is formulated or reviewed but it does seem to be listed by quietness, so whatever anomalies I've no idea but in theory.

**COMMISSIONER LINDWALL:** Okay, well thank you very much for appearing.

**COMMISSIONER LINDWALL:** We might firstly start with the Australian Business Aviation Association, then if you're happy, we'll go to Regional Express or REX and then an afternoon tea. How does that sound? Okay, David would you mind introducing yourself and perhaps making a statement?

**MR BELL:** David Bell, from the Australian Business Aviation Association; I am the CEO, I've been so since 2003. The Association was formed in 1981. We currently have 73 members, who operate 120 business jets in Australia and some turboprops and some helicopters but we are basically a business jet organisation. We are one of 14 business aviation associations in the world, who are members of the International Business Aviation Council in Montreal, Canada. Business aviation plays a vital transportation role throughout the world, with in excess of 35,000 jets and turbo props in operation; it's a very large fleet of aircraft.

Our submission to the 2011/12 Productivity Commission Inquiry into Economic Regulation of Airports concentrated on the requirement for larger business jets to operate at primary capital city airports, due to the need for longer runways and other infrastructure. It's very pleasing to note that in general, business jets are now very welcome at these capital city airports. We have worked hard at that and it was supported by the Productivity Commission report in 2012.

Also, the ABAA has achieved improved access to Australian airspace for our members and visiting business jets from overseas. Operations into primary capital city airports improved in 2016, when an amendment to the Airservices Australia Assessment of Priorities aeronautical information publication came out.

Now, if a business jet is off blocks on time and has a landing slot if required, the aircraft will be accommodated in the air traffic flow. This improved safety; this was a major step forward for business aviation and airspace safety in Australia and we've had absolutely no adverse comments, even though the Airports Association was very against it, they said that A380s would be diverted from Sydney to Adelaide, et cetera. It was absolutely wrong. We fit into the system, we slot in very easily and our air traffic controllers really appreciate that now.

We have got two major items for discussion today. One is we request a study be undertaken to compare charges incurred by business jet operations at primary capital city airports. We know they are Sydney, Brisbane, Melbourne, Essendon, Perth, Adelaide, Canberra. These airports are of course owned by the Commonwealth and leased to publicly listed companies and privately owned airport operators. Airport charges include take-off and landing fees, aircraft parking fees, security fees, ground handling fees in some cases - but we are particularly concerned about fees at Canberra Airport and it's in our paper, which has gone up on the website today, I believe.

I will just give you a couple of quick examples of Canberra. Domestic operation, first example. Same day domestic arrival and departure, this is one business jet, a Bombardier Global Express, $3,421 thank you. Aircraft parking for one day, same aircraft, $2,900 thank you very much. Total $6,337 plus GST. I will give you another example of an international operation at Canberra, where we need to be there for two days. Apron development levy, $260 a day, that's 520. Apron access security levy $440 a day; landing fee per visit $3,763; aircraft parking fee $3,200 per day; total for a two-day trip, international, Canberra Airport for Bombardier Global Express $11,579, plus GST. I think that would be amongst the most expensive in the world and there must be, in our opinion, an inquiry into Canberra charges and also at the same time, look at other airports.

Now I’ll give you an example of Sydney. Sydney International FBO arrival movement fee – that’s a fixed based operation charge - $390 for arrival, and $390 for departure; airport landing fee $274.98; airport departure fee the same; airport security fee $21; aircraft parking fee $280; total $1,631. That’s at Sydney Airport; for a one day airport visit for Bombardier Global Express.

So who is charging too much? I did get a story from Canberra Airport some years ago. They said, “We have to make these charges because our volume is very low.” Well, maybe your volume would increase if you decreased your charges. So that, I really believe we’ve got to look into capital city airport charges for business jets, particularly Canberra. But look at the rest for a comparison.

Now, I’d like to move onto the recommendation that Curfew Regulations 1995 be amended to allow business jet aircraft which are certified to ICAO Chapter IV noise standards and also certified to carry – and this is very important in our proposal – “a maximum of 19 passengers”, because that’s the way a business jet is defined in the world. That is the benchmark for a business jet. It might be a Boeing business jet, but they’re usually certified for 19 passengers. Our aeroplanes are the biggest, usually Gulfstreams, Bombardiers and Falcon Jets, et cetera.

This recommendation is supported by all of the business aviation associations in the airport who say that the – I’ll get onto it shortly – there’s a weight limitation, a maximum take-off limitation of 34 tonnes for quiet business jets to be able to operate during the curfew of Sydney Airport.

This was put into motion in 1995 when the Act came out and the largest business jet in general usage then was a Gulfstream G4 which weighed 33.8 tonnes. But aeroplanes have grown much bigger, less noisy and more fuel efficient and they fly further. But those heavier business jets now are penalised. They are discriminated against, even though they are quieter than many business jets currently approved to operate at Sydney during the curfew, but because they’re a little bit heavier and they have longer range, they are not permitted to operate.

So we’ve got a situation now, where there's several of these aircraft on order by wealthy Australians who are running very successful Australian companies, most of their employees fly on the airlines, but some of them fly with the boss in the business jet. But those people are being discriminated against because they’re buying quieter, more fuel efficient, long-range aeroplanes that do weigh more than 34 tonnes. So we’re asking for the Act to be amended, come into the 21st Century, please.

Now, business jet operations during the curfew at Sydney have been very important for overseas visitors for many, many years and – I talked about the 34 tonne issue; I'm jumping ahead of myself there. The economic case for change, there has been a world-wide trend in the past decade for business jets to be increasingly capable of long-range international operations; I touched on that as well. We’re saying, please, raise the weight.

Now, it should be about noise, not weight. Business jet operations during the curfew should be based on noise, not weight. But the max take-off weight limitation’s 34 tonnes. This position was supported by Deputy Prime Minister Warren Truss when he was also Minister for Infrastructure, Transport and Regional Development from 2013 to 16. Noise, not weight is also supported by Sydney Airport Corporation Limited and the aviation industry.

Under the current interpretation of the regulations by government agencies it is permissible to operate a Global Express (with a flight manual supplement) from Nandi to Sydney and land during the curfew, but not from airports of departure further afield, such as Honolulu because it’d be more than 34 tonnes on take-off. Well, that’s just illogical, isn’t it? This interpretation serves no practical purpose as the low noise footprint on arrival over Botany Bay will be exactly the same.

Now, I want to talk about the most important part of our submission; “Departures and arrivals over Botany Bay”. We agree with the requirement that low noise jet aircraft take-off from runway 16Right during the curfew, with the take-off roll commencing south of intersection with taxiway G – that’s south, you know, of the main sort of threshold there, going south – and landings be on runway 34Left, which is the same runway in reverse. They are the longest runways at Sydney.

But should a downwind component be present, the flight crew can either elect to carry out the landing or divert to another airport. In fact, you take-off over the Bay and you come back over the Bay. If the downwind’s too large you go to somewhere else; Canberra or whatever.

Now, “Departures”: The requirement to take off from runway 16Right results in virtually no noise to surrounding suburbs as the track is over Botany Bay, then, with a slight right-hand turn over the sand dunes and out over the Pacific Ocean. This is known as the KAMPI Standard Instrument Departure – a SID – that’s publicised now.

But for arrivals, there's not a standard arrival procedure that doesn’t go over Kurnell. So I’ve spoken to Sydney Air Traffic Control and they’ve told me the following:

“Presently, the requirement to land on runway 34Left, the long one, currently results in the aircraft approaching from the south, over the Pacific Ocean, parallel to the coast and then over Kurnell before landing. Apart from Kurnell, the noise impact on surrounding airport is” – well, we would say zero, but let’s say “close to zero. The ABAA has requested Airservices Australia prepare a Standard Instrument Approach” – “STAR” it’s called – “utilising the reverse track of the KAMPI SID. We have been advised this should be feasible, with the new STAR being over the Pacific Ocean, then over sand dunes and then west of Kurnell prior to landing on runway 34L.”

So we’ve resolved the problem. We’re also going to look at take-offs with a left-hand turn straight out over Botany Bay or coming in over Botany Bay, Airservices telling us that it might be a little bit tight from the western runway – the longer runway – but we’re going to have a look at that. But we can certainly resolve the noise issue with this new STAR, coming into land at Sydney’s 34L.

So we’re very excited about this. This has gone out to our members; it’s gone out to the International Business Aviation community. I will be putting a proposal to the Deputy Prime Minister prior to the budget. I’ve almost got it ready; it’ll be based on this one here. It’ll be going to the opposition as well and go to the Trade Minister et cetera.

This is about productivity. That’s what the Commission’s about. We’re about increasing productivity in the business world for Sydney, New South Wales and Australia, and this is going to help your business airplane operators who are the leaders of our community. They set the example, they want to abide by the law.

Now, I’ve just got one other point to make here; “Aviation Sunsetting”. “Senior offices of the Department of Infrastructure, Regional Development and Cities have been reviewing Australian airport-related regulations through the sunset process over the past year or so, with a decision made last year to extend the sunset date of ten Aviation and Airport Division instruments.” This is very interesting. These ten instruments were due to sunset in April this year. In their wisdom, they’ve decided, “No, we’ll let those sunset in another five years.”

Well, we have asked the Department to bring forward at least the Curfew Regulations to sunset as soon as possible so we can get these regulations changed, so we can have these departure and arrival situations and airplanes weighing more than 34 tonnes, but quieter.

Now, it’s very interesting that the Department have said that they will try to move the Curfew Regulation sunsetting forward a little bit. It definitely must happen before April 2024 and I'm going to work with them to have this as one of the first of the ten. There's slots; there's other things that are very important there too.

We don’t complain about the slot system. We try to fit in with it. I just want to touch on that a little bit and then I’ll be quiet. The slot system actually has worked – our members have always worked very well with Airport Coordination Australia on the slot system.

We understand where ACA’s coming from. We try to fit in with it and we do. But we’ve been quite lucky in recent years because the airlines have cancelled quite a few flights. Either the day before or even on that day. So if our guys are willing to go at short notice, they can. And it’s very interesting that our members are becoming more flexible. They might say to the boss look, we haven’t got a spot at 8.30 now, but you know, if you’re ready to go sometime after 7 am, we might get it. And invariably, we do now. Because the airlines are cancelling flights. Anyone who goes to Canberra knows that story. Anyone who goes to Melbourne knows that story. Brisbane. It’s the same thing. A lot of flights cancelled every day. And fortunately, Business Aviation can step in if we’re ready. And I get quite excited sitting on a Dash 8 going to Canberra at 7.05 or whatever it is. And I see a Global Express behind us, because I know someone has cancelled a flight and our guy was ready to go. So it’s great stuff. That’s it from me. Thanks very much.

**COMMISSIONER LINDWALL:** Well, thank you very much, David. Yes, just a couple of things initially. You said that the current limit is 34,000 kilograms.

**MR BELL:** Kilograms, yes.

**COMMISSIONER LINDWALL:** Now, what’s the – how much – how heavy are the planes we’re talking about?

**MR BELL:** Okay. The latest aircraft to be certified is the Bombardier Global Express at 52 tonnes. But they’re quiet.

**COMMISSIONER LINDWALL:** So it’s still maximum 19 passenger seats.

**MR BELL:** Yes, certified maximum 19 passenger seats. And those aircraft right now cannot operate during the curfew, which is such a shame because they’re long range, they’re very quiet. They’re quieter than some of the aircraft currently approved.

