

Greater scrutiny alone won't protect consumers from Australia's monopoly airports

More data is required to enhance transparency and more readily detect exercise of market power at Australia's major airports, according to [the Australian Competition and Consumer Commission \(ACCC\)'s Airport Monitoring Report 2021-22](#), released today.

While welcoming the ACCC's recommendations, Airlines for Australia & New Zealand (A4ANZ) Chairman (and former ACCC Chair), Professor Graeme Samuel AC said that it doesn't go far enough. "This report again shows that the current regulatory regime for airports – based on monitoring alone – is not fit-for-purpose. Transparency is important, but it is not the whole solution. Indeed, this report acts as a reminder that a regime involving monitoring alone does little more than shine a light on the challenges of dealing with monopoly airports."

The report's focus was on improvements to the monitoring regime, prompted by recommendations from the Productivity Commission in 2019. In advice delivered to the Government in May 2023 – and repeated in this report – the ACCC recommended changes to the Airports Regulations that would:

- Enhance the transparency of airports' operations and provide the ACCC with more readily-accessible data and information as required to detect the exercise of market power; and
- Provide the ACCC with a greater level of transparency regarding the quality of services at Australia's busiest and most significant airports, in the context of having due regard to the interests of airport users and the general community.

A4ANZ CEO, Dr Alison Roberts said that when the ACCC consulted on the potential options to implement new transparency requirements, their preferred option was accepted by a range of airport users – from international, domestic, and regional airlines to car rental companies. "Despite this – and the fact that this option was less onerous than the information disclosure requirements in New Zealand – the airports and their representative body, the Australian Airports Association (AAA), pushed back against any change."

"This is disappointing but unsurprising, given that the AAA and airports also rejected good faith efforts by airlines to work with them on a voluntary industry code of conduct that would support the application of the Aeronautical Pricing Principles (APPs), and in particular, give effect to the clause stating that airports and their customers should "*utilise processes for resolving disputes in a commercial manner (for example, independent commercial mediation/binding arbitration)*."

Prof Samuel AC said, "The airports all say they support the APPs, yet reject the use of binding commercial arbitration to resolve disputes. All that leaves us with is litigation – the protracted and expensive process we have seen with the Perth Airport and Qantas dispute. It's not just me, the ACCC, and the airlines saying that there is a better way – in 2021, the independent *Future of Aviation Reference Panel* recommended to Government the implementation of suitable commercial arbitration models and rules, including an Industry Code of Conduct; with specific focus on efficient, cost-effective resolution of disputes between airports and airlines."

"What is particularly frustrating is that last year's Airport Monitoring Report had warned that 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, and the ACCC had recommended that work be undertaken to improve the operation of the APPs in commercial negotiations with airlines – but we are no further ahead today."

"We urge the Government to adopt and swiftly implement these ACCC recommendations on transparency. A4ANZ will continue to work with Government and industry stakeholders through the Aviation White Paper process, to ensure that our aviation policy settings are fit-for-purpose; addressing bargaining power imbalances, and better protecting Australian consumers from the impact of monopoly market power."

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