



1 Melbourne Airport jet fuel supply disruptions



The costs to airlines, passengers and the Victorian economy continue to rise from the lack of a competitive and reliable supply of jet fuel to Melbourne Airport.

The recent severe fuel rationing – imposed with little practical notice to airlines – caused delayed flights, off-loading of cargo and substantial additional operating costs for airlines.

BARA calls for the urgent development and implementation of an infrastructure plan to enable both greater supply reliability and competition between jet fuel suppliers at the airport.

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2 Taxing international aviation



BARA challenged the increase in the Passenger Movement Charge to \$60 based around the need to add value and support industry growth.

The sustained growth in Australia's international aviation – underpinned by reductions in real airfares offered by international airlines – is already providing windfall revenue gains to the Australian Government.

The focus of effort should be directed towards supporting continual improvement in the safety and efficiency of international aviation, which will underpin improved airfare affordability and industry growth.

3 Reasonable commercial expectations



International airlines expect more than the right to 'wait in the queue' for airport services at Australia's major international airports during peak periods.

As some major international airports become increasingly congested, there is a need to better define the acceptable standards for service outcomes in the agreements between the airport operator and individual airlines. This will better align accountabilities and promote growth consistent with the infrastructure's service capacity.

International airlines are also seeking reasonable commercial remedies for service delivery failure on the part of the airport operator.

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4 A safe and merry Christmas



BARA wishes everyone a safe and merry Christmas and looks forward to working with you to support safe and efficient international aviation in 2017.

International airlines will carry over six million passengers during December–January, connecting Australia to the rest of the world during this busy international travel period.

BARA's 32 member airlines provide some 90% of all international passenger flights to and from Australia.



Melbourne Airport jet fuel supply disruptions

The jet fuel supply problems to Melbourne Airport highlight the danger of allowing investment in jet fuel infrastructure supply chains to drift along rudderless. BARA advocates establishing a framework to encourage supply chain investments that will promote greater reliability in supply and competition between jet fuel suppliers.

Globally, international airlines generally take for granted a reliable and competitive supply of jet fuel at major international airports. Governments recognise the benefits of a reliable and competitive supply and have established arrangements to promote good industry outcomes. This include directions over access to facilities for all potential jet fuel suppliers.

None of these arrangements exist for jet fuel supply to Melbourne Airport or any other airport in Australia. The results for industry and the Victorian economy were made clear on Friday 25 November with airlines rationed to just 50% of their necessary jet fuel allocations. BARA members reported the need to: delay flights, off-load cargo, divert flights to other airports to refuel and 'tanker' additional fuel by aircraft from other airports (e.g. Sydney Airport).

There is an urgent need to apply the basics of good infrastructure planning and delivery for jet fuel supply to Melbourne Airport. BARA is not advocating long-term government involvement. Instead, BARA calls for the network and on-airport storage investments necessary to provide a long-term solution to growing airline demands for jet fuel at the airport. This will require support from government in facilitating the planning and delivery of the new jet fuel infrastructure.

An infrastructure plan

BARA supports the Australian and Victorian Governments jointly commissioning a jet fuel infrastructure plan. The plan would be developed by industry experts and must include consultation with potential new jet fuel importers. The plan should also clearly describe the investments necessary to support a reliable and competitive supply of jet fuel to the airport.

The infrastructure plan will need to cover all aspects of the supply chain, including off-airport storage, transport to the airport and on-airport storage and distribution. The access to, and pricing of, the supply chain must be aligned with promoting supply reliability and 'competition on its merits' between jet fuel suppliers.

BARA supports an independent review of jet fuel supply arrangements at Melbourne Airport chaired by an independent third party.

Investment opportunities

With a clear infrastructure plan, BARA is confident there will be multiple parties willing to invest in the new infrastructure.

BARA's member airlines are prepared to discuss in good faith options to support the competitive pricing of the new infrastructure so it can be commercially viable from when it is commissioned. BARA notes that a new pipeline could immediately replace the growing volume of jet fuel currently transported to the airport by road tankers, proving a large initial base of demand.

