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## *Regional Express*

### *Regional Express (Rex) Response to the Productivity Commission Draft Report on the Economic Regulation of Airports*

25 March 2019



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Productivity Commission Draft Report on the Economic Regulation of Airports

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## **1 Opening Statement**

Regional Express (Rex) is responding to the Productivity Commission Draft Report on the Economic Regulation of Airports. Rex will also attend the public hearing and make a verbal response.

Overall Rex is very disappointed with the draft report. The draft report is full of errors and incorrect assumptions. We are surprised that the Productivity Commission (the Commission) has chosen to ignore the evidence and arguments put forward by airlines whilst willingly accepting evidence and arguments put forward by the airports.

It appears that either the Commission did not read Rex's submission, totalling about 500 pages, or if it did, decided to ignore it. Statements made in the draft report justifying the claim that there was insufficient evidence to indicate that airports put take-it-or-leave-it offers to airlines could not have been made honestly if the Commissioners had read Rex's submission. There were several clear and specific examples of those types of take-it-or-leave-it offers that the Commission has clearly ignored. We therefore approach this stage of consultation with low expectations of achieving anything given the Commission's serious failings in the draft report. Even our hope that obvious errors will be corrected is in our view faint.

Not everything in the draft report is wrong. Rex acknowledges and welcomes some of the draft recommendations. In particular the recommendation regarding government funding of regional airports and the need for sound economic analysis prior to the granting of funds for upgrades to regional airports is sensible. The Commission correctly points to the fact that regional airports are often run by people who have no knowledge or skills in aviation resulting in poor economic outcomes for the regions. The recommendation that the West Australian Government's new management template, designed to assist regional airport owners, should be adopted across the entire regional airport sector, is very sensible.

Our biggest disappointment is the rejection of the negotiate/arbitrate method for dispute resolution between airports and airlines. We are completely baffled by the reasons put forward by the Commission that the current arrangements are sufficient to deal with these disputes and that negotiate/arbitrate would be too costly and take too long to resolve. There are existing examples of negotiate/arbitrate that work extremely well and that cost little and are completed successfully within a few months. How is this proven process worse than litigation? Qantas and Perth airport are engaged in litigation which will run for many years and cost millions of dollars in legal fees. Our own example of litigation between Dubbo Council and ourselves took more than a year to resolve and cost hundreds of thousands of dollars.

It defies logic to claim, as the Commission does, that litigation is the best way to resolve disputes between airports and airlines when proven, quicker and cheaper methods are available to other industries. All Rex asks for is an orderly system to resolve disputes. Negotiate/arbitrate achieves that and the Commission makes no sense in their enthusiasm to support the status quo.

## 2 REGIONAL AIRPORTS

### 2.1 Countervailing Power of Airlines

The draft report has asserted that;

***An airline can threaten to withdraw some or all of its services at a particular airport if it is not satisfied with access conditions. An airline's threat to reduce services is less credible at a congested airport, such as Sydney Airport, given its competitors could readily meet any gap in demand for services. In practice, complete withdrawal of services is only likely to occur at regional airports, where a single airline is the airport's main, or only, customer.***

***Rex withdrew services on the Mildura to Sydney route in response to what it described as 'exorbitant' aeronautical charges and has redeployed resources to Griffith Airport as part of a five-year partnership agreement with Griffith City Council.***

The Commission has got this completely wrong. Before we explain why we will provide some historical perspective.

In relation to the draft report's sole example of Rex exercising its countervailing market power by exiting Mildura to Sydney route, Rex needs to provide some perspective. Rex first commenced operating the Sydney to Mildura in October 2002 (within 3 months of the commencement of Rex) and prior to that no other airline had been servicing the route.

In FY03/04 the passenger numbers were less than 4,000, however on the back of Rex initiated schedule improvements in 2005 that required an increased allocation of Rex's resources, the passenger numbers grew to around 8,000, however the daily service provided around 20,000 annual seats.

Rex had been consistently delivering in excess of 10% annual passenger growth to Mildura airport but this was not enough for the greedy airport who increased the airport charges excessively such that its revenue increased by 67% from 2003/04 to 2006/07. Not being able to convince Mildura airport to act reasonably and responsibly, Rex exited the Sydney to Mildura route for the first time back in October 2008.

