

Mr Ricky Xu  
Senior Analyst, Airports & Ports, Infrastructure and Transport – Access and Pricing  
Australian Competition & Consumer Commission

30 November 2022

**RE: Consultation on Airport monitoring – more detailed information on airport performance**

Dear Mr Xu,

Airlines for Australia & New Zealand (A4ANZ) welcomes the opportunity to make a submission to the Australian Competition and Consumer Commission's (ACCC) consultation regarding more detailed information on airport performance.

The Productivity Commission (PC) determined in its 2019 Report that enhanced monitoring of airports delivers transparency over airports' operations and assists in maintaining a credible threat of additional regulation.<sup>1</sup> This is not only important for ensuring efficient access to, and use of, privatised monopoly infrastructure assets – it also meets the objectives of the *Airport Act 1996*; regulation that has due regard to the interests of airport users and the general community, and facilitates the comparison of airport performance in a transparent manner.

Indeed, as part of the 2019 Inquiry, the PC recommended – among other things – that the ACCC collect more detailed information from the monitored airports on their financial performance to aid with transparency and the ability to more easily determine if the monitored airports are exercising their market power (Recommendation 9.4).<sup>2</sup> The PC argued that appropriate scrutiny of airport performance required an improved evidence base, noting that while relatively high aeronautical charges at some airports “*could be consistent with the airports exercising their market power...the monitoring reports do not contain sufficient detail to make that assessment.*”<sup>3</sup> It is essential to rectify such deficiencies before future PC Inquiries are conducted, to enable these critical assessments to be made.

Objections to the proposed expanded evidence base and increased transparency were raised by airports during the 2019 Inquiry, and the PC's response was unequivocal [emphasis added]: “*The Commission's proposed reforms would increase the credibility of the threat against airports that exercise their market power to the detriment of the community in the future. **The reforms are necessary and justified. The benefits of increasing the credibility of the threat would outweigh the costs to airports of complying with the enhanced reporting requirements and the costs to the ACCC of administering the regime.***”<sup>4</sup>

The then- Australian Government endorsed the above Recommendation in December 2019, and agreed, in principle, to amend Part 7 of the Airports Regulations 1997 to expand the reporting requirements for monitored airports, asserting that, “*the Government considers that increasing the transparency of prices and performance will assist it to assess airports' market power over time, for aeronautical, car parking and landside access and services.*”<sup>5</sup> The Government's response further noted that this action “*will benefit users of airports, both passengers and commercial users, and the broader community in the long-run.*”<sup>6</sup>

---

A4ANZ agreed, and – with the COVID-19 pandemic delaying actions to address the PC’s recommendations – welcomed the current Government’s request in June 2022, for the ACCC to commence a review and to provide recommendations on these matters. The expectation that this would be conducted in support of the Government’s review of the sunseting Airports Regulations was also welcomed, as it will enable these important improvements to be implemented in a timely manner.

While this response to the Consultation Paper’s questions is informed by input from our members, A4ANZ understands that the airlines may separately make written or verbal submissions to the ACCC.

### **Response to the Options**

A4ANZ notes the three options for enhancing monitoring outlined by the ACCC in the consultation paper, and agrees that Option 3 presents an effective and reasonable option that retains a light-handed regulatory regime. Furthermore, it is similar to the information disclosure framework applied by the NZCC to the monitored New Zealand airports, which manages to operate without the issues that the Australian airports have raised. We note that it is the option which will best enable the ACCC to undertake the sort of assessments and benchmarks that will support the aim of the regulatory framework, by providing incentives for airports to operate efficiently.

However, A4ANZ also supports the ACCC’s preliminary view that Option 2 – collecting systematically disaggregated data and relying on detailed cost allocation method – balances the need for greater transparency over monitored airports operations and financial performance versus the increased compliance costs that may arise from providing more detailed financial and cost allocation data. Option 2 provides a superior option to the current practice of the ACCC using aeronautical revenue per passenger as a proxy for the average price that the monitored airports charge airlines, and as the basis for analysing trends in pricing and performance.