**COMMISSIONER LINDWALL:** The Canberra Airport prices which you’ve alluded to here are – well, they seem, on the face of it, high. Have you spoken to Canberra Airport and - - -

**MR BELL:** No.

**COMMISSIONER LINDWALL:** We had a testimony from Canberra yesterday, so.

**MR BELL:** Not – well, I did have a meeting with Canberra Airport when the first hearing was on back in 2011/12, I got the short shrift. I was rudely treated. He was on the phone, he didn’t come back to the meeting. And I thought well, if that’s the way we’re going to be treated, that’s not very good. He didn’t want to listen to me, in fact, I think you know who I’m talking about. He actually said, “What is Business Aviation?” And I said, “If you’re running an airport and you don’t know what Business Aviation is, you should not be running the airport.

We have 35,000 turbine powered airplanes in the world criss-crossing countries every day. “Well, they’re not all flying every day but you’d have 25,000 flying every day probably. The gentleman down there was not interested in Business Aviation.

**COMMISSIONER LINDWALL:** Your point about a standard instrument arrival for runway 34L. The – they could of course, make a standard – so, they could make a visual of (indistinct) if they wanted to in that (indistinct).

**MR BELL:** They can.

**COMMISSIONER LINDWALL:** Do they do that?

**MR BELL:** They do that from time to time but we’re taking the worst case where it’s – instrument approach here, yes. I’m very pleased that the Sydney air-traffic controller said that should be feasible. It’s on their list to do now, the staff, the reverse track of the SID and they think they’ll have it done by the end of the year. – these are proper IFR approaches and departures.

**COMMISSIONER LINDWALL:** So what do you say about the government policy announcement that when Western Sydney opens in 2026, there’ll be no arrivals during curfew at all except for emergencies?

**MR BELL:** Yes, it doesn’t seem reasonable. We’ll have to cross that bridge when it comes. It’s – I think that we’ve proven that our airplanes are very, very quiet and with these new flight procedures we’re not going to be flying over built up areas at all. They’re very quiet airplanes. In fact I had a group visiting from the Japanese Research Institute, part of ANA Airways. They’re interested in Business Aviation movements during the Olympics in Tokyo in 2020 and they had a team come out. We showed them around the airports and talk to airport managers – we went to Sydney Melbourne, and Essendon airports, and we stood outside Kentucky Fried Chicken one day and watched the airplanes coming into land on 16Left, the short runway and there was a couple of 737s with flaps down, pretty noisy.

And then I knew this was going to happen because I had a mate of mine who said I’m going to be arriving in a GIV soon, David, I’m coming from Brisbane. And I said to the Japanese, “Just have a look at this G4 coming in.” And they said, “Well, where is it?” I said, “It’s just going past now.” “Oh.”

You could hardly hear it. So that’s the proof of the pudding. I know some noise away from airports, but you’ll find that Business jets are not noisy away from airports either. They’re very quiet.

**COMMISSIONER KING:** Can I come back to your price examples. So when a business jet arrives, or let’s say is flying into Canberra, do – would your members negotiate the prices with Canberra? Or is it sort of like a supermarket. You go in and you either take the price or - - -

**MR BELL:** No, they don’t negotiate. They might tell me that it’s too expensive or – I said to them before this hearing now, I said, “Give me some examples that you’re really disappointed with.” And Canberra came up mostly. But then I got a comparison for Sydney which is in here, so the two examples I’ve given for Canberra, or it might be three, are actually quite recently.

The first one was an operator from Melbourne going for a day and he was up for more than $6000 to go to our national capital and park at Fairbairn, that’s where they park now, of course. And there’s no assistance there and you don’t get any assistance from the airport.

You’re on your own, organise your own transport or if you want an FBO on the other side to organise a taxi or fuel, you’ll do it that way. So the airport doesn’t help at all.

**COMMISSIONER KING:** Yes, are there – so you went to – you’ve asked your members and they’ve come back with Canberra. Any other airports that really we should also be looking at here or is it really Canberra that’s the standout - - -

**MR BELL:** Look, I don’t get a lot of feedback, they’re very private people. They don’t like even putting this on the table. I had to squeeze this out of a couple of them. I said, “Look, I’m going to the Productivity Commission hearing give me some examples because otherwise, my case is going to be weakened.” And so they’re very reluctant to come forward. It’s like the curfew. They leave at – these leaders of business don’t get on television, they leave it to the association to the best – to do the best for them.

And they’re all members. You find – all of the people who operate the bigger business jets in Australia are all members of the ABAA. So we have a very good representation there, but they do leave it up to the ABAA.

**COMMISSIONER KING:** I assume that one that’s the business jet that’s used for the Governor General and the Prime Minister are not subject to the same rigorous restrictions as yours?

**MR BELL:** Well, they are actually. Yes. They do abide by them. The challengers, the three smaller aircraft do operate during the curfew under 34 tonnes and they meet the noise requirements, Chapter 3, ICAO. The Boeings are Chapter 4, but of course, they’re heavier than 34 tonnes. So RAAF 34 squadron does comply - I haven’t known them to abuse that at all. I think they always comply.

**COMMISSIONER KING:** Just – and again, your members may not give you feedback on this, but I was wondering if you have had any feedback on the different costs of refuelling at different capital city airports and – and whether that’s an issue?

**MR BELL:** Not much. Not much really. I know Essendon was a monopoly up until fairly recently and then another fuel company came in to Essendon and that’s improved the situation a lot. Essendon, I’ll just say this is a very important Business Aviation airport. There are more than 60 Business jets based at Essendon and a lot of turboprops. It is a – it’s a hub for Business Aviation in Australia. The other airports, Sydney, Brisbane, Melbourne, Adelaide, Perth, Darwin, Cairns, to some extent, are all now welcoming business jets, which is great. Because it wasn’t the case 10 years ago with some of these airports. In fact, Sydney airport when it was owned by Macquarie Bank in entirety wanted to move Business jets off the airport. They said you can go to Bankstown.

I reported this in the last Commission Inquiry. Going to Bankstown, Newcastle or Canberra would be totally inept and they said “By the way, because of downtown real estate prices, we’re going to start charging your members $3300 a day to park at Sydney airport. They were currently paying $150 a day. Well, we won that one and since that meeting in 2010, we’ve had CPI increases at Sydney Airport for parking. And you’ll now find that Sydney Airport is amongst the least expensive airports – for aircraft parking. I don’t know about car parking charge. They’re good for us.

**COMMISSIONER LINDWALL:** Thank you very much there, David.

**MR BELL:** Thank you. No more questions?

**COMMISSIONER LINDWALL:** No, no.

**COMMISSIONER KING:** That’s it.

**COMMISSIONER LINDWALL:** We’re going to hear from REX now. Yes, John how are you? Nice to see you. So John and Warrick, if you would like to introduce yourselves and then perhaps give us a statement.

**MR SHARP**: Certainly. My name is John Sharp, I'm the deputy chairman of Rex and I'm here with Warrick Lodge.

**MR LODGE**: Yes, I'm Warrick Lodge and I'm the general manager of network strategy and sales for Rex.

**MR SHARP**: Thank you very much for giving us a hearing. I have to say at the outset that we very nearly didn't bother to come here today because we are extremely disappointed with your report. We're disappointed on a number of grounds, but one of them which is the reason why we nearly didn't bother to come was because we believe that you didn't bother to read our submission. This is our submission. There's over 500 pages of it, and there's very little evidence than anybody in the Productivity Commission actually read it, and if you had read it then you couldn't honestly have declared in your draft report that there was no evidence to conclude, or insufficient evidence to conclude that airports were putting take it or leave it deals to airlines.

Now, that's what you said in your report, your draft report. In this document here there's 400 pages of examples of exactly what you said there wasn't sufficient evidence of, and that is examples of take it or leave it deals that airports put to airlines.

Now, strangely enough in your draft report you refer to one of those take it or leave it deals at Mildura Airport. You recall. You've used that as an example of regional airlines having countervailing power over airports. That was an instance where Mildura Airport proposed to put up their charges by 13 per cent. They went ahead and did it. We threatened at the time, as you know, to withdraw services from that airport if they did.

They put the charges up by 13 per cent. We withdrew the Mildura Sydney service and did it have any effect? None at all. Mildura went ahead and increased the charges to all airline operators, not just Rex, by 13 per cent. Now, that is in your own use of an example is a very good example of a take it or leave it deal put by an airport to an airline. Also you got it wrong, and I will go into that a little bit later on, because you actually argue one thing but actually because you got it wrong it turns out to be an argument for the opposite.

So we were very disappointed with your draft report, and I am going to go into that in a little bit of detail in a little while's time. Having said that there are a couple of things that we do agree with, and those - - -

**COMMISSIONER LINDWALL**: Sometimes you get it right, I guess.

**MR SHARP**: Yes, occasionally you've got to get it right, and we agree with your recommendation in regard to the need for governments, State and Federal, to undertake some form of economic analysis prior to providing regional airports with funding for extensions or upgrades of their airport. We think that's a sensible decision.

We also agree with your recommendation where you draw on the West Australian example of their template, if you want to call it that, for regional airport managers to more professionally manage their airports. We think that is a sensible recommendation. So there are some good things, but there are more bad things than good in this report, this draft report.

The thing that really upsets us the most is that you've put forward an argument for the status quo when it comes to the subject of negotiate-arbitrate, and your position in the draft report, if I am correct I'm sure, is that the current system is more than adequate to deal with the normal commercial issues that airlines and airports experience during the normal course of their daily activity. We would argue that that is wrong. We would argue that for you to try and promote the status quo into the future is the wrong judgment, and we believe there's lots of evidence in here, which we don't think you read, or if you did you ignored it, we believe there's lots of evidence in here which actually demonstrates why negotiate-arbitrate is a better form of dispute resolution in the status quo today.

Effectively the status quo today gives us ultimately litigation. That is the end result of any dispute, and litigation isn't an efficient way of resolving disputes. We've had our own experience with airports in going down that path, and I can tell you they are lengthy, they are costly, they are inefficient and they result in both parties having a public slanging match that does no side any good, and I will give you the example, it's in here, but there are several others.

At Dubbo Airport where we had a dispute that resulted in us having negotiations over a security charge that wasn't required that added about $10 to a departing passenger's ticket price or to our cost. That negotiation went on for a year. We ended up in court. It took us a long time, it cost us hundreds of thousands of dollars and the local newspaper enjoyed it enormously as they ran lots of headlines about us abusing each other, the council and ourselves.

Now, that to me is not a very efficient process. That to me is the status quo that you are proposing to continue into the future, presumed to be the next five years, and we don't think that is forward looking. We don't think that is seeking out the most efficient way of resolving disputes, and we propose as have other airlines proposed that the negotiate-arbitrate process, the regime that sits around that is an efficient, fast and inexpensive way of resolving disputes between airlines and airports.

Now, you argued against that and I think you put four propositions as to why negotiate-arbitrate is not the correct way of dealing with disputes between airports and airlines, and if I can paraphrase those four points, they are cost and time, airlines using arbitration to hold up investments, and I think it was talked about in the terms of gaming earlier today; arbitration outcome may reduce efficiency for others, and availability of the national access regime. Those are the four points you make.

I would like to deal with those sequentially. In this submission, 500-odd pages, which we don't think anybody read, we give seven examples of negotiations with regional airports that have gone badly. These negotiations outlined in detail here in this submission demonstrates what our problem is, and all of them will show you that when it comes to the issue of cost and time the current system, the status quo, which you argue for, is expensive and takes a long time.

I just gave you the example of Dubbo a short while ago. I could give you many other examples, Mount Gambier Airport for example. We have been in dispute with Mount Gambier Airport which is owned by the district council of Grant, which is the shire around Mount Gambier. We have been in dispute with that airport for ten years.

**COMMISSIONER LINDWALL**: I remember you telling me.

**MR SHARP**: I have told you that, yes, and I did tell you by the way, I have been listening to your questions, I did tell you when you came to see me what the science was behind the 80 movements per hour, but you clearly weren't listening because you didn't know the answer today when you kept asking the question. You clearly didn't listen then.

