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Board of Airline Representatives of Australia Inc

Our Ref.: Let.1983

16 May 2011

Dr Wendy Craik
Presiding Commissioner
Economic Regulation of Airport Services
Productivity Commission
Level 2, 15 Moore Street
Canberra City ACT 2600, Australia

Dear Dr Craik,

Submission by the Department of Infrastructure and Transport
Inquiry into the Regulation of Airport Services

The Board of Airline Representatives Australia (BARA) is surprised and concerned at the submission by the Department of Infrastructure and Transport[1] (DIT) to the Commission's inquiry into the regulation of airport services. In BARA's opinion, the DIT makes unsubstantiated claims over the quality of commercial negotiations with airport operators. Even more importantly, the Department's submission highlights the fundamental failing with the current regime. Specifically, with the dropping of the 'show cause' process, there appears to be no credible process available by which adverse findings about individual airport operators in the prices monitoring reports are acted upon. BARA's concerns with the DIT's claims and positions are set out below.

Finalisation of commercial negotiations between airport operators and airlines

In its submission the DIT asserts that airport operators have been able to 'finalise' commercial negotiations with airlines and that this represents a major achievement of the regime.[2]
BARA questions the basis on which the DIT is making its claims over the commercial negotiation process. The DIT does not participate in any such commercial negotiations and, therefore, is not aware of the quality of negotiations and the commercial conduct displayed on an airport by airport basis. As stated in the Commission's *Issues Paper*, the Commission's inquiry was brought forward as a result of the concerns raised over the conduct of Sydney Airport Corporation Limited (SACL). The blanket claims by the DIT, in BARA's view, represent misguided support to SACL rather than an objective assessment of the actual performance of individual airport operators. BARA maintains that, in a number of cases, airport operators 'finalise' negotiations with airlines, but with far from satisfactory outcomes from the airlines' perspective. As explained in BARA's

[1] Department of Infrastructure and Transport (DoT) (2011) Productivity Commission Inquiry into the Economic Regulation of Airport Services, Submission, April.
[2] DoT (2011) p. 3.

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submissions to this inquiry and the 2006 inquiry, the quality of commercial negotiations has varied widely across airport operators and through time with individual operators.

In the case of SACL, BARA has been involved in lengthy and generally pointless 'negotiations' for many years. discussions have been problematic from the beginning, with SACL simply making demands for higher profits and prices. Pricing proposals are designed to generate excessive returns on existing assets, while proposed 'commercial' agreements were in many respects more draconian than those imposed by the previous Federal Airports Corporation. SACL's poor commercial conduct does not simply represent 'tension' between the parties in conducting normal commercial negotiations. In competitive markets, purchasers and suppliers actually have an incentive to develop successful commercial relationships based around partnering and sharing of information. In doing so, the businesses are able to provide superior goods and services at lower cost, providing them with a market advantage. If one business does choose to engage in poor commercial conduct, the other business has the option of finding an alternative supplier or purchaser.

If competitive market conditions existed, the airlines would simply choose not to have any dealings with SACL. SACL's poor commercial conduct would be easily addressed directly through it not having any customers. However, as the monopoly provider of aeronautical services in Australia's largest city, such competitive market disciplines are not available. As such, the airlines are reliant on either the prices monitoring regime or declaration to obtain reasonable terms and conditions.

BARA's submission to this inquiry outlines the unsatisfactory procedures and outcomes associated with other airport operators as well. In summary, negotiations have been characterised by the following poor commercial behaviour:

(a) Adelaide Airport – the operator typically adopts a formula driven approach to setting aeronautical charges.
(b) Melbourne Airport – there has been a marked reduction of transparency of capital investment programs by the airport operator.
(c) Brisbane Airport – the airport operator continues to revalue its assets and claim low returns.
(d) Cairns Airport – the airport operator has sought to set aeronautical charges based on unrealistic asset valuations.

Implementing the prices monitoring regime

BARA maintains that the DIT should undertake an important role in implementing the prices monitoring regime. In particular, BARA would expect the DIT to provide advice to the Minister for Infrastructure and Transport over the need to take corrective action against an individual airport operator based on the outcomes contained in the annual prices monitoring reports.

In January 2009, the DIT released its Draft Guideline, intended to detail how the Australian Government would undertake the 'show cause' process recommended by the Commission in 2006. The Guideline responded to stakeholder concerns that historically there had been a lack of

transparency and credibility in the process of investigating poor commercial conduct by an airport operator.

BARA provided a written submission on the Draft Guideline. It was BARA's view that the Draft Guideline lacked clarity over how the show cause principles would be implemented in practice. BARA notes that the Australian Government is not proposing to introduce the annual 'show cause' assessment.[3]

This means that the current regime appears highly reliant on the discretionary implementation (if at all) by the DIT. It would also appear from the DIT's submission that it would be highly reluctant to recommend taking action against an airport operator. In particular, the DIT seems to indicate that Part IIIA is the appropriate remedy for airlines, stating that:

> But the successful conclusion of negotiations after the declaration (without needing recourse to final arbitration by the ACCC) indicates the value of the Part IIIA processes where serious differences exist.[4]

In summary, BARA considers that the DIT's submission highlights the fundamental weakness of the current regime. There is no effective implementation. The department responsible for implementation seems to consider that Part IIIA is the appropriate mechanism available to airlines. With such process and attitudes, it is hardly surprising that airport operators such as SACL have little regard for the current prices monitoring regime.

Please contact the undersigned should there be any requirement for additional information in relation to any matters raised above.

Yours sincerely

Warren Bennett
Executive Director

[3] DoT (2011) p. 11.
[4] DOT (2001) p. 11)