The enhanced provision and collection of systematically disaggregated data, and relying on detailed cost allocation method will address this and support both the ACCC and the PC to accurately assess not only the pricing and performance of the monitored airports, but to determine whether a monitored airport is *exercising* its market power. This is important because, from time to time, both the ACCC and the PC have said that the absence of more detailed cost data has prevented them from being able to draw definitive conclusions – leaving them reliant on theoretical economic arguments to justify their respective positions, as opposed to evidence clearly demonstrating either the presence or absence of market power exercise by monopoly airports.

In order to ensure the effectiveness of the selected Option, the ACCC will need to clearly define what is included in aeronautical and non-aeronautical, to capture the allocation methodology for both capex and opex, and ensure transparency of directly attributable, non-attributable and apportionable costs and revenues at a line level. A4ANZ further suggests that if Option 2 is implemented, there should be a periodic review of its effectiveness in achieving the transparency and accountability goals outlined by both the PC and Government, with a provision to move to Option 3 if the ACCC identifies that these goals are not being met.



---

## **Response to feedback from airports**

A4ANZ recognises that the monitored airports have raised concerns regarding the publication of more detailed performance information by the ACCC – noting fears of damage to airports’ competitive position, the adverse impact on competition between airlines, and the reporting burden.

A4ANZ contends that concerns relating to competitive positions (and competition between airlines) would be alleviated by the ACCC’s proposal to manage these concerns through the existing protections under the Airports Act 1996 and the Competition and Consumer Act 2010, and by publishing some of this data in aggregate. A4ANZ further notes that these issues have not manifested in the NZCC’s requirements for Information Disclosure by airports, which go even further in terms of transparency and reporting burden than what is proposed by Option 2.

While A4ANZ would support the ACCC publishing the collected data in full to support transparency and accountability of airport performance and pricing, we note that if the information were to be published in aggregate, it would not preclude the ACCC from being able to analyse the data and publish the results and observations arising from this analysis.

In regard to the concerns expressed by airports that the proposed enhanced monitoring will have an adverse impact on competition between airlines – A4ANZ shares the ACCC’s interest in understanding the evidence to substantiate such a claim. As has been repeatedly demonstrated, airlines in Australia operate in a robust and competitive market, and there is nothing proposed in this review that would diminish this.

A4ANZ further notes the opposition to the enhanced monitoring on the basis of reporting burden, by a monitored airport detailed in the consultation paper, identical to the concerns raised during the PC Inquiry. A4ANZ acknowledges that improving the information collected from airports by the ACCC may have the effect of an increased (albeit minimal) regulatory burden for some airports – indeed, airlines had to adapt to a far more frequent and detailed reporting requirement when Airlines Monitoring was introduced during the pandemic. However, it is important that this minor effect is weighed against the benefits to the system as a whole, including and most importantly, for consumers. In this regard, A4ANZ shares the PC’s view, quoted earlier, that the reforms are both necessary and justified, with the benefits outweighing the costs.<sup>7</sup>

## **Other relevant recommendations from the PC Inquiry**

Airports’ clear reluctance to submit to greater transparency or accept efforts focused on improving efficiency is disappointing but unsurprising, given their monopoly position and the fact that they do possess market power. It is consistent with their response to A4ANZ’s efforts to work with them on an entirely voluntary, self-regulated, industry code of conduct. The *Voluntary Aviation Industry Code of Conduct* was drafted as means of enshrining the Aeronautical Pricing Principles (APPs) in a document and to provide a process to which all parties could adhere. This was conceptualised largely in response to the 2019 PC Inquiry, which had underscored the importance of the APPs in the regulatory framework for airports, including that the PC had itself “*drawn on the Aeronautical Pricing Principles in its*

---

*assessment of whether airports have exercised their market power and in its assessment of parties' conduct in commercial negotiations...and the commercially negotiated outcomes that parties have reached."*<sup>8</sup>