Mount Gambier - we threatened to withdraw services from Mount Gambier, but do you know what, if we did those services would be replaced the next day by other regional airline operators such as Sharp or Fly Corporate, all of whom operate in this zone, and all of whom would be willing to try and fill a gap left by Rex departing or withdrawing some form of service to a regional community.

So cost and time - a long, long time; a lot of cost. So is the status quo without cost and time? No, of course it is not. It comes with a lot of time and comes with a lot of cost. The alternative negotiate-arbitrate, you've heard the experience of a gas pipeline. They managed to resolve their dispute within four months, which included the Christmas/New Year break, and they resolve it inexpensively.

Now, the next point you make is that arbitration will hold up investments. The status quo can result in disputes with airlines and airports holding up investments. You've seen Qantas talked about their dispute with Perth Airport. They believe - there's no reason not to believe them - they believe that that dispute will last for about four years as it goes its way through the courts. That will cost them many millions of dollars in legal fees. Surely that in the current system is a very lengthy delay and a lot of cost. So I don't understand and we are baffled why you think negotiate-arbitrate is going to be worse than that.

**COMMISSIONER LINDWALL**: We can talk about that - - -

**MR SHARP**: Well, I look forward to hearing what the explanation is, because it's not obvious in your draft report. You then talk about arbitrated outcomes may reduce efficiency for other users. You make the statement, but there's no example of how that actually works and we're baffled to find out what it is. We don't understand that. So we will be interested in hearing what it is you think this actually means, because just saying something doesn't mean it's correct.

Then you also talk about availability of the national access regime. This one has us more than baffled. National access regime - the last time anybody had a go at this in the airline business was Virgin Blue. It has been discussed already today. It started in 2002. It took five years to resolve it, and you know this. Virgin Blue ended up having to apply to the NCC. The NCC had to make a recommendation to the relevant minister. The minister could make a judgment. It was appealable by the tribunal. Virgin ended up in both the Full Federal Court, the tribunal, and there was an appeal in the High Court. This took five years. This cost many millions of dollars in legal fees.

You're proposing that this is a reason why we should be happy with the status quo. Now, you think of the cost of that and the time taken in that, and you think about if it wasn't Virgin Blue, pretend it's Rex, Virgin Blue has a market, or Virgin as it is today has a market cap ten times the size of Rex. Sydney Airport who was of course the person or the entity that Virgin Blue was appealing to the NCC for a declaration of airside services, Sydney Airport exhausted every legal avenue they could find to delay that process to try and wear the other side out. Sydney Airport has a market cap that is one hundred times the size of Rex. If you think about this from a practical person's point of view would Rex ever embark on a process like that where the persons or the entity that you are appealing against will have full access to a legal process that they can afford and you can't. I don't think having availability of the national access regime represents a solution that an airline like ours would contemplate using. I think it's a nonsense and I think nobody else has tried it since from the airline perspective.

**COMMISSIONER LINDWALL**: Tiger has.

**MR SHARP**: Tiger? And I think BARA once tried too, didn't they. But the interesting thing, Paul, is that at the end of the process that Virgin Blue application was resolved by commercial negotiation, the day of or the day before the final resolution of the legal process.

**COMMISSIONER KING**: I think, John, we should just make sure the record is correct. There was an application for a declaration after Virgin Blue by Tiger at Melbourne Airport, and the declaration was then withdrawn by Tiger after Tiger and Melbourne Airport reached an agreement and that was obviously relatively quickly because the NCC actually hadn't even reached a decision in that situation.

**MR SHARP**: It doesn't take away the reality of the situation, and that is - if you go down this course you are going to expose yourself to very extensive legal costs and a very lengthy period of negotiation and legal activity.

**COMMISSIONER KING**: Even though factually - sorry for interrupting you, but even though factually that is not the case in the Tiger declaration application, so they actually achieved a very rapid outcome under Part IIIA. I don't wish to argue this, but I am simply stating that factually what you are saying is I understand not quite correct.

**MR SHARP**: Well, all I can say to you is that once you embark on this course of action, and you can't disagree with this, once you embark on this course of action you expose yourself to a very lengthy - potentially a very lengthy period of time. Am I not correct? Am I not correct?

**COMMISSIONER KING**: Potentially it could be a lengthy time - - -

**MR SHARP**: Potentially, yes. Okay, so I'm correct.

**COMMISSIONER KING**: - - - or it could actually be resolved very quickly as in Tiger.

**MR SHARP**: And it could rain tomorrow too, but, you know, it probably won't. So I'm correct in saying that you potentially expose yourself to a very lengthy period of time. Now, also am I correct in saying you potentially expose yourself to an enormous amount of legal cost. Am I correct in saying that?

**COMMISSIONER KING**: It's up to you to put your arguments to us.

**MR SHARP**: No, am I correct in saying it?

**COMMISSIONER KING**: No, John, I'm not going to be involved in arguing with you.

**MR SHARP**: Well, you are, but anyway.

**COMMISSIONER KING**: I merely wish to point out that you stated there hadn't been any application since Virgin. That is factually correct and I think you would agree with that.

**COMMISSIONER LINDWALL**: Do you want us to ask some questions, John?

**MR SHARP**: Okay. We don't think the four reasons that you put forward, time and cost - I mean it's hard to argue that the current system doesn't take a lot of time. Am I correct?

**COMMISSIONER LINDWALL**: Some people would say, yes, that it doesn't take time.

**MR SHARP**: Some people say.

**COMMISSIONER LINDWALL**: Some people would say, yes, it does take time.

**MR SHARP**: The evidence is there to suggest it is, and we have got 400 pages of it here, which we would invite you to read, which actually proves that it does. So the four points; time and cost - it's a long time under the status quo, and the cost can be very great, can it not? Okay. The second point, which is arbitration can hold up investments, well that happens now under the current system. So negotiate-arbitrate is unlikely to change any of that, in fact it could actually speed up the resolution of a dispute because that's the experience others have had doing the same thing, and you can't disagree with the fact that the gas pipeline resolved its problems, it's negotiations, very quickly.

**COMMISSIONER LINDWALL**: Airports are different to pipelines.

**MR SHARP**: Okay. Is that correct? Am I correct in saying that?

**COMMISSIONER KING**: I think if you can finish your comments and then we will start asking you questions because I'm worried about our timing here.

**MR SHARP**: Well, I will continue, and I want to talk to you about the issue of your claim that airlines have countervailing power over airports. You made it in your draft report, remember, and it's a strong point in the proposals that you put for your justification for the status quo. Now, we talked to you about Mildura Airport. We talked to you about Mount Gambier Airport. Mildura Airport did not take any notice of Rex's so-called countervailing power, did it?

**COMMISSIONER LINDWALL**: What about King Island?

**MR SHARP**: If I go to Mount Gambier then I will go to King Island. Mount Gambier on one occasion put up its airport charges by 46 per cent in one year. That had been preceded by a 9 per cent increase the year before. Our threats of leaving or reducing services did not result in Mount Gambier Airport changing its behaviour.

**COMMISSIONER LINDWALL**: But did you act on your threats?

**MR SHARP:** No, we didn't in the end.

**COMMISSIONER LINDWALL**: So it wasn't a credible threat then. A credible threat is one which you act upon.

**MR SHARP**: We have in the past. Did we? We didn't reduce our services, did we, to Mount Gambier?

**MR LODGE**: Not initially, no.

**MR SHARP**: No. We did later. We didn't at the time. But you see your proposition is that airports - airlines I should say, and you make it particularly relevant to regional airlines, because they are often sole operators to airports, regional airlines have countervailing power, but you make a broader statement that all airlines have countervailing power over airports.

**COMMISSIONER LINDWALL:** Well, some. I think we would have said some airlines have countervailing - - -

**MR SHARP:** Okay, so we would put the proposition to you that that's absolutely wrong and we can demonstrate that with Mildura. We can demonstrate that with Mount Gambier and we go to King Island Airport and we can go to other airports if you wish. It's all here and if you're worried about time then I suggest - - -

**COMMISSIONER LINDWALL:** I did read it.

**MR SHARP:** - - - rather than take the time of the meeting today, it's all here.

**COMMISSIONER LINDWALL:** Could we go to some questions, John?

**MR SHARP:** Can I finish?

**COMMISSIONER LINDWALL:** If you like, yes.

**MR SHARP:** Okay.

**COMMISSIONER KING:** Because remember, there is limited time so we would prefer to have some time to ask questions. If you're merely repeating things and - - -

**MR SHARP:** I know there's limited time, and I notice that Qantas had had an hour, for example.

**COMMISSIONER KING:** No, they didn't.

**MR SHARP:** Yes, they did. They did have an hour.

**COMMISSIONER KING:** A bit less than an hour, but all right.

**MR SHARP:** No, it wasn't less than an hour. It was exactly on an hour. I timed it, so.

**COMMISSIONER KING:** All right.

**MR SHARP:** So I note your flexibility in this regard and I note your flexibility in regard to the way you rearranged the program today. So we have some other points to make and we'd like to make them, and we want to talk to you a little bit about the cost of airports to a regional airline. Now, in your draft report you make about the cost of jet fuel and you say that jet fuel make up 20 per cent, approximately 20 per cent of the cost, the operating costs of an airline. Remember that? You did say that.

You also then draw on the AAA's proposition that airport costs, airport charges make up less than 10 per cent of the cost of an airline ticket. Do you recall that example that you used in the report, page 313, I think, of your report. Somewhere there.

**COMMISSIONER KING:** Yes, continue.

**MR SHARP:** And you talk about that, and then that is used to justify the argument that airport costs are relatively immaterial to the overall cost of an airline ticket. We would like to make the point, and again it's all detailed here, in this submission, we would like to make the point that for Rex, airport costs represent in the financial year 18, most recent, airport costs make up 16.7 per cent of all our operating costs, not less than 10 per cent, 16.7 per cent. I would also like to point out to you in the same financial year, 18, that fuel costs represented 15.9 per cent of all our operating costs. Now, the assumption made in the draft document is that fuel costs are greater than airport costs, and airport costs are less than 10 per cent. It is not correct. Certainly not correct in our instance - - -

**COMMISSIONER KING:** Correct.

**MR SHARP:** - - - for Rex, which is a typical regional airline operator.

**COMMISSIONER KING:** No, that's good.

**COMMISSIONER LINDWALL:** That's good to know that.

**MR SHARP:** And theoretically you are supposed to be putting forward propositions which deal with regional as well as others. Now, I can go on further, and I can say to you that in, and that actually represents, I think it's about $26.16 per passenger is the airport cost, so take-off and landing, because there's a charge at either end, $26.16 is the average cost for an airport charge across our network.

Now that changes in some states. In West Australia, for example, that's much higher. In West Australia, in the network there, our average airport cost is $50.81, $50.81, and that represents 25 per cent of all our operating costs in West Australia and on our community fare, which is our most popular fare, it represents 40 per cent of our total ticket price, and this is a reason why airport costs and the subject that you are reviewing is so incredibly important to an airline like us, and why the status quo doesn't work for people like us because it needs to be better.

And why does it need to be better? It needs to be better because in the same financial year Rex made a profit of $10.46, was it? Yes, $10.46 per passenger, and in some years we've got down to $3 and $4 per passenger, and if an airport puts up its charges by 46 per cent or 13 per cent, or in the case of King Island by 111 per cent , that suddenly makes a service to a regional community unviable, and that's why we need to have an orderly dispute resolution process that brings common sense to the table to ensure that some of these regional airports don't behave against ultimately their own best interests and push up charges such that they end up without an airline service because it's no longer viable, and that's where government can play a role, and you're here to advise government. You're here to advise government. Okay?

Now, that's why this is so important to us. We talk about government and we talk about privatised capital city airports and privatised or council owned regional airports. You're aware that I, of course, years ago privatised those airports. I commenced the process. Not in 1994 like you said last week in your speech, Paul. I did it in 1996. Okay?

