20 July 2009

Mr Les Andrews
Assistant Commissioner
Annual Review of Regulatory Burdens on Business
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Email: regulatoryburdens@pc.gov.au

Dear Mr Andrews

Regulatory Burdens – Social & Economic Infrastructure Services

Sydney Airport Corporation Limited
ABN 62 082 578 809

Locked Bag 5000
Sydney International Airport NSW 2020
The Ulm Building
1 Link Road
Sydney International Airport NSW 2020
Australia

Telephone
61 2 9667 9111
www.sydneyairport.com

Sydney Airport appreciates the opportunity to respond to the draft report issued by the Productivity Commission and acknowledges the importance of the work of the Commission in this area.

Sydney Airport is the busiest airport in Australia and is one of the most valuable infrastructure assets in NSW. It makes a substantial economic contribution and generates about 206,000 full and part-time jobs. Its operations are extensively regulated.

Sydney Airport provides the following comments and hopes that the Productivity Commission will be able to consider these points as it finalises its report.

Price Regulation of Regional Aviation

Sydney Airport is the only airport in Australia at which aeronautical charges for regional airlines are subject to regulatory control by Government. The current price regulations are due to expire in June 2010.

Prices for regional services have not increased since the airport was privatised in 2002. As a consequence, aeronautical fees at Sydney Airport are now considerably cheaper than at many NSW regional airports where prices are set by local councils elected by the communities that use the regional airports.

Of course, services provided by government, for example train fares or water or electricity charges, have not remained unchanged since 2002. The prices for these services, and many others in the economy such as local government rates, have increased from time to time.

The public policy rationale for regional price controls at Sydney Airport was never transparent and has not been subject to review for a decade. The regulations continue to operate to hold prices for regional users at artificially low levels, cause cross subsidies from other airport users and act as a disincentive for investment in regional facilities. The extent of the pricing distortion is evidenced by the fact that the cost of operating a regional aircraft through Sydney Airport (Australia's busiest airport) is now lower than at Bankstown Airport. For example, based on published charges as at 1 July 2009, a Saab 340 aircraft carrying 24 passengers (at a load factor of 70%) would incur landing and terminal charges at Bankstown Airport that were 12% higher than at Sydney Airport.

With the pricing constraint applied at Sydney Airport, regional carriers are provided with a disincentive to consider other Sydney markets. In this regard, if a regional carrier were to form a commercial view that there was demand for services through Bankstown Airport, the price differential would act as a disincentive for them to operate there compared with Sydney.

Regional Pricing: Sydney Airport and Bankstown Airport

Saab 340 (turnaround)	**Terminal Charge**	**Runway Charge**	**Total Cost**
MTOW (kg)		13,155	
Seating Capacity	34		
Pax on Board (70% load)	24		
Bankstown	$4.40/pax	$13.60/tonne/land	
	$211	$179	$390
Sydney	$4.95/pax	$55 min/land & dep	
	$238	$110	$348
% Difference	-11%	63%	12%

* Based on published charges at 1 July 2009. Charges include GST and exclude security and aircraft parking charges

Government intervention distorts the necessary price signals required for the efficient use of infrastructure and interferes with what should be regarded as normal commercial arrangements between airlines and an airport.

The existing set of price regulations expire next year and Sydney Airport considers that the price arrangements applying to regional airlines should be the subject of a formal review by the Government prior to their renewal even being contemplated.

Sydney Airport recommends that such a review be conducted by an independent body, such as the Productivity Commission, and that it be undertaken within a framework of clearly stated Government policy goals in relation to regional aviation. The review of price regulations should also consider the aeronautical fees set by local councils at regional airports such as Orange, Albury, Dubbo and Broken Hill.

Sydney Airport's view is that normal commercial arrangements should apply and that aeronautical fees for regional airlines should be negotiated directly between the airlines and the airport.

Quality of Service Reporting by the Australian Competition and Consumer Commission

In line with the requirements of the *Airports Act 1996*, the ACCC undertakes quality of service monitoring at major Australian airports. As part of this exercise Sydney Airport is required to provide information to the ACCC each year.

Sydney Airport supports the principle of quality of service monitoring and recognises that it can be an important tool to inform and guide airports as they continually improve their performance. However, Sydney Airport believes that the existing system as developed by the ACCC suffers from a number of methodological inadequacies and conflicts of interest.

Of particular relevance here is the statement in the Productivity Commission's draft report that "regulation should not require business to take responsibility for matters over which it has no control or require business to provide information concerning other agencies."[1]

This is indeed one of the flaws of the ACCC's approach to airport quality of service monitoring.

Services to passengers at Australian airports are typically the result of cooperation between a number of different organisations including airport operators, airlines, and government agencies such as Airservices Australia, Customs and AQIS. A major weakness of the ACCC's approach is that it judges the performance of airport operators by monitoring services over which those operators have little or no control. For example:

- The ACCC reports on the length of time that passengers wait at check-in counters as if this can be fully controlled by an airport operator. In reality, the waiting time at check-in counters is principally determined by the number of people an airline employs to staff its check-in counters.