In mid-2012 the Chair of the Mildura airport approached Rex to repair the relationship. A partnership agreement was forged that covered the ensuing 5 years and saw Mildura receive air services to 3 capital cities, vis Sydney, Melbourne and Adelaide, in addition to an air link to Broken Hill. No other regional city in Australia of similar size had such extensive regional air links to 3 capital cities. It is very important to note the reference to the broader partnership agreement, because in the absence of such an agreement Rex would not have resumed the Sydney to Mildura route, given Rex's intimate understanding of the marginal nature of the route.

However we again see the greedy nature of Mildura airport with an exorbitant 13% increase to the Mildura airport passenger head tax that was implemented in October 2018. This represented an increase in airport head tax revenue of over \$400,000 a year on all passengers transiting the Mildura airport with the Melbourne Mildura route alone accounting for 226,000 passengers.

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With this steep increase, Rex had no choice but to cut off its marginal Sydney to Mildura route which it exited in October 2018. However Rex's threat of an exit and its eventual exit did not deter Mildura Airport from maintaining its 13% increase on head tax charges.

Hence the Productivity Commission citing the example of Mildura is a flawed attempt in demonstrating that regional airlines have market power. In fact it is quite the opposite, as it fully demonstrates that all the power is with the airport and that even with the threat and execution of 2 exits, the exorbitant airport head tax increases have not been staved off and have been implemented.

The Productivity Commission is completely wrong on this point. It is quite clear that Rex's threat to reduce or withdraw a service had absolutely no impact on Mildura airports decision to increase their charges by 13%. In fact, the Productivity Commissions' use of this example proves the opposite point to the one they are trying to make. Mildura airport ignored Rex's so called threat and went ahead with the 13% increase. What this proves is that airlines do not have any countervailing power when negotiating with an airport that is hell bent on increasing their charges by an unreasonable amount. If Rex had such power Mildura Airport would have withdrawn their excessive charges. They did not. We would expect that the final Productivity Commission report will correct the false claims and incorrect assumptions regarding regional airlines having countervailing power when dealing with airports.

On a broader point, it would be naive to the extreme to believe that any airline has countervailing power in dealing with an airport given that a threat to leave an airport or to reduce services to an airport would only result in that airlines competitor commencing or increasing their services to that airport. The net result would be that the airline carrying out the threat would lose revenue and profits, their competitor would increase their revenue and profits and the airport would be unaffected financially.

Even if we take the case where Rex is the sole operator on a route, for example the Rex Mount Gambier case study, Rex has not been able to assert its market power vis a vis the airport. This is because if Rex exited the route, there would simply be another regional operator, Sharp Airlines or possibly Fly Corporate, in this instance, who would be ready and willing to commence operations.

The Mount Gambier case study is clearly demonstrated by the more than 10 years of bitter conflicts between Rex and Mount Gambier airport (the District Council of Grant) with the council not backing down on its exorbitant price increases. The complete trail of exchanges between Rex and the council have already been provided to the Commission in the extensive Annex to Rex's submission. In addition to the trail of communications there has been the constant verbal threat of the council actively campaigning to attract either QantasLink or Virgin Australia Regional Airlines to operate to Mount Gambier.

Regional airlines do not have a countervailing market power vis a vis the airport even in the case where the airline is the sole operator at the airport. This is because any threat of exit would be futile as another regional airline would simply be too glad to step in. The airport has the power to drive down the returns of the airline to below its cost of capital, knowing that the airline would generally try to hang on as long as its marginal revenue exceeds cost.

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## **2.2 Negotiate and Arbitrate**

The Commission incorrectly argues that the Negotiate - Arbitrate framework proposed by Airlines and the ACCC would have few benefits and many risks. The Commission makes this flawed conclusion based on the following reasons as set out in the report:

1. The arbitration process would be financially costly and time consuming and would change the incentives for parties to reach outcomes through commercial negotiation.
2. Airlines that disagree with investment proposals could use the arbitration process to hold up investments that could increase airport capacity or competition between airlines.
3. An arbitrated outcome for one airport user might reduce the efficiency of airport operations for other airport users and the community as a whole.
4. A mechanism already exists under the National Excess Regime that enables airport users to seek declaration of airport services and subsequently to seek access to arbitration by the ACCC if negotiations fail.

While the above theories may sound sensible to an academic, reality is actually the opposite. Rex argues that they are debunked by the real case studies provided by Rex in its original submission.