**COMMISSIONER LINDWALL:** All right, two yearsafter, all right.

**MR SHARP:** And we started in 96 and you know that when we did that we introduced regulation to control certain behaviour at the airport, airports. You'll know that because it's referred to in your document. You've got a little time chart thing in your document.

We did that, why? We were a conservative government, who believed in dry economics you could argue. We did it because we understand that greed is a basic human instinct, and if you transfer a natural monopoly from a publicly owned body to a private entity, chances are greed will raise its ugly head at some point along the course of the way. This is something you'd be aware of in your economic studies on monopolies.

We decided to introduce regulation to protect the public interest, and we did it for five years, and after five years your predecessors argued that it wasn't necessary and there's been the so-called light-handed approach ever since which some would describe as a no-handed approach ever since, and airports have been allowed, in many ways, to operate freely, although there are some variations to that statement, and we did that, 1996, how many years ago it is, 30 years ago. We did that in order to protect the public interest.

Now, we are not, the airlines are not, A4ANZ is not, asking for you to reintroduce regulation. All we are asking you to do is to recommend to government to introduce an orderly dispute resolution process, one that is fast, cost effective and efficient, and that's why we argue that negotiate/arbitrate is a fast, cost effective and efficient method, as proven by others with similar challenges, if you like, in dealing with monopoly providers. That's why we ask for negotiate/arbitrate. It isn't a big ask.

We're not asking you to regulate. We're asking you to introduce a method of orderly process for dispute resolution. Instead you have argued for the status quo, and the status, quo as these documents demonstrate, and as your experience, you see now with Qantas at Perth Airport and we've seen with a few examples I've given you today, this is not - the status quo is not fast, it is not cheap and it is not efficient because litigation and the courts, as you well know, are not efficient methods of resolving disputes are by nature inefficient, and so we ask you to not try and defend the indefensible. We ask you to try and introduce something a little new, a little different, but proven and known to work to enable this industry, our company, Australia's largest independent regional airline, to actually continue to keep offering our services to the people who live in the 60 communities that we service throughout Australia. That's what we ask you to do and we hope you will do it, and for you to do it, we hope you'll amend your draft report and your final report, to include a recommendation to have a regime of negotiate and arbitrate between airlines and airports.

**COMMISSIONER LINDWALL:** Okay, thank you John. Could I ask, going back to the 80 minimum cap, could you remind me what you said back there?

**MR SHARP:** Well Paul, when you came to REX and you only came once and I note from Geoff's comments earlier, that you went to Sydney Airport on numerous occasions, he thanked you for that - well he said "numerous" I'm only quoting him back.

**COMMISSIONER LINDWALL:** We met Qantas a lot of times ‑ ‑ ‑

**MR SHARP:** Well I'm pleased you did and I'm sure they were pleased you went there too but you came to us once and on that occasion, I actually explained to you the background to the 80 movements cap and I'm fascinated to hear the attempts at the answers today. None of them were correct. The answer is it was purely political; there's no science to it whatsoever. Labor had a ‑ ‑ ‑

**COMMISSIONER LINDWALL:** I know that ‑ ‑ ‑

**MR SHARP:** Labor had an 85 movements per hour cap as air policy, aircraft noise was a huge issue, you recall that there were no aircraft noise parties running around with candidates, the airport had been blockaded I think on two occasions. It was a major political issue and 80 movements per hour sounded better than Labor's 85. It's pretty simple really.

**COMMISSIONER LINDWALL:** Yes.

**MR SHARP:** Basic politics, no science to it, the airport can and could and some would argue should, carry more movements per hour but that's not my job today. On that point, if you're talking about the slot system, we don't oppose a review of the slot system but what we would say to you is the slot system which I introduced also, also created the Sydney Airport Community Forum that was here earlier with John Alexander. The slot system that I created actually - and I should really get Warrick to answer this question but I think he'll tell you, it's worked extremely well, he is far better versed in it than I and as far as the rest of it is concerned with managing Sydney Airport, I think you should leave things alone.

**COMMISSIONER LINDWALL:** Okay, well we had better get on to a couple of questions. Do you want to go first or me?

**COMMISSIONER KING:** Sorry, just a couple of points that came up during your presentation, so thank you for that. Does REX consider that cost-based prices, that it should be paying cost-based prices at airports for its landing charges?

**MR SHARP:** The cost-based price would be what it costs to provide the service**.**

**COMMISSIONER KING:** So for example, if a building block model or a standard regulatory approach was used with the proper costs, so the operational costs, return on capital, that that should be the basis of REX's charge?

**MR SHARP:** Let me tell you the experience that we have and this is real-life experience. When a council gets a new general manager, the first thing they try to do, they think this will be a very good initiative on their behalf and show what a good general manager they are, is they decide they'll increase the charges at the regional airport that they administer and they think this is going to produce profits and the airport will be a profit centre and everything will be great.

Now how they do that, in the case of King Island Airport, for example, is you go in and you revalue the asset and you go and value an asset that for the ease of example is worth $100 before you valued it and after you value it, it's worth $400 so you then depreciate it at whatever rate you pick, five per cent, whatever you want. In the case of King Island Airport, it added another $400,000 to the so-called operating costs. So coming to your question, what is the cost - because the cost could be an inflated depreciation cost caused by a new valuation designed to get the charges up so that the airport manager and the council can say "But we're not covering our costs", which is of course what they do. Warrick can give you the example at Wagga, you might like to give the example at Wagga Airport, what they've done there.

**MR LODGE:** Yes, it was probably only around five years ago that the assets were revalued at Wagga Airport and that revaluation process seen the depreciation costs at the airport blow out from around $700,000 per year to about $1.8 million. You know, when Wagga Airport has just over 200,000 passengers a year and you've got almost two million dollars in depreciation costs alone, that has a big impact on the financial viability of the airport.

I guess with regional airports, there needs to be some acknowledgment that many of the regional services that we operate are extremely marginal and if were to go down a path of ensuring that every regional airport was profitable, then there'd be a vast change in what our network would look like because there needs to be a balance between service viability and the community benefits that are driven by regional aviation. As a regional airline we experience the same inefficiencies associated with small passenger numbers as what regional airports do.

So I guess that's where the tension exists in terms of saying, well you know, we've got a loss-making service going to your airport and the airport wants to put up its airport charges by a dollar a passenger. That dollar a passenger might not sound like a lot at face value but with 60,000 passengers, that's an extra $60,000 in operating costs, which for a service that potentially is already loss-making, is difficult to swallow. So that's where, I think from a regional local government perspective, there needs to be that balance between all those other benefits that the air service bring to the local community and not just looking at the one-dimensional viability of the airport profit and loss.

**COMMISSIONER LINDWALL:** Because this comes back to negotiate/arbitrate, the (indistinct) access regime or the (indistinct) rules of the arbitration regime under there has been put up as being one that we should look at to see success and yet that is explicitly - part of the rules for the arbitrator is to take explicitly into account the costs. So from what you've just said there, my understanding would be you would have problems in setting that as part of the things that the arbitrator must take into account. Is that?

**MR SHARP:** Well you know, you're assuming the arbitrator's not very intelligent. I mean the arbitrator I'm sure is capable of working around what a reasonable cost is. I mean when you asked me that question a moment ago, would we be prepared to pay at just the cost, my answer to you is it depends on what the cost is. Is it artificially inflated in the case of say King Island Airport or we experience with others, it depends. So I think if you get an expert arbitrator who actually knows what he's doing and is intelligent, I'm sure he or she would be fully capable of working out what is a real cost, as opposed to an artificially inflated cost.

**COMMISSIONER LINDWALL:** What about a better solution ‑ ‑ ‑

**MR SHARP:** Okay, I'm looking for better solutions because we haven't found any so far.

**COMMISSIONER LINDWALL:** A lot of the money that you're talking about going to regional airports, which as you say, cannot make money actually, come from state and federal governments. Some people have proposed a fund for a cost delivered analysis for the investment that is made by the governments because capex for those airports is required to cover them external source, right?

**MR SHARP:** Correct.

**COMMISSIONER LINDWALL:** And it goes there. Perhaps as a condition of that, that the governments insist, since they are actually investing in it, that the airports cannot charge depreciation on the asset that's been provided to them and then that wouldn't form part of the charges, you wouldn't need negotiate/arbitrate and you'd have lower prices and ‑ ‑ ‑

**MR SHARP:**  It's a very valid point to make and we would argue that is the case because in reality, it is an investment made by the airport owner, it's an investment made by the public in the public interest, so why would you depreciate it and then add it to the cost of operating the airport? Indeed it's a very valid point and I totally agree with you. Sadly, we see airport owners, regional councils, local councils, attempt to do that and so this is where your question, I keep coming back to your question, is a difficult one to answer because it depends on the cost. Paul's highlighted a very good way of dealing with it, how an intelligent arbitrator might indeed be able to identify what is a real cost.

**COMMISSIONER KING:** Would you see the negotiate/arbitrate solution, would the arbitration decision or the arbitrator's decision be appealable?

**MR SHARP:** Sorry, appealable?

**COMMISSIONER KING:** Could be - able to be appealed, yes.

**MR SHARP:** My understanding of what we want is that the arbitrator's decision would be final.

**COMMISSIONER KING:** Let's imagine that an arbitrator did something that from your perspective was incorrect, in terms of getting the asset base or getting the cost. So perhaps includes facilities that you think are gold plating are over the top and shouldn't but the arbitrator comes up and says, no they're included in the price. It seems to me that's a very lopsided, if I can call it that, solution. The airport then can't say well you know, if the price is too low, they can't say "We'll take our airport and go away" but if the price is too high, as we've seen in Mildura, REX can say "We'll cease flying to that airport." So isn't the negotiate/arbitrate with no appeal process biased towards the airlines?

**MR SHARP:** I don't see it as such. I see it as providing a quick, affordable and efficient method of solving disputes. I mean, you are putting to us a hypothetical situation. We can be here all afternoon. I could put some hypothetical situations to you. But as a principle, which is what we should be talking about now, and what you should be proposing the government, as a principle, an arbitration system which leaves the arbitrator's judgment as the final judgment is the proposition, I believe, that we support and that we would hope that you would support.

Now, you can put these hypothetical situations where there may be a failure in law, in due process or some other thing, that would give the other side, the so-called loser if there is one, there may not be a loser in this, but let's assume there is for the moment, gives him cause to go to legal challenge. Well, that might happen, I don't know, but what I would say to you is, that is entirely available to anybody who is a so-called loser now, which is probably what will happen in Perth with the Qantas situation, where whoever wins or loses, if there is such a thing, if there is a loser they'll probably appeal.

And that's available now. So in that situation it's no worse than what we've got. But if you take an optimistic view of the world and you assume that arbitrators are intelligent, capable people who are expert in their field, know what they're doing, follow proper due processes, comply with the law as they know it, then the chances are they'll come down with results which would be deemed to be fair and reasonable and there won't be follow on.

**MR LODGE**: And I think that, from our experience in dealing with more than 50 regional airports that are predominantly owned by local government, that our experience in the way that some of those have been managed from the airport's perspective, our view is that some of those have been quite ridiculous in terms of the proposed increases that are being imposed onto us or put forward, and we believe that having that arbitration process or even the threat of having that arbitration process as a back stop, will actually avoid some of those outrageous things that happen.

You know, we put forward the negotiate-arbitrate process based on our real life experience in terms of dealing with airports, and we know that, any reasonable person looking at the process that we've been looking at for the last 17 years that Rex has existed, would say that many of the things that we have to endure are totally unreasonable.

**COMMISIONER KING:** Just one final one and I understand you don't want to deal with hypotheticals so I'll just put a high level principle, in an arbitration, let's say between Qantas and Wagga airport, would Rex believe that it should be involved in that arbitration, that it should have standing before the arbitrator?