In its response to the PC's Report, the Government said that it *"considers the Aeronautical Pricing Principles set an important framework for establishing prices, service delivery and the conduct of commercial negotiations at airports, [and] expects all airports and airport users to have regard to the Aeronautical Pricing Principles when negotiating future airport services."* And further, that it *"encourages all parties to continue to work together to strengthen their commercial relationships under the current regulatory framework. It welcomes interest by some airlines and airports in working together to establish principles that could be of assistance in guiding negotiations and achieving mutually satisfactory service contract outcomes."*<sup>9</sup>

A4ANZ had been optimistic about the prospects of good-faith participation in collaborative efforts to progress these objectives, given the AAA's submission to the PC Inquiry which said that *"If the government was to endorse principles for negotiating and contracting, this would guide the behaviour of both airports and airlines and lead to a substantial improvement in outcomes through more timely and less expensive negotiating processes."*<sup>10</sup> Indeed, it was on this basis that a voluntary, industry-led code of conduct was envisioned by A4ANZ and initially received positively by the AAA through early-mid 2022. As the industry has progressed in its recovery, however, further attempts to work together towards self-regulation through an entirely voluntary Code, have now – regrettably – been rejected by the AAA and its airport members.

### **Concluding comments**

There is much to be gained from these necessary, minimal reforms. As the ACCC concluded in its most recent Airports Monitoring Report, *"the current light-handed regulatory regime is not working well enough to effectively protect Australian businesses and consumers from the exercise of monopoly power by airports."*<sup>11</sup>

This proposal for enhanced monitoring is an important first step towards rectifying this. Importantly, it will give effect to the PC's recommendation and thereby enable both the ACCC and the PC to undertake more definitive assessments of the exercise of market power in future inquiries. To that end, A4ANZ believes there is a strong justification for the next PC Inquiry being deferred until these amendments are implemented. There would be limited value for Government, consumers and stakeholders in undertaking another inquiry when the very changes proposed from the last inquiry are yet to take effect, and therefore their impacts cannot be assessed. Furthermore, the upcoming Aviation White Paper and the sunseting Airport Regulations review may have material impacts on the terms of reference for future PC Inquiries.

It is A4ANZ's view that the enhanced transparency for airports' performance monitoring – as outlined in Option 2 – is not only important for ensuring efficient access and use of privatised monopoly infrastructure assets, but also has due regard to the interests of airport users

▶

---

and the general community, and facilitates the comparison of airport performance in a transparent manner – an overall net public good.

The initial Recommendation from the PC to implement these changes in 2020-21 was unavoidably delayed by the impacts of COVID. We urge the ACCC to now move ahead swiftly with these important amendments to airport monitoring.

A4ANZ would welcome the opportunity to discuss this submission with the ACCC as appropriate.

Yours sincerely,



---

**Professor Graeme Samuel AC, Chairman**  
**Airlines for Australia & New Zealand**

[Redacted contact information]

---

<sup>1</sup> Productivity Commission. 2019. Economic Regulation of Airports – Final Report. At: <https://www.pc.gov.au/inquiries/completed/airports-2019/report/airports-2019.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Australian Government. 2019. Australian Government response to the Productivity Commission Inquiry into the Economic Regulation of Airports. At: [https://treasury.gov.au/sites/default/files/2019-12/41706\\_govreponseairports.pdf](https://treasury.gov.au/sites/default/files/2019-12/41706_govreponseairports.pdf)

<sup>6</sup> Ibid.

<sup>7</sup> Op.cit (1)

<sup>8</sup> Op.cit (1)

<sup>9</sup> Op.cit (5)

<sup>10</sup> Australian Airports Association. 2019. Submission to Productivity Commission Inquiry. At: <https://www.pc.gov.au/inquiries/completed/airports-2019/submissions>

<sup>11</sup> Australian Competition and Consumer Commission. 2022. Airport Monitoring Report 2020-21. At: <https://www.accc.gov.au/publications/airport-monitoring-reports/airport-monitoring-report-2020-21>