### Cost and Time

Rex's submission contained seven examples where negotiations with regional airports have gone poorly. In the confidential annexure Rex submitted over 400 pages of correspondences between the airports and Rex. Assuming that the Commission has actually read the submission by Rex, it would have seen that some of these negotiations can drag on for more than a year and cost hundreds of thousands of dollars in legal fees.

For example a major dispute between Rex and Dubbo airport (Dubbo City Council) that involved the airport imposing the unnecessary cost of passenger security screening on to Rex. There was no legal or security basis for the screening. Someone in council just decided it was a good idea. The additional cost of the screening would add an extra \$10.00 of cost per departing passenger. The extra \$10 cost was completely unnecessary. Negotiations dragged on for more than a year and resulted in costly legal proceedings for both parties. Additionally, both the council and Rex were embroiled in a bitter public debate that was damaging to all concerned.

Had it read the Rex submission the Commission would also have noted that the outcomes of these failed negotiations are either higher fares or reduced schedules or both. It is ultimately the regional communities that pay the price for this.

Had a negotiate-arbitrate framework been in place these issues would have been resolved in a matter of months and with little cost. While arbitration may come at a cost, Rex argues that it will be significantly less than legal proceedings and time wasted as demonstrated in the Dubbo airport example.

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Airlines using arbitration to hold up investments

The Commission makes the false assumption that arbitration would take longer than ongoing negotiations between airlines and airports.

As evidenced by Rex's case studies, ongoing negotiations can drag on for many months and sometimes years. Rex argues that arbitration will actually speed up investments in airports, where investments are indeed warranted. Certainly, experience with the gas pipeline negotiate/arbitrate regime demonstrates that on the one occasion it has been called upon it resolved the dispute between the parties in four months, which included the Christmas and New Year breaks, and for very little cost. The extraordinary thing is that the Commission argues for the status quo which can and does result in disputes rolling on in to litigation that can go on for years at huge cost. The Qantas and Perth airport example could go on for as long as four years and will cost many millions of dollars.

Rex also argues that in some cases these investments are or will be detrimental to the community on the whole. Rex refers the Commission to the Orange and King Island case studies, which are detailed in our submission.

Arbitrated outcome may reduce efficiency for other users

Rex fails to see how this can occur. The Commission needs to understand that just saying something doesn't mean it is correct. The Commission needs to give examples if this statement is to have any credibility at all. In the meantime, due to a lack of any examples, we would expect the Commission to remove this claim from the final report.

National Access Regime

Seeking arbitration under the National Access Regime requires a service to be declared. This process involves recommendation by the NCC and then a decision by the relevant Minister which can be appealed to the Competition Tribunal.

Once again using a real case study - In 2002 Virgin applied to the NCC to get airside services declared at Sydney Airport so it could initiate an ACCC arbitration. The declaration process took 5 years because of appeals and Sydney Airport seeking judicial review of technical legal points through the courts (including attempting to appeal to the High Court). During this time, Virgin had to pay for legal representation at three separate hearings (one before the Tribunal, one before the Full Federal Court and one before the High Court), in addition to the cost of the lengthy submissions and expert economic reports it had to prepare for the NCC as part of the initial application. However, having fought every technical legal point in that 5 year declaration process, the minute the legal challenges were exhausted and the ACCC was finally able to arbitrate, Sydney Airport promptly resolved the dispute commercially before any arbitration could occur.

If Rex were in the position of Virgin in the above example it would not have the financial capability to fund such a long and expensive legal process when battling against a giant public company worth billions of dollars. As a result arbitration would have never occurred.

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The Commission says that the arbitration process would be "time consuming, financially costly and would change the incentives for parties to reach outcomes through commercial negotiation". However, the declaration process, as seen in the Virgin example, is time consuming and financially costly, and knowing that an airline has to go through this hoop gives an airport the incentive not to negotiate a compromise. In Rex's case we would fail due to not being able to fund the legal costs.

Rex suggests that the Commission also remove this from the final report to avoid being a laughing stock. How any sensible group could claim that applying to the National Access Regime would result in a faster and less costly outcome than arbitration is beyond the wildest of imaginations.

The recommendation by all the airlines and indeed the ACCC is to allow arbitration by the ACCC without the declaration process.