**MR SHARP:** It depends on the circumstances. Again, you're putting a hypothetical situation, you said you weren't but ‑ ‑ ‑

**COMMISIONER KING:** Well, as a general principle, should airlines that are not directly involved in the dispute, having standing before the arbitrator given that decisions for an airline at an airport may have consequences for the other uses of that airport?

**MR SHARP**: Yes, Warrick, you can answer that.

**MR LODGE**: I guess with the regional airports, it's highly uncommon for different users to have different airport charges. Like, for example Wagga airport has a published per passenger head tax and at the end of the day if Qantas is going to have an issue with what Wagga airport is doing, I think that would be a uniformed issue that Rex would have. We operate – like we said, to sixty airports, more than 50 of those are regional airports. Eighty percent of those airports we actually operate as the sole operator. There's only about seven or eight airports where we compete alongside QantasLink.

So when you look at it from that perspective, I wouldn't see any issue in terms of having a regional airport and multiple users which in practical terms is probably going to be one or two regional airport users. We don't see an issue when it's exactly the same issue for both parties.

**COMMISIONER KING:** So different at regional to say Sydney Airport?

**MR LODGE**: I think so.

**COMMISSIONER LINDWALL:** The issue John you mentioned about regional airports, who has – I said before many of them can't make a profit, right? I think we all agree on that. It is hard for me to describe them as monopolists with market powers and that usually requires that you'd make maximised profit. If you can't make a profit it's hard to be thought of as a monopolist. I think of them more as a pseudo government because they're actually owned by councils. They've got different agendas, they're not profit maximising. As you say, a general manager comes in and the first thing they think of is upping the charge.

So surely the solution is not something thought of commercial negotiation, but is more of a government policy, if you like, from perhaps a Federal and State governments to the local councils which vary in their quality. I mean, I did transitional regional economies and I can tell you they vary quite a lot because they're very small to very large councils. Brisbane City Council is highly competent because it is a very large organisation.

**MR SHARP**: Yes, some councils vary dramatically in their level of competency and professionalism, there's no question of that, and a lot – if you take an airport like Parkes. I mean, Parkes is a destination we've flown to for a long time. I think it is 36,000 passengers a year, Warrick, around about there. We do three return services a day. It's good service. We support the community there, particularly during their Elvis Festival, and we paint up one of the aircraft and call it The Hound Dog Express. We offer a $99 fare from Sydney to Parkes and Warrick turns up and dresses up as Elvis and the flight attendant does.

So some of these airports are never going to, in reality ever turn themselves into profit centres. They need to see themselves in the same way as the local community use the road or the bridge or the public park or the library or the swimming pool. These are part of the community asset that the community needs to sustain, and I hear people from local councils say to me at times "Why would we subsidise a privately owned airline so it can make a profit?

And this proposition is put in order to justify increasing the charges. And I say to them, "Well, when Mr Fox drives his truck down your main street, how much do you charge him for that?" "And when Woolworths delivers their supermarket goods in their van around the suburban streets of whatever town it is, how much do you charge them for that?"

I mean, the reality is these are pieces of infrastructure that support a community. An airport is a very important part of a local community and if you live in places like Broken Hill or Ceduna or Cooper Pedy or Bamaga or Esperance or wherever it may be, the maintenance of your airport is a vital piece of economic asset or infrastructure, and so it should be viewed that way. But you do get and we've given you examples, you're familiar with them, where these new general managers come along and you end up with these ridiculous fights and they can go on for years. Sometimes you can get a mayor, in the case of Dubbo we had that, where the mayor decided – he came up with his own brilliant plan, of how to generate more revenue from the airport. Now, these things are costly. They aren't based on any common sense.

**MR LODGE**: We have a lot more issues with the regional airports that have got higher throughput and higher airport revenue than we do with the smaller regional airports that truly value their air service and treat their airport like a piece of community infrastructure.

**COMMISSIONER LINDWALL:**  That's what I don't understand when – you gave examples of King Island, 111 per cent increase, and Mt Gambier 46 per cent. Why aren't the other airlines just also withdrawing and then, of course, they would capitulate like nothing is instantly basically and – if there are no airlines flying something, I can tell you that council will fold very quickly.

**MR SHARP**: Well, if there is – if we were to withdraw from say Mt Gambier, I'm quite sure that – possibly even Virgin Regional or certainly Sharp or Fly Corporate, would be there in a flash.

**COMMISSIONER LINDWALL:** To pay the extra ‑ ‑ ‑

**MR LODGE**: I think in the case of King Island there are two operators servicing King Island which is Sharp which operates services to Essendon and King Island Airways which operate services to Moorabbin. So they're both alternatives to the Rex Service which goes to Melbourne Tullamarine.

**COMMISSIONER LINDWALL:** But I can't imagine they'd be more efficient than you. You once told me John, that you run on the smell of an oily rag.

**MR SHARP:** Well, I think just because we've been the most vocal, doesn't mean that the other airlines don't, you know, share the same view as us in regards to what the increased charges are.

**COMMISIONER KING:** To come back to Paul's point, I mean, you know, many of your airports you're the only carrier, so in a sense there surely if you said "This is uneconomic, we're leaving", that's got to be a pretty good threat, at King Island for example, where they're putting it up by 111 – the proposal is to put it up by 111 per cent. If they’re doing that to all of the carriers, surely all of them are going to be in the same situation as REX, saying, “We can no longer make a buck out of service in King Island. Nice knowing you, bye.” In which case, back to Paul’s point, the council will pretty quickly learn that was an undesirable move.

**MR LODGE:** Well, council tried to implement those charges with no notice. It was effectively communicated in June, for the start of the financial year. And that’s what triggered, I guess, discussions between REX and the council, and also between council and the other two airlines. And it’s fair to say that probably the departure of the general manager of that council and the departure of the mayor of the council is a reflection on how mismanaged that process was, and that’s still an ongoing discussion now. And this first surfaced probably two years ago, when this was first put on the table. Then it went quiet, and then it was put on the table again prior to the last financial year. And now, it’s still out in the open, in terms of what King Island Council are going to do with the situation.

**MR SHARP:** There’s an example of, take it or leave it. And we’ve got another example of take it or leave this week, with Melbourne Airport, moving us from one area to another for our aircraft departures and arrivals parking. It doesn’t sound like much, but we were given two weeks’ notice to move. Now, the problem with that is that you’ve got to cross live runways. You’ve got to cross where jet aircraft push back, and you’re going to incur delays, which means your schedule is going to be thrown out.

Now, that’s a take it or leave it example. So if I can go back to a point I was labouring on for some time, and that is that there are lots of take it or leave it examples we can give you, bore you to tears on it, that airports put to airlines. It happens all of the time. So, please, if you do anything, change your draft report, which says there’s insufficient evidence, and say there is evidence, because there is. And we’ve been talking about it now, and you used it in your own report, in a different way.

**COMMISSIONER KING:** Can I come back again to the smaller, regional airports – and this is perhaps putting it more bluntly than Paul it – is it the case that you’re not facing abuse of market power, incompetence in some of these pricing decisions?

**MR SHARP:** Well, the old theory, you know, “Is it a conspiracy or incompetence?” go for incompetence every time. It could well be that.

**MR LODGE:** I think if you look back at King Island, you probably rewind the clock about four to five years ago, where they significantly upgraded their little terminal on the island, with Government funding. And then, effectively, that wasn’t put to any of the airport users, whether that was required or not; that Government funding gets put into a new airport terminal. REX is only servicing King Island with one flight a day, at a modest 14 or 15,000 passengers, and then it’s almost an afterthought, “Okay, how are we going to pay for this now?” It’s all well and good to receive that upfront funding, that we’ve now got an asset that’s increased in value, we’ve got other costs that have gone up. We would have actually been happier to operate to the old terminal and keep the costs where they are.

**COMMISSIONER LINDWALL:** Which is what I was – my point was, that that asset, which is provided by the Australian taxpayer, shouldn’t be depreciated. I mean, the operating costs, that’s a different issue (indistinct) different issue. But the actual asset, quite different.

**MR LODGE:** We didn’t ask for that terminal. We didn’t ask for the new terminal in Orange. We didn’t ask for the fancy terminal in Dubbo. We think that the air services are more important.

**COMMISSIONER LINDWALL:** Could I just ask one final question, unless you’ve got any more.

**COMMISSIONER KING:** I’ll finish – to what degree, given the issues with regional airports, in the longer term, to what degree will they be solved by actually setting investment at regional airports – and it may need to be more than investment, but investment, at least, in regional airports on the basis where there’s a proper cost-benefit analysis done before investments occur, which then create costs that are passed on to REX and other airlines? I mean, is that at least part of the solution?

**MR SHARP:** Well, certainly it’s part of the solution, I think, because we end up wearing the cost. We’ve given examples of Orange. Kangaroo Island is a recent example; a $21m investment there, an $18m investment at Orange. The largest aircraft that operated there at the time before the works was a Saab 340B. The largest aircraft that operates there now - - -

**COMMISSIONER KING:** Still a Saab.

**MR SHARP:** - - - Saab 340B, after $18m has been expended. A complete waste of money. So, having some rigour, some discipline which governments impose prior to handing out taxpayer’s money would be welcome. Of course, in the real world, it’s all about politics. But we shouldn’t let that stop us from arguing a proper case for a principled argument, and that is that the taxpayers’ funds should be invested wisely, not foolishly, and it shouldn’t be wasted. And so I thoroughly agree with what you’ve put forward in your draft report in regard to that, and Paul has been making that point again today.

But what I would say – if I can come back – this is why we get so disappointed with what you’ve done. We have all these problems, and you’re starting to see some of them now. We’ve been talking about them, and I think you can – maybe you can sympathise a little bit with us in some of the problems we deal with, because you were inferring incompetence might be a reason why some of these things are happening, and it’s probably quite right. But we deal with this. We have 50-odd council-owned airports that we fly to. That’s 50-odd councils that we deal with. That’s 50-odd general managers, mayors, and other councillors, multiplied by – there’s probably hundreds of people who are actually involved in the management of all of these airports.

It is a very difficult thing to have common sense prevail at times with some of these airports. And that’s why a negotiated – an orderly process for dispute resolution is best. You ask Qantas, do they threaten to withdraw services? And I forgot the answer now, but if you ask me that question, which you haven’t, but if you did, I would say, “Of course we do.” And you know why? We don’t want to do it. It’s unpleasant. We don’t want to live an unpleasant life. But we do it, because it’s one of the few tools that you give us. It’s one of the few tools.

The only other tool is litigation, and we’ve done that, and it’s not a happy outcome. So why would you deny us an orderly process for dispute resolution, when we have so many obvious problems we have to deal with around this multitude of 60 destinations, 50-odd council-owned airports, where obviously we’re going to have problems with the individuals who are involved in managing these airports? It’s going to happen. It happens all the time. We’re probably running two or three of them at any one time, all the time.

It would make our life so much easier. It would protect the interests of the ratepayers, the interests of the taxpayers, the interests of the travelling public, if there was an orderly process to resolve those disputes, rather than for us to have to go in and threaten to withdraw services, close down the airfield, get into a mud-slinging match with the mayor or the general manager in the local paper, which the local paper loves. We don’t want to do that. But I’m going to blame somebody here for making us do that, and it’s you. You are the reason why we do that. I mean, you will be in the future if you don’t go with our recommendation. So bear in mind that if you don’t do that, we’ll blame you, because we’ve got no other tools to use. So do we threaten to withdraw services? Yes, we do. Why? Because it’s one of the only tools we’ve got left.

**COMMISSIONER LINDWALL:** I think, John, you should also blame some of your successes (indistinct) who have handed out money to local councils without - - -

**MR SHARP:** I wouldn’t disagree with your comment. I have been known to say it myself to some of them over the years, that this is a stupid thing for them to do.