[1] Productivity Commission Draft Research Report, "Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services", 2009, p 218.

- The ACCC reports on the length of time that passengers wait at government inspection points (inbound and outbound – Customs and AQIS) as if this can be fully controlled by an airport operator. In reality, the waiting time at government inspection points is principally determined by the number of people that government agencies employ to staff their service counters.

- The ACCC reports on the length of time that passengers wait for their baggage as if this can be fully controlled by an airport operator. In reality, the waiting time for baggage is principally determined by the number of ground handling staff that an airline employs and allocates to its baggage handling task.

Far from assisting passengers, the inclusion of these measures in a report that purports to evaluate the performance of an airport operator creates confusion and perhaps unintentionally may assist airlines and government agencies to avoid being held properly accountable for the level of service that they provide to passengers.

The ACCC approach suffers from other serious flaws including an inherent conflict of interest and unaddressed methodological weaknesses.

Conflict of interest: The ACCC has stated that the objectives of quality of service monitoring include providing "information to users of airport facilities, including passengers *and the aviation industry*, as a basis for improved consultation and *negotiation on pricing* and investment proposals." [Emphasis added].[2]

In preparing its report the ACCC makes extensive use of airline surveys that seek to record the opinions that airlines express about the performance of airports. The details of these airline surveys are not disclosed and the anonymity of the airline sources is protected by the ACCC.

The conflict of interest that exists in asking a commercially motivated organisation (an airline) for its views on one of its commercial counterparts and suppliers (an airport operator) is obvious. Airlines have a clear commercial interest in talking down the performance of an airport as they seek to gain a commercial advantage to employ in the course of significant commercial negotiations. It is naïve to consider otherwise.[3]

The inherent conflict of interest involved in an airline contributing to a report that is designed to assist it in its price negotiations is compounded by the ACCC's methodological approach. The ACCC's airline survey lacks transparency and fails

[2] Australian Competition & Consumer Commission, "Airport quality of service monitoring guideline", October 2008, p 3.
[3] Airlines have a history of using every diverse tool available to advantage their commercial negotiating positions. Consider Virgin Blue's use of advertising and Qantas's recent resort to media coverage:
http://insider.com.au/xoopsinside/modules/news/article.php?storyid=396
http://business.smh.com.au/business/qantas-chief-slams-airports-over-costs-20090527-bni8.html

to disclose which airlines and at what level of that organisation participate in the survey and what information each airline submits. The absence of transparency and accountability in the ACCC's approach can only serve to provide an extra incentive to airlines to behave in a manner which distorts the survey outcome.

Given the clear and powerful conflict of interest that exists, airline surveys should no longer be used in the preparation of quality of service monitoring reports.

Methodological weaknesses: The current system provides for results across airports being "directly comparable through the ACCC's annual airport monitoring reports".[4] While comparable reporting is of course useful and a desirable outcome the problem with the existing situation is that no guarantee exists that the data on which the comparisons are made is genuinely comparable.

This is because the ACCC does not require a consistent methodology to be employed to measure quality of service. Different airports use different passenger surveys. The ACCC does not:

- specify the questions that are asked in passenger surveys – meaning that different questions are actually posed to passengers at different airports
- establish sample sizes or an acceptable margin of error – meaning that the results have different levels of reliability
- specify whether the surveys should be conducted during peak hour or during the quietest hours of airport operations – which could decisively influence the passenger experience and hence the results produced
- specify how representative samples need to be recruited to account for passenger demographics (eg: male/female or business/leisure traveller)
- take account of issues such as establishing the views of non-English speaking passengers or passengers with special needs.

The ACCC's quantitative measures can also be somewhat crude and unhelpful. For example, the ACCC's existing methodology reported that the number of flight information display screens (FIDS) at Sydney Airport was reduced in 2007. However, this reduction was due to an *upgrade* to larger and clearer LCD screens. While from the passenger's perspective the quality of service had unambiguously improved, the ACCC's methodology produced a perverse outcome that reported that passenger facilities had been reduced. This is a textbook case of regulatory over-reach producing a flawed outcome.

The current regulation involves Sydney Airport allocating significant staff resources to the task of collecting information, commissioning market research companies to undertake surveys, collating and checking reports and so forth. This suite of failings identified here raises strong concerns about the validity and usefulness of the

[4] Department of Infrastructure, Transport, Regional Development and Local Government, "Discussion Paper – Improving the passenger experience: Quality of service monitoring of airports", March 2009, p5.

regulatory approach adopted by the ACCC in undertaking quality of service monitoring. Regulatory reform is clearly required.

Australian Noise Exposure Forecast (ANEF): An Effective Noise Descriptor?

Sydney Airport is committed to providing the community and other stakeholders with accurate and meaningful information on aircraft noise impacts that can be easily understood. In line with the provisions of the Airports Act 1996, Sydney Airport is required to prepare a Master Plan which must include:

> 71 (d) an Australian Noise Exposure Forecast (in accordance with regulations, if any, made for the purpose of this paragraph) for the areas surrounding the airport;

Put simply, the ANEF presents a forecast noise footprint that is based on future (not today's) traffic volumes using the noise produced by today's (not future) aircraft.