No other regional airline in Australia deals with as many true, local government owned regional airports than Rex and we maintain our strong position :

***Regional airports need to be regulated to dissuade the local councils from acting in a myopic manner that could end up destroying the local community.***

***Rex strongly recommends a framework whereby the airline and the regional airport owner would negotiate in good faith but if agreement could not be reached then either party could request the ACCC to make a decision as to which of the 2 positions to accept and such a decision would be binding on both parties.***

***Such an approach would be the most cost effective as the very threat of intervention by the ACCC and the negative publicity that would generate in the local community would be sufficient in most cases for the local councils to act responsibly.***

*(Rex submission, Conclusion and Recommendation, page 22)*

All Rex seeks from the Productivity Commissions' final report is to have an orderly process to resolve disputes between two parties. Negotiate-arbitrate is available now, is a well proven method of resolution and provides an orderly process to a resolution.

## **2.3 Government Funding for Regional Airports**

### ***DRAFT RECOMMENDATION 10.6 FUNDING FOR REGIONAL AIRPORT INFRASTRUCTURE***

***Draft Recommendation 10.6 - The Australian, State and Territory Governments should ensure that:***

- ***an independent analysis of proposed government funding of regional airport infrastructure is completed, and made available for public comment, before funding is committed. The analysis should:***
  - ***assess the economic and financial viability of proposed infrastructure investment***
  - ***assess whether the project is consistent with the long-term strategy of the region and the airport's master plan***

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- *quantify the economic benefits delivered and the recipients of those benefits*
- *assess users' (airlines and communities) willingness to pay for the infrastructure*
- *government-funded investments in airport infrastructure are undertaken using the relevant functional economic region as the basis for decisions, not individual local councils*
- *any project funded by government is monitored, and an independent evaluation is conducted and published that assesses whether the project outcomes have been achieved.*
- *The Australian, State and Territory Governments should publish the justification for funding an infrastructure project that was not supported by independent analysis.*

Rex fully supports draft recommendation 10.6. It is critical that all levels of Government ensure that the allocation of taxpayer funds to regional airports undergoes a high degree of analysis and scrutiny.

This process must be supported by the economic and financial viability of the proposed infrastructure investment. Regional airports are of course critical community infrastructure and whilst they deliver both economic and social outcomes, all government-funded investment decisions must be financially viable.

It is also critical that such government-funded investment decisions do not negatively impact the ongoing viability of the airport due to increased asset valuations resulting in increased depreciation costs that contribute to increased airport charges to airport users.

If an airport investment decision is more socially driven (eg. a regional community wanting a new airport terminal despite the existing airport terminal meeting the needs of airport users) then there should not be an expectation that taxpayers will foot the bill for a project that cannot be economically justified.

## **2.4 WA Financial Template**

### ***DRAFT RECOMMENDATION 10.7 ASSET MANAGEMENT AT REGIONAL AIRPORTS***

*Draft Recommendation 10.7 - The Australian Government should review the efficacy of the Western Australian Strategic Airport Asset and Financial Management Framework in 2022, in consultation with State, Territory and Local Governments. Pending the findings of that review, the Framework should be adapted and rolled out by governments in other jurisdictions with the objective of providing a template for sound asset management practices and greater transparency when determining airport charges at regional airports.*

As an active participant in the WA Strategic Airport Asset and Financial Framework working group, Rex fully supports draft recommendation 10.7. It is Rex's view that an Airport Management Framework (as per the WA example) will be an important tool for Federal and State Governments in the important decision making process to allocate taxpayer funds to regional airports. It will therefore be an important part of the commissions draft recommendation 10.6.

### **3 IMPACT OF AIRPORT CHARGES ON REGIONAL AVIATION**

In Chapter 8 of the draft report, the commission notes that the cost of jet fuel accounts for the largest single source of airline operating costs, at about 20 percent in 2017-18.

According to the AAA submission to the PC Issues paper, Attachment 3 InterVISTAS (2018) The Impact of Airport Charges on Airfares, there is a conclusion that airport charges typically represent less than 10% of airfares and that fuel costs amount to about 20% of total costs.

Rex is deeply concerned that the Commission has taken evidence from one party only, (the AAA) and has ignored the submission made by Rex. The Rex submission highlights that airport costs make up a very significant proportion of airlines operating costs and by default a significant proportion of an airlines ticket price and this fact needs to be correctly captured in its final report.

In the most recent FY18, airport costs across Rex's Regular Public Transport (RPT) network accounted for 16.7% of Rex's total operating expenses. This is in comparison to Rex's fuel cost for its RPT network that accounted for 15.9% of Rex's total operating expenses.