**COMMISSIONER LINDWALL:** Could I ask one final question, and then we can go and have a coffee, is whether – and then we’ve got one more – is whether, after you mentioned about the Virgin Blue dispute with Sydney Airport back in 2002, how have your relations with Sydney Airport changed over time?

**MR SHARP:** Well, our relations with Sydney Airport have changed. My very good friend Max Moore-Wilton was the CEO, then chair of Sydney Airport, and I have a great deal of regard for Max, but we got on terribly when he was running Sydney Airport. We had very substantial near-physical altercations about the way they would operate. You heard from David Bell earlier about the increase in parking charges for the private business jets. We had exactly the same experience. We received a letter – and it was usual that it was written by Max, presumably.

It said, “Good news, we’ve revised the way the general aviation area is going to be working, and how it’s going to happen. And as a result, your parking charge for your Saab 340B aircraft will now go to $3400 a day,” something like that; about the same sort of charge that David Bell’s members were threatened with, “and it’ll take effect as of July 1, in a short while’s time.” Now, that was a low point in our relationship. I think we paid $64 a day to park our aircraft there at that time, so it’s a fair increase by any measure, hundreds of per cent. I don’t know how many hundreds of per cent, but a lot. And you would argue, I think, if I can assume you guys are reasonable men – are you?

**COMMISSIONER LINDWALL:** Would I admit otherwise?

**MR SHARP:** All right, well, I’ll judge you when you bring out your final report, and I’ll – but if you were a reasonable man, you would say that was an unreasonable increase, wouldn’t you?

**COMMISSIONER LINDWALL:** It does seem rather - - -

**MR SHARP:** And that was the low point. We had other low points, but I have to say, since Kerrie Mather came, and now with Geoff, the situation has improved. But Warrick deals with this more regularly than I do, so I should leave him to answer the question.

**MR LODGE:** I think our relationship with Sydney Airport is very good, and it’s obviously underpinned by the declaration on the price cap for regional New South Wales services and also the protection of New South Wales regional slots. There’s always going to be some tension in terms of general access issues, because we’re a relatively small player at capital city airports. Sydney Airport is our biggest airport. We’re probably the third-largest holder of slots behind the Qantas Group and the Virgin Group. We’ve got about 550 slots a week, which services our 14 destinations.

But that combination of the price cap and the protection of the New South Wales regional services obviously underpins what is a good relationship with Sydney Airport. We do only have two commercial agreements, or aeronautical service agreements with other capital city airports, and that’s with Perth, that we entered into at the start of this financial year, and also Melbourne Airport. But outside of that, generally, our airport charges at the capital city airports effectively tie into whatever the rack rate is.

**COMMISSIONER LINDWALL:** So your issue that you are explaining today is about (indistinct) is really for the regional airports, not for the capital city airports?

**MR SHARP:** Well, in terms of number, yes. We still have problems at the moment with Melbourne Airport, and I think I may have mentioned that to you when you came to see us, and it’s all detailed here, where Melbourne Airport refuses to introduce the runway demand management scheme, for arguments which we find failing. And as a result, the congestion at Melbourne Airport is severe, and we have our worst on-time performance – in departure, I should say, in Melbourne because of that, and it’s getting worse every day. I think we did a forecast, and we’re down to – our on-time departure will be down to about 50 per cent in about two years’ time or something like that.

**COMMISSIONER LINDWALL:** (Indistinct) Melbourne would say the new runway will alleviate some of - - -

**MR SHARP:** Well, a new runway demand management system would indeed make the situation a whole lot better. Now, most airports – I mean, Sydney has a slot system which is legislated, and I introduced the legislation for those slots. But the other airports have, if you like, voluntary systems that they bring in to better manage departures and arrivals. Some of them are unfair. I think Brisbane has a condition where they won’t allow scheduled charter services to operate with aircraft below 50 seats, which we think is unfair. But at least they have a system, and Sydney does; Melbourne doesn’t.

**COMMISSIONER LINDWALL:** I think we’ve given you more time than Qantas, actually. So if you want to respond one quick thing about jet fuel, is there anything you want to tell us about that?

**MR SHARP:** Well, we don’t have quite the same problem that the others have. It’s not a big issue for us. The subject of fuel we’ve only raised in these discussions today, on the basis that we think you got it wrong. Because it isn’t 20 per cent, it’s 15.9. Airport charges aren’t less than 10 per cent, they’re 16.7, and that’s why we - - -

**COMMISSIONER LINDWALL:** I’m happy to correct the mistakes that we make.

**MR SHARP:** Very good. I look forward to that.

**COMMISSIONER LINDWALL:** Thank you, John and Warrick.

**MR LODGE:** Thank you very much.

**COMMISSIONER LINDWALL:** Let’s go and have a coffee, everyone.

**SHORT ADJOURNMENT [3.44 pm]**

**RESUMED [4.02 pm]**

**COMMISSIONER** **LINDWALL**: Well, as I said before to everyone, this is our last scheduled presentation. But after that there will be an opportunity, if anyone wants to come forward and give a brief presentation to rebut or agree or whatever. (Indistinct). So, please, Steve, (indistinct) yourself, and an introductory statement if you like.

**MR** **FITZGERALD**: Thank you. And good afternoon, Commissioners. Thank you for the opportunity to participate at the hearing. Morrison & Co's provided a brief submission, to support our appearance.

**COMMISSIONER** **LINDWALL**: Thank you.

**MR** **FITZGERALD**: So I believe you'll have that. If you don't mind, I'd just like to mind a few opening comments for a couple of minutes, and then happy to take any questions. Morrison & Co's known as a specialist infrastructure manager. Our involvement in airport investment goes back over 20 years, and it's detailed in the submissions, so I won't read it. There's comments. The current investments include APAC, which are Melbourne, Launceston, and Queensland Airports, which is Gold Coast, Townsville, Mt Isa, Longreach, and Wellington Airport in New Zealand.

My role as head of asset management for Morrison & Co, and I've got responsibility for the performance of private (indistinct) investments on behalf of clients. I also sit on a number of boards, including Perth Airport and Queensland Airports. I've been involved in the airport sector for 27 years. I work for the Commonwealth Departments of Finance and Transport through the privatisation process. I was an executive at Sydney Airport for several years, including as an economist, and then I was Chief Executive of a group with European Airports and Chief Executive of Wellington Airport.

As noted in our submission, strong investment outcomes rely on a predictable, regulatory framework. Providing investors with confidence in their ability to recover operating and capital expenses over the industries long investment horizon is in the best interest of final customers, the passengers, as it ensures them the appropriate level of airport services will be provided.

I commend the commission for the evidence based approach taken in the draft report, which I note is a continuation of a (indistinct) applied since 2002. As noted in the submission from Harry Bush, Australia is in the fortunate position of not having to unwind a regulatory system over decades to gain the benefits of responsive investment and service quality. With investment and quality outcomes generally observable in Australian airports, there's no case for the imposition of a heavy-handed regulation with its attendant cost in the form of resources, and delays to investment.

The point I wish to most emphasise, however, is that the proposition that there are simple and quick regulatory interventions that would not have significant negative consequences, is simply false. Airport owners and managers understand their responsibility is custodians of significant infrastructure, to invest the appropriate capacity and a quality that facilitates economic growth of the communities they serve. Airports need to balance the needs of all airline customers, and consider the need to passenger customers. The framework for this is set out in the planning requirements under the Airports Act, that is taken through extensive consultation and negotiation, prior to agreements being struck and investments made.

If a third party is introduced to determine outcomes based on a limited number of factors, and the needs of a limited number of stakeholders, such as a single airline, or subset of airlines, the outcome could be materially damaging. We've set out the reasons for this in our submission, but examples of issues that would cause net damage if put through a "simple and quick" process, would include a major common user terminal development, which Perth, Gold Coast and Townsville, all having current, live examples.

The allocation of costs between users or user groups, creating winners and losers amongst - amongst a set of customers. Capacity enhancements that increase competition, or the potential for airline competition, that may be opposed. And the enabling of arguments for fundamental changes to the regulatory understanding of investors at the time of investment, such as stranded asset risk, or pinpoint rate of return specification.

The evidence over 17 years that airports have been able to navigate these complex issues have arrived at balanced outcomes that have facilitated strong growth and delivered increased levels of quality. Given this, increased regulation is unwarranted, and would be unwise. I'd be very happy to take questions.

**COMMISSIONER** **LINDWALL**: Okay, thank you for that, then, Steve. Could I start by the examples of negotiate-arbitrate, which some participants have been pushing for, and then claims that the airports have made that might lead to gaming by airlines, against interests of other parties. What do you think of that as a credible outcome, and how would the gaming be manifested?

**MR** **FITZGERALD**: Look, I think if the - if a negotiate arbitrate is seen as the way for an airline to ultimately achieve a lower price through a third party, then I do think that derails the good faith negotiations that genuinely are - are progressed towards an outcome. I think there is a risk, and I think - again, the UK example through - through Harry Bush's experience is interesting. It does take - it does take a great deal of maturity, good will, and a system that somehow protects against just the - the negotiate part of a negotiate arbitrate, just being - just being a testing out to get to the lowest possible level before always seeking to go to a - to an arbitrator to seek something even better.

**COMMISSIONER** **LINDWALL**: Is it conceivable that under negotiate arbitrate, you might get more investment than you would under the current system?

**MR** **FITZGERALD**: Well, one of the concerns I have with negotiate arbitrate as it's being put forward, is - is it would seem to be triggered not by all of your customers, but by a single customer, or group of customers, and therefore you'd be going into a third party arena, where not all of the facts are on the table, not all of the stakeholders are represented, the benefit of - the benefit of whatever's proposed, or being opposed, to other parties is not taken into account. So I think that - that environment takes you down the "swallow the spider, catch the fly" methodology where you continue to broaden out the participants in that regime, until ultimately, you have a full blown price and inquiry type of outcome to avoid the selective outcomes that you would achieve through a limited – a limited scope and limited (indistinct) arbitration process.

**COMMISSIONER LINDWALL:** Yes, well, I mean, when I asked about investment obviously, it’s a very lumpy investment. CapEx program (indistinct) the airports, there was Frontier Economics in the UK did a study of Heathrow which showed that when there were capacity constraints there was insufficient investment. The rates from that were – went to airlines, not airports. Did you find – have you seen that study?

**MR FITZGERALD:** Yes.

**COMMISSIONER LINDWALL:** And - - -

**MR FITZGERALD:** I’m aware of the summary of the outcome study.

**COMMISSIONER LINDWALL:** So – so would that be fair to say that if a new system led to less investment at an airports, our major airports, you know, could actually lead to higher returns for airlines?

**MR FITZGERALD:** I absolutely think that that is a risk and a potential driving force of incumbent airlines. And I don’t think airlines are unique in this, but I think if you have incumbency in a system with limited capacity, you’re incentive is not to have that capacity grow at a rate that you’re not ready personally, as the incumbent organisation, to take up.

So look, I’ve experienced and seen cases where investment is opposed because I would say the market is concentrated, yields are high, new capacity leads to greater competition and it leads to lower fares and therefore is not in the interest of the incumbents.

**COMMISSIONER LINDWALL:** Now, you’re on the board of Perth Airport, as you’ve said. It’s currently in a dispute with Qantas before the Supreme Court in Western Australia. Is there anything you can say to us now about that? Obviously there’s sort of things legal privilege type rules that’s applied, but - - -

**MR FITZGERALD:** Look, there are, and I certainly won’t go near the legal privilege elements and also I note, I think, you have Kevin Brown, the Chief Executive of Perth Airport protecting (indistinct) Melbourne, so I think Kevin is probably better placed to go through the detail. But I would say it’s been amazing in some senses that this is the first legal action to recover charges, short paid by Qantas over the last 17 years. I mean, the commission has evidence of fairly long-term behaviour and what the lack of legal challenge suggests is that people think very, very long and hard before they take legal action against their major customer. I think in the case of Perth, you know, the extent of the short payment and the fact that the short payment was coming off an offer to reduce charges, invoicing them without an agreement at a level below the consulted rate, and then what I consider to be an unjustified and really unexplained level of low remittance, is taking place. It’s – it was – I think on public record over $11m in four months of short payment. I think when you’re a commercial organisation you need to act to protect the company.

