Virgin Blue Application for Declaration of Airside Services at Sydney Airport – Response to Invitation for Additional Comments

SACL considered it worthwhile using the opportunity for additional comments to briefly draw together some of the main issues identified in submissions on the Council’s draft recommendation.

Of the nine submissions lodged, two were in support of the NCC’s draft recommendation. One of these was, of course, from the applicant, Virgin Blue. The Board of Airline Representatives (BARA) lodged a submission on behalf of its members, supporting declaration in the absence of a commercially negotiated agreement between SACL and airlines. While BARA observed that "SACL has declined to enter into...discussions" on a commercial agreement, SACL has enunciated to BARA its view that the airport cannot provide airlines with a satisfactory form of agreement until its Master Plan is finalised. Clearly it would not be practical to cost and incorporate a programme of capital investment into a commercial agreement where these projects may be inconsistent with the 'blueprint' for the airport’s development as mandated by the Commonwealth Government. Indeed, in a recent statement this position was recognised by the Minister for Transport and Regional Services. However, SACL has indicated to BARA in writing that once a Master Plan is approved, SACL is prepared to enter into negotiations with BARA in good faith and has invited preliminary input regarding aspects of such an agreement.

BARA suggested in its submission that Sydney Airport appeared to lag behind other major airports, which have commercial agreements in place. We consider that BARA has not recognised that these airports were privatised and had master plans in place well before the move to light-handed regulation, placing them in a better position to implement commercial agreements relatively quickly. BARA also takes the view that declaration is warranted because it considers that the operating costs incorporated into the airport’s charges are too high. While SACL stands by the operating costs established at that time, it is difficult to see how this argument supports re-regulation, given that these operating costs were actually established by the ACCC under the former regulatory framework.

The NCC’s draft recommendation attracted a broad range of submissions from parties with concerns over the NCC’s initial conclusions.

Four airports other than Sydney lodged submissions. Brisbane, Canberra and Adelaide Airports variously highlighted the benefits to relationships with airlines and airport pricing efficiency that have followed the move to light-handed regulation. They also raised concerns about the change in regulatory risk that their businesses would face if Sydney Airport facilities were declared based on the evidence before the Council.

Melbourne Airport highlighted that a number of significant price increases at airports to move charges towards more efficient levels cannot be demonstrated to have had any impact on the level of demand or competition in the domestic aviation market. It also raised concerns that the Council’s draft conclusions on the potential effect of declaration on competition were not supported by independent analysis, but were based on the assertions of the applicant and its consultant. The airport also put forward the view that the level of assessment undertaken by the NCC of costs and benefits of declaration did not support its conclusion on the public interest criteria.
The Department of Transport and Regional Services submission summarised its position regarding possible declaration in the context of the Government’s policy on light-handed regulation. In the Department’s view, “it would be undesirable for the NCC to inadvertently provide easy recourse to regulation, by precedent in this case and thus undermine the benefits available from the lighter-handed pricing regime, which has shown itself to be working.” It also notes that it would not support the use of Part IIIA where that was aimed at advancing a particular party’s commercial position. DOTARS considers that it is the entry of new airline services that has had the most significant impact on market competition and airfares, noting that SACL has “historically been seen to facilitate access to its facilities particularly in relation to new entrant airlines”. The Department also highlights that the potential remedies available to the Government under light-handed regulation are more subtle than merely the threat to re-regulate. It notes a “spectrum of responses to influence any inappropriate pricing behaviour by airports”. Government intervention could be expected even before the notional point, suggested by the NCC, at which price increases would trigger re-regulation.

The Productivity Commission questions “whether the public interest can be served by cutting short a new and innovative approach to airport regulation…at least, without good reason”. The Commission notes that the incentives and outcomes that it expected under light-handed regulation have been demonstrated at other major airports and it sees no reason why these would not act in a similar way with regard to SACL. It also maintains its view that the costs of declaration would outweigh benefits and highlights the incentive that airports have to increase competition in an aviation market, as this increases airport throughput.

Peter Forsyth, Professor of Economics at Monash University, lodged a submission focusing on the potential competitive effects of deregulation. His view is that the NCC has not established that declaration would promote competition in the airline market, and his paper concludes that “higher airport charges associated with the absence of declaration do not lead to an alteration in the competitive balance”.

Overall, the submissions appear to provide useful additional information that may assist the NCC in formulating its recommendations to Government, in particular regarding the potential for declaration to influence competition in the domestic aviation market, and the Government’s views on the policy interaction between Part IIIA and light-handed regulation.

Yours sincerely

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Chairman and Chief Executive