NSW councils use the noise contours of the approved ANEF to locate zone boundaries and to know what land uses should and should not be permissible within those zones. Sydney Airport's three neighbouring councils – Botany Bay, Rockdale and Marrickville – also have clauses in their existing Local Environment Plans that require them to consider aircraft noise when making decisions on development applications affecting land within certain ANEF contours. The location of ANEF contours is therefore essential to the making of many day-to-day decisions concerning development applications. ANEFs are used when councils decide whether or not a condition requiring the installation of noise insulation should be included in a development consent or, indeed, whether a particular development should be refused outright.

The ANEF that councils in the vicinity of Sydney Airport must use is dated 2029. That is, a decision being made today concerning whether or not to approve a particular development or to include land in a particular zone is informed by an ANEF that is dated 20 years hence. This raises two important issues concerning the relevance and validity of the ANEF.

First, the A380 aircraft is already being used by three airlines at Sydney Airport. The number of A380s flying to and from Sydney Airport will grow over the next twenty years. However, the Integrated Noise Model (INM) which is used to model aircraft noise does not currently contain noise data for the A380. Sydney Airport consulted with Airservices Australia, and used the noisier B747-400 to represent the A380 when preparing the ANEF 2029. However, Airservices Australia has itself already released a report showing that the A380 is between 2.3 and 6.7 decibels *quieter* than the B747-400 when departing Sydney Airport[5].

[5] Airservices Australia, "Noise Monitoring Report A380 v 747-400", 2008.

Second, the impact of other quieter new generation aircraft such as the B787 and A350XWB has similarly not been taken into account when preparing the ANEF 2029. Once again, this is because the Integrated Noise Model that must be used does not yet contain the relevant noise data. While, unlike the A380, these aircraft are not yet flying, they will be in the not-too-distant future and many airlines regularly using Sydney Airport have placed large orders with aircraft manufacturers.[6] Boeing claims that the noise footprint of the B787 will be 60% smaller than that of today's similarly sized aircraft. Airbus claims the A350 will also be a quieter aircraft as a result of its advanced wing design. In the case of the B787, Sydney Airport used the noisier B777 as a proxy to represent this aircraft when preparing its ANEF 2029. The A350 was excluded altogether.

It follows that as a result of these issues, at the time of its endorsement and publication, the ANEF 2029 shown in Sydney Airport's Master Plan knowingly overestimates Sydney Airport's future noise footprint. As a result, the ANEF contours are further away from the airport than they should be and more land (and potentially many thousands of additional private properties) is affected by development and/or zoning constraints than should be the case. The community and councils are understandably frustrated at being provided with, and then required to act on, information that is known to deliberately overstate future noise impacts.

Sydney Airport believes that this is because a flawed and misleading methodology is mandated by regulation. It is a methodology that pretends that technological change over the next 20 years will not assist in reducing the noise impacts of aircraft – even though the evidence to the contrary in the form of the A380 already flies from Sydney Airport several times everyday.

Sydney Airport acknowledges that this issue is complex and difficult to resolve. However, it remains a fact that there is no public benefit in requiring planning authorities to rely on noise information that is known to be inaccurate and, perversely, appears to be deliberately designed to exaggerate the anticipated aircraft noise impact, thus potentially misleading members of the public and, more specifically, unnecessarily restricting property rights for the owners of land located within certain ANEF contours.

Sydney Airport therefore suggests that some reasonable allowance should be made in the ANEF methodology for the advent of the quieter new generation aircraft that will be flying in 2029. This would help to ensure that ANEFs can be more accurately used to inform planning, development and other decisions both now and into the future.

---

[6] For example, the B787 has been selected as the cornerstone of the Qantas Group's domestic and international fleet renewal program.

Harmonisation with international security regulation

Aviation is one of the truly globalised industries with aircraft routinely transporting passengers and freight between countries and continents.

Sydney Airport sees significant merit in ensuring that Australia's security regulations are harmonised with those of other jurisdictions such as the European Union or USA. Harmonisation or mutual recognition between jurisdictions would reduce passenger confusion and associated costs.

In order to improve harmonised international security measures there should be stronger ties with aviation security agencies (both regulatory and industry participants) in the United States, Canada and the European Union. This will ensure security systems and learning outcomes are globally more consistent as well as inform better practise legislation, balanced against the local risk context. Sydney Airport supports the Australian Government's intention to act on ICAO recommendations to implement a Prohibited Items regime that is consistent with internationally-agreed standards, especially the removal of low risk items.

Australia should strengthen its cooperation with other regulators within the Asia-Pacific to ensure the region is adequately represented in negotiations on the application of harmonised security measures rather than the proliferation of measures applied after the LAGS incidents at Heathrow.

The contact officer for this submission is Mr Michael Samaras, Manager Media and Communications. Please do not hesitate to contact him if Sydney Airport can further assist the work of the Productivity Commission.

Yours sincerely

Russel Balding AO
Chief Executive Officer