And look I – this is only part of the ongoing – the discussions, negotiations, a legal case to recover a past invoice only really deals to that invoice. It will provide some guidance as to what might constitute a fair and reasonable price for service and facilities that continue to be delivered and continue to be accepted. And I think that the – the legal – the legal case, if it were to run its course would add to the body of knowledge of how we should be looking at pricing.

**COMMISSIONER LINDWALL:** (Indistinct) NZ (indistinct) submission said that this was indicative of why a negotiate arbitrator’s needed because it’s a very costly situation going to court. I take it you don’t agree with that?

**MR FITZGERALD:** No, look, the – it is costly to go to court. But in the context of economic cost of a system that has been working well for 17 years in a national (indistinct) infrastructure, to have one legal case, I think is actually a pretty modest cost. I think the legal process can be relatively efficient. The courts do deal with cases every day. Protagonists can choose to drag things out. And they can choose to delay. They can choose to go through multiple appeals. They needn’t. And in the background, there’s always the potential for negotiation to continue.

The legal process also tends to include attempts to bring the parties together through some kind of mediation anyway. So look, I think the Western Australian Supreme Court is a – is in my view, a valid place for Perth Airport to be going to seek some form of outcome for the level of short payment that it’s currently experiencing.

**COMMISSIONER KING:** I’ll ask one question then if you don’t mind. I was going to ask (indistinct words) Perth Airport (indistinct) case. Yes, just rather than change topic. Just to follow up on your last point. Perth Airport hasn’t gone to the Supreme Court in WA and asked for payment, back payment based on its own invoices. It’s gone to the Supreme Court and actually said, or asked the Supreme Court to work out what are fair and reasonable charges on which Qantas should be paying for these back charges.

That does sound an awful lot like something that would be better put before an arbitrator rather than put before a Supreme Court Judge who may have absolutely no or very little background in regulated returns, utilities, how you actually come up with pricing structures and efficient prices. So the argument that’s been put before us is yes, it’s the first time it’s gone to court, but it’s ended up in exactly the wrong forum compared to what you could have under an arbitration system.

**MR FITZGERALD:** I don’t necessarily agree. I think that we are operating in a commercial framework of light-handed regulation and recourse to a common law outcome is actually the continued working of remaining in that commercial framework rather than going to an outcome. Again with one party, Perth Airport has reached agreement with every other airline, other than the Qantas Group at Perth Airport, has been transparent in the information its provided, has gone through an extensive process published its documents so it has attempted to run a fair and reasonable process as negotiated in good faith. Now, the point being made by Qantas, publically, is that there is no contract. So there’s not a contract against which to submit an invoice.

We’re getting – we’re straying into the – straying into the legal territory but in the absence of an invoice, you need to decide – there are services and facilities being provided by Perth Airport that Perth Airport believes it should receive recompense for and is asking a commercial jurisdiction in the Supreme Court to opine on what that might be. And you know, the building blocks model approach to setting price is not the be all and end all in either regulation or the commercial world. It’s rarely seen in the commercial world. And in the regulatory world, it’s not ubiquitous.

**COMMISSIONER LINDWALL:** (Indistinct words) Wellington Airport in New Zealand, is there anything you can contrast and compare the New Zealand regulatory system to our one here in Australia?

**MR FITZGERALD:** Yes. And unfortunately, in my view, the New Zealand system’s taken some retrograde steps recently. And over a number of years – so recently, my experience, I was Chief Executive of Wellington Airport from 2008 to 2011. And that was about the time the Commerce Commission started to really inquire into their role. And I think prior to that, there’d been a process of their legislation as you’re probably aware, has a – specifies that airports can set charges after consultation. That concept of consultation is quite weighty. It has been legally tested and actually they use the judicial process in New Zealand to really test what does litigation mean. Sorry, consultation mean. And it does mean entering into a process in good faith, with an open mind, taking on board the - the views of all the parties, and ultimately coming to a decision, and I think embedded in that is this common user concept, that you listen to everybody, but ultimately someone has to determine what are - what the investment's going to be, and what the prices that come from that will be.

Now, the commerce commission now has gone down this process of - of really doing a report post pricing. Now, I appreciate, although I haven't been close to the system, but I appreciate that it is a broader report. But everyone is focussed on price and WACC, and that's what the media's focussed on, there's, you know, coming out of the Auckland decision recently, they were talking about 50 - the price was 50 cents too high, and the minister's released - the commerce minister doing a press release about expecting Auckland to reduce its prices, down to what is a - what was a process that had led to an investment outcome, had been a consultation, but everyone they spoke to, well, you need to reduce your price by 50 cents.

In the end, Auckland Airport did see that as pretty much price regulation, because they reduced their price pretty much to the point that the commerce commission would like them to reduce it to. So, in some senses, I think they're - they're actually detracting from all of the rest of the negotiations between the airlines (indistinct) come down to a, "Are you getting accounting return that we think has a bit of extra profit in it," and that's the thing we're going to focus on.

And in a national test of what - what is - what's Auckland Airport's role in the future economic growth of New Zealand, as the major gateway hub, constrain capacity, needing a new runway, pretty - as a regular user of Auckland airport, not the best of - not the best of experiences all the time. So I think they've really taken the focus off the regulatory system down to a pin point WACC, two decimal places, and we all know that's no - no more right than many other two decimal place answers, and I worry that that investment is going to suffer, and Auckland Airport subsequently has had delays in its investment, they are not linked as far as we're told, but investment's been pushed back. So the return actually probably will be higher than that, but they've lowered their price to the price the commerce commission want it.

**COMMISSIONER** **KING**: Just to follow up on that, when the commerce commission's looking at Auckland, how do they determine the capital base? Is there a set capital base, do they do a - a test of whether capital investment has been reasonable or not? I mean, these are standard tools that occur in, effectively, regulation everywhere else, so I was wondering what happens there.

**MR** **FITZGERALD**: Look, I will stand to be corrected, but my understanding is that it's a - that element of it is actually fairly light. They do, sort of, read the materials, and so they are still - the commerce commission still claims they use a light-handed approach, so they would be - I'm not sure if they engage experts to review capital plans. I suspect they read the views of Air New Zealand, other airlines, and Auckland Airport, and sort of say, you know, have they reached some consensus here or not, and (indistinct).

So I don't think they're exercising judgment over that, and it is - it does just come down to almost the press release element of the report. Um, I think if there were a more material economically consequential outcome from - poor outcome from that sort of process, perhaps they would - perhaps they would look in more depth, and I think the - the case there in Air New Zealand's market - market position in New Zealand puts Qantas' position in Australia to shame, in the sense that it's concentration are in the domestic market, 80-plus percent, and flying out of other centres, even internationally pretty strong.

So, I think the - the way that expansion of airport capacity is done in New Zealand - the concerned regulator are a regulatory body, or a government should have is that there is some compact between the national carrier and the airports to not invest fast enough, because it's in both of their interests. Now, I haven't observed that, and I certainly think from the Wellington Airport perspective, and Wellington's - Wellington's running a, you know, a pretty strong campaign to try to get approval to extend its runway so it can compete with Auckland for direct long-haul services.

Now, that's been heavily opposed, by Air New Zealand, who like the hub and spoke of Auckland, and Wellington - but Wellington is very much out there, it has enormous community support behind it, it has - it has, you know, council financial support. The Airport's a third owned by the council. Two thirds owned by one of our clients. And so, so I'm not seeing the hold up of investment coming up on the airport side, but certainly the incentive's there for Air New Zealand to try to maintain its strong market position in New Zealand.

**COMMISSIONER** **LINDWALL**: Very good. When you look at the airports as an investment, how riskily do you - do you (indistinct) the airport investments in Australia, compared to other asset classes?

**MR** **FITZGERALD**: Look, within infrastructure, within core infrastructure, I think airports are right at the top end of the core. Now, core, fundamentally, is a low - a low risk investment class, because of - because of the additional volatility - because of the system in Australia where - where airports take the passenger volume risk within set periods of time, there is greater volatility in passenger numbers than things like electricity consumption, and then you have investments that need to be paid for on, this is another electricity analogy, on merchant's, sort of, basis for the commercial side of the business.

They are at that upper end of your core class, and you could - some people do call them core plus, and certainly when I look around the airports we have interest in, you know, getting to Townsville, let alone Mt Isa or Longreach. You're way up the spectrum. Gold Coast, even, is an interesting case in point, such a strong leisure destination, so you do need - and we certainly, when we invest and advise clients, we look at the - for the volatility of folding the underlying passenger traffic, and clearly government, business, visiting friends and family, leisure are kind of your continual of increasingly volatile passengers.

So, an Airport like Gold Coast, which has a degree, now of business traffic, as that region in northern New South Wales is developing decently VFR a strong leisure focus, is certainly a much riskier airport than a Sydney or a Melbourne, and I'll stop there. I could go into different types of traffic as well, but there are different volatilities.

**COMMISSIONER** **LINDWALL**: No, that's all right. So you wouldn't agree characterisation by someone (indistinct) very low risk, you know, put the higher return assets?

**MR** **FITZGERALD**: No. And certainly, with there now (indistinct) board of transport, we have - we also have investments in UK water that we manage, we have investments in various other asset classes, and I - you know, we also invest in data infrastructure and other things, and so we invest across the spectrum, and that's where I'd say, they're not the top of the risk of where we sit. But they're well above the core utility type (indistinct).

**COMMISSIONER** **LINDWALL**: Has that risk changed over time? So, if you look at airports today compared to 10 or 20 years ago?

**MR** **FITZGERALD**: I think the risk of an airport inherently reduces as it grows. So I think - and I think when you're in a small airport, especially a small international airport, one service can be a fundamental swing of your revenue and cost base, and Gold Coast has only a couple of international carrier, those are quite fundamental to its success. And it runs very hard, those. When you've got a much more diversified base, so I think the inherent growth has probably taken a little bit of risk out of some airports, fundamentally.

In terms of how the market operates, when Morrison & Co first got involved, people just didn't understand the asset class. So in some senses, it was mispriced, and some of those early investments have done - done well, because they were expected to.

**COMMISSIONER** **LINDWALL**: Yes.

**MR** **FITZGERALD**: They were priced that way, actually relatively - relatively well priced, and I think knowledge over time, and - and quality of management teams, and quality of governments has probably managed to bring that - bring that balance in, so people understand it better. We have got some opportunities within a company structured to - to push more into property development or not, and someone like fixed property development with long term leases is less volatile than the aeronautical business, so you can make some choices about the business as well.

**COMMISSIONER LINDWALL:** How do you perceive regulatory risks since the design of the system (indistinct words) you said on the basis of if you look at successive reports of the PC, that the large airports are not (indistinct) and not systematically exercising it. But the threat of regulation (indistinct) more heavy handed regulation which is always (indistinct) that the holder is omnipresent if you were to take that logic. Does that effect the way you view the assets?

**MR FITZGERALD:** Absolutely. And I can guarantee you that we see the threat of regulation is very real. I feel it in my role advising clients. I feel it in my role around the board table. We have taken this process extremely seriously. We’ve done a lot of work. Really the Airports Association has sort of led what I’d say is a very robust piece of statistical and economic analysis which came at some cost to the airports because it is a very real threat of regulation. And I think you’ll see that you’ve published – you’ve analysed and published in the draft report the returns of the major airports over time in their aeronautical (indistinct) and they’re not – they’re not out of sync with what you’d expect from pretty much a regulated business. Because, you know, there is that degree of (indistinct) regulation, self-regulation that keeps returns very, very much top of mind.