On a per passenger basis, airport costs represented \$26.16 (excluding GST) per passenger, noting that airport costs are applicable to both the departure and arrival. This means that each one way ticket comprises of airport costs at both ends of the journey. This may seem obvious however it is a point that is often overlooked.

To put the \$26.16 (excluding GST) per passenger into perspective, Rex's profit per passenger in FY18 equated to \$10.46, and in prior financial years the profit per passenger has been as low as \$3.00 to \$4.00. It is clear from this factual information it is possible that airports can make more money from the services provided by a regional airline, than the regional airline. The Commissions draft report completely misrepresents the real situation and misleads the reader. The final report must be corrected to ensure accuracy.

For Rex's RPT network in WA in FY18 (Perth to Albany and Esperance), the average airport costs per passenger was \$50.81 (excluding GST) for a one way ticket. This represented 25% of Rex's WA average ticket price and 40% of Rex's \$129 Community Fare on the Perth Albany and Perth Esperance routes. In WA, Rex's airport costs exceeded its fuel costs by 130%. These facts should be reflected in the final report. More importantly the Commission needs to reject the proposition of the AAA that airport charges are a small portion of a ticket price and are therefore not material. In fact airport costs in some circumstances are the largest single cost for a regional airline.

That's why a review of this type by the Productivity Commission which gets this subject so completely wrong is disappointing, annoying and frustrating. Rex hopes that the Commission will correct this in the final report.

The key points are;

- Airport charges are Rex's single biggest external cost, exceeding fuel costs in most years;
- Increases in airport charges has a significant impact on profitability given the thin margins and low profits per passenger associated with regional air services;

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- On some regional routes the airport costs account for 25% of the average ticket price and up to 40% of the entry-level ticket price;
- Airport charges, whilst significant, are one of countless other costs that Rex has to cover within the fully inclusive ticket price charged to the customer;
- It is not possible to simply pass on increasing costs in the fully inclusive ticket price, because if it was that simple there would not have been 20 regional airlines collapse since Rex commenced operations in 2002.

## 4 CAPITAL CITY AIRPORTS

### 4.1 Regional Access Arrangements for Sydney Airport

#### 4.1.1 Draft Recommendation 7.1 Regional Access to and from Sydney Airport

*PC Draft Recommendation 7.1 - The Australian Government should amend the Sydney Airport Slot Management Scheme 2013 (Cwlth) to allow slots that are not part of a permanent regional service series (PRSS) to be used for either regional or non-regional flights. These slots should not become PRSS slots when used for regional flights. Future Declarations relating to the regional price cap and notification regime should only apply to regional flights operated through PRSS slots, after the current Declaration no. 94 ceases on 30 June 2019.*

Once again the Commission has got it wrong. The current Sydney Airport Slot Management Scheme already allows for non-regional NSW slots to be used for NSW regional flights. The current regulations state that an airline wanting to use a non-regional NSW as a regional NSW slot, can do so by being allocated a “conditional slot” (subject to a non-regional NSW slot being available), and if the airline successfully operates at the same time for 2 scheduling seasons (without accruing historic precedence) then the non-regional NSW slot would become a NSW regional slot. The commission is calling for something to be created that already exists. Please find the relevant article from the Scheme as follows;

*Creation of new permanent regional service series*

- (3) A slot series is also a **permanent regional service series** if, for each slot in the series:
- the equivalent slot in each of the 2 previous equivalent scheduling seasons was allocated to the operator to conduct a regional service; and*
  - the operator conducted the regional service in compliance with any ‘size of aircraft’ requirement that applied to the slot*

As such Rex does not believe that the current scheme inhibits an airline from converting a non NSW regional slot into a NSW regional slot and that the real inhibitor is the overall 80 movement cap applicable to all flight movements at Sydney airport.

#### 4.1.2 Draft Recommendation 7.2 Commercial Negotiations for NSW Regional Services

*PC Draft Recommendation 7.2 - The Australian Government should ensure that future Declarations relating to the regional price cap and notification regime at Sydney Airport only*

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*apply to aeronautical services that are not covered in commercial agreements between Sydney Airport and airlines operating NSW regional air transport services, after the current Declaration no. 94 ceases on 30 June 2019. Future Declarations should also specify that prices in commercial agreements cannot be used to assess whether Sydney Airport has breached section 95Z of the Competition and Consumer Act 2010 (Cwlth).*

Rex referenced the importance of the Declaration of the regional price cap and notification regime at Sydney airport in its submission. The combination of this price protection and the protection of NSW regional slots is critical. Rex argues that the Declaration of the regional price cap and notification regime at Sydney airport should be permanent and not be subject to a renewal every 3 years as this creates unnecessary uncertainty for regional airlines and the regional communities that they service. The Government can always remove the Declaration should this be a justified position of the Government of the day.