**COMMISSIONER LINDWALL:** Yes, Steven, did you have one

more - - -

**COMMISSIONER KING:** Well, just to follow on and keep on the risk area. From the airports you deal with, how do you think about the returns from the different services? So I’m just looking through them, but I don’t think there’s any that have – although Perth may have a Business park on it. But earlier today, we were discussing airport services where you’ve got Core Aeronautical Services. You’ve got other services have sort of related to passenger traffic and car parking (indistinct words) then you have sort of a grey area (indistinct words) go from business (indistinct) or you may say, well, being close to the airport is (indistinct words) can be higher through to having shopping centres which have separate entrances and probably have no relationship to passenger transport at the airport.

So from the airports that you’re involved with, how do you think about those different investments and the relationship between those investments? How much – how much are they thought of as a package (indistinct words) thought of as separate investments? I’d like to understand that a bit more.

**MR FITZGERALD:** The answer to the question is that we think very deeply about the individual characteristics of each airport in trying to value it and trying to think about its returns.

Now, some airports have more opportunity to be (indistinct) risk than others. And Perth actually has quite an extensive property of state, both developed and potential. It has distribution centres for Coles and Woolworths. No particular reason to be on the airport (indistinct words) but the airport is located in a place that has good road accidents.

Recently opened a DFO joint venture shopping centre on the (indistinct) of the airport. In some senses, the airport, being that was one of the issues, you don’t want to have traffic congestion overlapping. A lot of work is done in urban planning to prevent the almost mixing of the traffic types, because you don’t want people complaining about missing flights, because people are queued up to go to the DFO.

The Perth Airport has, for example, a large office for Rio Tinto, there’s over a number of buildings operation centre, yes, I think that has benefits to Rio being on the airport, but it’s – you could assume it’s at a cheaper rent than A grade office in the centre of Perth at – or at least the A grade office prices of a few years ago.

So you know, that is something that is a feature of that airport. Now, when I was at Sydney airport, it’s a - Sydney airport is a tiny geographic footprint. And so has less capability, but as an investor, I think you – these are substantial investments and they’re big enough to be taken on a case by case basis and to look at the characteristics of a (indistinct words).

But I think you asked about the hierarchy of risk. And I do think long term property leases to good credit counterpart (indistinct) is right at the bottom. And it’s not part of the aeronautical till but it’s there. Sometimes property’s talked about as, you know, sort of lounge leases or office leases of the airlines. They probably are next up because they don’t fluctuate with the number of passengers. (Indistinct words) the passenger volatility comes into your aeronautical till and there I think you’ve got greater volatility with things like car parking and retail because you are seeing particularly at the moment, you’re seeing quite a lot of substitution going on with car parking for rideshare, for other ground transport modes, you’ve got competition of public transport et cetera, et cetera.

So I’d say that they are riskier than (indistinct words) aeronautical. So aeronautical is not the top or the bottom, but it’s probably – it’s probably in the middle.

**COMMISSIONER KING:** So some parties, either explicitly or implicitly, so explicitly called for a single till presumably because it’s not always clear, but presumably as all airport operations, other parties have implicitly done that by saying, well, we’re going to analyse a return on all airport assets and argue that that’s too high and therefore there needs to be more regulation of airports. What’s your view, again, from the investment perspective of the consequences of if you started moving towards a single till type approach, rather than explicitly separating aeronautical services off from the other services?

**MR FITZGERALD:** I think you would – you would really dampen any appetite to take any risk. So I think you – you will – why do we work hard at those other parts of the business, not aeronautically related businesses? Well, because they are businesses in their own right. They’re substantial businesses.

They’re standing in a market with competitors and being priced competitively against alternatives. Now, if they are making a reasonable return and they may have some locational advantage or something else we’ve spoken about, I don’t know what the economic efficiency benefit of taking that return and giving it to airlines would be. And I think – I think this goes to the issue of your – of what is the appropriate economic signals to be sending through pricing. And I think we’re all in a world where average cost is seen to be accepted as the right way to go. Whereas I think you know as – as a (indistinct) you sort of think well, actually, we’re sort of really – we really should have an eye on what long run incremental cost is. And if you’re pricing too far below long run incremental cost, what are we doing; and in a constrained market, all we’re doing is transferring wealth around. And I don’t think that is of any great economic consequence. And even if you did behind that, you know, with the people we represent, essentially, Australian superannuates, you know, our – Wellington Airport is based on New Zealand superannuates?

But the Australian airports are owned partly – the future fund, which is the commonwealth generally, but also our other clients tend to be dominated by Australian superannuates. I think that wealth transfer out of that pool doesn’t seem to make a lot of sense to (indistinct).

**COMMISSIONER KING:** (Indistinct) airports. Yes.

**MR FITZGERALD:** Yes, (Indistinct) airline (indistinct).

**COMMISSIONER KING:** (Indistinct words).

**MR FITZGERALD:** And – and – yes. And look, I don’t think – I know the Commission doesn’t tend to (indistinct) wealth transfer type issues because it’s not particularly (indistinct) to what you do, but I do think that, you know, those equity and ownership arguments do fade with the airports if you were to want to run down that rabbit hole.

**COMMISSIONER KING:** Yes, okay.

**COMMISSIONER LINDWALL:** Anymore questions?

**COMMISSIONER KING:** Just on financial indicators.

**COMMISSIONER LINDWALL:** Yes, that’s fine.

**COMMISSIONER KING:** Yes, so in our report, we used a range of financial indicators to try and estimate or provide evidence of whether there was market power or whether there was the airports were taking advantage of their market power. I was keen for your views on what are the financial indicators that really – the investors and the airport boards pay most attention to, and if you’ve got views on – well, did we choose a decent set? Have we missed obvious ones? Anything along those lines.

**MR FITZGERALD:** Look, I think maybe with some regret, I think we’re all drawn to the return on invested capital of measure of the aeronautical till. And I think that’s because we’re somewhat conditioned that that is the – the point that placed a first look. I note in passing that you know, even the margins are still used by others, but I think I can say that there's really no economic merit in - in such a - - -

**COMMISSIONER** **KING**: Well, (indistinct). He doesn't invest in companies and boast about their effort to (indistinct).

**MR** **FITZGERALD**: Yes, no, absolutely, and you can certainly buy (indistinct). There's no - investors know well that even management teams incentivise (indistinct), are ones who want to spend your capital unwisely. But, so return investment capital is probably the overall benchmark financial indicator. I think where our opportunity, and where we're moving as an industry and particularly the airports that I am close to, try to move away from the financial indicators to more surface quality type indicators, and I think BARA has been incredibly constructive in pushing airports to, you know, get - get more definitive, more measured, more measurability into the quality and service indicators, as - as a way of, you know, of demonstrating value for money.

Value for money is that concept of price and quality, and I think for too long we've - the price element of it has been the - has been the dominant factor. I mean, at a board level, we look at, you know, return by - when you're trying to manage a business in the very short run, you're looking at real measures on the passenger basis, because really, you have some control in the medium to long term of passenger numbers, and airports put a lot of effort into trying to grow passenger numbers, and in that sense, airports are aligned to their communities, because growth is good for airports.

But in the short term, you have relatively little control over the passenger number, and therefore, when you're trying to pull the levers of a business, to try and extract from that, we look at per passenger measures, and I certainly like looking at real capacity measures, rather than nominal.

**COMMISSIONER** **KING**: Anything else?

**COMMISSIONER** **LINDWALL**: Well, one other final question, Steve, is about jet fuel. Now, you know that many of the airports, the major airports, they JUHI with the joint venture owned by peak companies. Darwin has moved towards buying back the asset by the airport. Melbourne's moved to open access. As an investor, do you think you have an appetite for the airport actually owning the infrastructure for fuel and supply?

**MR** **FITZGERALD**: Yes. And I think that's - look, I think that, my view from an investment point of view, is that that is - that is a good place to be in terms of having someone who can be more the honest broker, to encourage competition in those related markets, and I haven't observed that concentration in those markets as being something that pushes up price to - to airlines, and that's bad for airlines. We want airlines with cheap prices, we want - we want affordable fuel in our airports to encourage growth in airlines.

It's particularly important for international carrier, who are taking up relatively large amounts of fuel, have relatively constrained abilities to tanker fuel between ports, depending on their ranges, and in the airports I deal with, and I include Melbourne in this, but I'm closer to Perth and Gold Coast, particularly that low cost segment, and even that sub-segment of long-haul, low cost. Being able to make sure that they have a competitive fuel offering is absolutely critical to (indistinct), and therefore whether they serve your airports or not.

**COMMISSIONER** **KING**: I think that's great, and thank you very much.

**COMMISSIONER** **LINDWALL**: Thank you, Steve.

**MR** **FITZGERALD**: Thank you.

**COMMISSIONER** **LINDWALL**: Now, thank you again, Steve. I think we have Virgin was to appear, is that correct? Something like that.

**MR** **STEEDMAN**: (Indistinct).

**COMMISSIONER** **LINDWALL**: Happy to answer any questions after the statement?

**MR** **STEEDMAN**: No, I think we're going to rely on the statement.

**COMMISSIONER** **LINDWALL**: All right. Just identify yourself and make your statement about your client.

**MR** **STEEDMAN**: Glen Steedman from Virgin Australia. So we'd like to just make a statement today, and that statement's really just forward our submission that's been sent through to you, and also the A4ANZ, their submission. So, firstly Virgin Australia has a strong preference to negotiate our commercial agreements to the betterment of both parties, and that's the way we approach our negotiations. We believe that gives us a better pro-active and long-term relationship with the airports. However saying that, we don't always reach a position that we believe is equitable to both parties.

PC, as itself recognised, that the airports are in the position of a natural monopoly, and we provided examples in our submission, where we outline that. We also think that PC is incorrect in its assessment that the market power can be controlled through the withdrawal of an airline from an airport. We don't believe that is the case, and we believe that an airline would suffer significantly more detriment than the airport if that occurred, and that's - that lack of account of our market power effectively leaves the airport free to exercise their market power - excuse me.

So, we are not seeking the re-regulation of airports. We don't believe that's beneficial, but we are looking for a circuit breaker we can activate when negotiations break down. We do not share the concern that a negotiate arbitrate regime is inefficient, or it won't work effectively. A well designed negotiate and arbitrate framework will encourage information sharing and genuine commercial negotiations between the parties from the start to the finish. I think the effective thing is we want to use the arbitration mechanism as a way of starting negotiations on the right foot.

And finally, Virgin Australia would encourage the PC to reconsider its position on the negotiate arbitrate regime. We believe that will deliver the best benefit for the traveling public of Australia and the broader economy. And apologies for not taking questions,

**COMMISSIONER** **LINDWALL**: No, no, that's perfectly fine.

**MR** **STEEDMAN**: We haven't represent ourselves, about that

(indistinct) - - -

**COMMISSIONER** **LINDWALL**: You're not prepared for that, and

that's - - -

**MR** **STEEDMAN**: So we'd just like to make that submission, and rely on the reports. Thank you very much.

**COMMISSIONER** **LINDWALL**: Thank you. Now, does anyone else want to come up and have their say? No one wants to rebut or agree vigorously with (indistinct)?

**COMMISSIONER** **KING**: Going, going.

**COMMISSIONER** **LINDWALL**: All right, in which case I think we'll adjourn the proceedings, and we resume in Melbourne on Thursday. Thank you, everyone, for being here.

**MATTER ADJOURNED AT 4.47 pm**

**UNTIL THURSDAY 28 MARCH 2019**