#### **4.1.3 Draft Recommendation 7.3 Reviewing Sydney Airports Slot Management Scheme**

*PC Draft Recommendation 7.3 - The Australian Government should commission a public review of the Sydney Airport Slot Management Scheme 2013 (Cwlth) following the outcomes of the International Air Transport Association's review into the Worldwide Slot Guidelines, expected to be completed in 2019. The review of the Scheme should assess how effectively it contributes to the efficient use of scarce airport infrastructure while taking into account regional access and noise management objectives. It should consider reform options in relation to:*

- *whether slot allocation arrangements generate the greatest benefits to the community or if alternatives that are not based on historical precedence would improve competition*
- *slot performance monitoring to ensure that slots are being used in accordance with the intent of the Scheme*
- *the costs and benefits of continued alignment with the latest Worldwide Slot Guidelines, including the effects on competition between airlines.*

Rex does not oppose a review of the Sydney Airport Slot Management Scheme, however the effectiveness of the Scheme has more to do with the Government's decision to cap aircraft movements at 80 per hour than it has to do with the Worldwide Slot Guidelines (WSG).

In Rex's experience, adopting slot management rules from the WSG has always delivered a fair and equitable approach and airports that have pushed to adopt local rules outside of the WSG have typically done so for their own commercial gain. An example is Brisbane airport not granting historic slot precedence to aircraft with less than 50 seats that operate scheduled charter services.

## 5 Western Sydney Airport

The draft report implies that the opening of a Western Sydney Airport would mean the bulk of regional flights would be operating from that airport. Regional communities require continued access to Sydney Kingsford Smith Airport for essential travel that requires efficient access to Sydney CBD.

Essential Regional air services cater for the needs of Government, (Federal, State & Local), business and medical related travel and in many regional communities the regional air services are a pseudo flying doctor service. Government, business and medical related travel accounts for more than 80% of Rex's regional passenger demand, with discretionary and leisure travel being a minor segment of the regional passenger mix.

The medical related travel includes regional patients travelling to the Capital Cities for specialist treatment, as well as specialists travelling out to the regions to provide specialist medical support.

A further unique aspect of regional travel is that a large percentage of Government, business and medical related travel undertake day-return travel in either direction. This further signifies the importance of the time critical nature of regional air travel and the importance of continued access to Sydney airport.

Another element that is extremely important for regional NSW communities is that around 20% customers connect with domestic and international services and this connectivity at Sydney KSA is paramount to the viability of NSW regional air services. The operating margins associated with the provision of regional air services are thin and losing the ability to efficiently connect with domestic and international services would render many routes to be commercially unviable, spelling an end to the air service.

Most NSW regional routes compete with the motor car, as well as other modes of transport, and if the customers end destination was not easily accessible to the Sydney CBD, this would also account for a considerable reduction in the number of NSW regional air passengers.

## 6 The Productivity Commission had Insufficient Evidence

The draft report of the Commission stated the following;

“Third, the Commission had insufficient evidence to conclude that airport operators make take-it-or-leave-it offers *and* that airlines are compelled to accept them.”

If the commission had read Rex's submission it would have noted that it cited 9 specific case studies relating to regional and capital city airports. Rex also provided an in-confidence Annex that detailed some 400 pages of information relating to the 9 airport case studies. To date, Rex has not received a single question from the Commission about the 9 airport case studies and the detailed information provided in the Annex. Surely if there was a lack of information a simple request for that information made to the airline would have solved the problem. It is clear the Commission could not be bothered to make that simple enquiry.

Rex cannot understand how the Commission reported that it had insufficient evidence to conclude that airport operators make take-it-or-leave-it offers to airlines and that airlines are compelled to accept them.

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Rex does not agree that airports have limited ability to exercise their market power using take-it-or-leave-it offers and Rex has provided the Commission with real examples of where this occurred. We suggest that the Commission reads Rex's submission and acquaint itself of the evidence.