Regulatory approvals

New infrastructure will require support and approvals by government at all levels. The Victorian Government will have a specific role in facilitating and streamlining the necessary regulatory assessments and approvals so that the new infrastructure can be delivered as quickly as possible and at the lowest cost.



Reasonable commercial expectations

Operations at some major international airports are becoming increasingly congested with the growth in international aviation. This raises the issue of whether - for the prices paid to the airport operator - international airlines should be entitled to operate their services to schedule.

BARA considers that previous commercial practices will require modification as Australia's major international airports become increasingly congested. At the heart of the issue is what 'service' the international airlines are buying – is it the right to expect necessary infrastructure services to be available at the agreed time or merely the right to 'wait in the queue' for when services may or may not become available?

Further, if an airport operator fails to deliver on its service delivery promises, however defined, to what extent should the airline have the right to seek financial compensation?

Finding an appropriate balance between the commercial interests of the international airlines and airport operators will be necessary to support ongoing efficient international aviation.

Negotiation boundaries – or lack of

Under Australia's 'light-handed' economic regulation of the major international airports, the Australian Government expects the airport operators and airlines to commercially negotiate the provision and pricing of airport services:

It is expected that airlines and airports will primarily operate under commercial agreements and in a commercial manner, and that airport operators and users will negotiate arrangements for access to airport services.

The obligations of, and risk allocation between, the international airline and airport operator therefore lie in the various clauses contained in the legal agreement between the two parties.

The expectation that the parties will negotiate 'commercial agreements' and operate in a 'commercial manner' lies at the heart of the 'Review Principles'. There is no particular guidance as to what this means in practical terms for many non-price terms, especially service outcomes and the allocation of commercial risk. This is ultimately a matter for the airport operator and international airlines, having regard to their reasonable commercial objectives, which typically involves a range of business decisions.

One of the fundamental principles of Australian contract law is 'freedom of contract', under which parties are generally at liberty to strike whatever bargain they choose (subject to limited qualifications). The law does not require that an agreement be balanced, fair or reasonable in order for it to be enforceable.

In the context of aeronautical services, Australia's major international airports have considerable market power in setting price and non-price terms and conditions with international airlines. One way this can manifest itself is through the airport operator transferring the commercial risk of inadequate service capacity and delivery failure onto the international airlines.

The existence of signed agreements between airlines and an airport operator does not necessarily mean the airport operator is abiding by its obligations under 'light-handed' economic regulation and the Review Principles. As the Productivity Commission acknowledged:

The fact that airport users may ultimately accept the conditions offered by the airports does not automatically imply reasonableness...it could simply reflect the strong bargaining position of the airports and the need for airlines to have access to services to continue to operate.



International airlines rely on the services provided at the major international airports. The airport operator's strong bargaining position can create an environment in which there is the potential for overreach. If the contractual outcomes do not reflect the reasonable commercial expectations of the international airlines it is inevitable that relationships will be strained.

It is important for airport operators to negotiate within the Review Principles parameters and to avoid the temptation to overreach. This includes an airline's reasonable expectations over service quality and rights to seek legal remedy if outcomes are materially below expectations.

Clearly defined service levels

A good start to addressing the commercial issues in the face of rising airport congestion levels is to clearly define the service level outcomes.

BARA considers that if an airline has performed its side of the bargain (e.g. landed on time during the morning peak), then it should be entitled to expect that the services necessary for its operations will be available within a reasonable time (e.g. the availability of a contact gate).

With common use facilities, the actions of one airline may disrupt the availability of the facilities for another airline (e.g. an airline is late from a gate, delaying an arriving aircraft). BARA rejects the suggestion that the actions of another airline should automatically be deemed to be outside the reasonable control of the airport operator and treated as an open-ended excuse for service failures. The airport operator's responsibilities extend to co-ordination of operations at and around the airport to optimise local capacity.

Removal of 'sole remedy' clauses

Most airport agreements provide for some very modest compensation to international airlines for service failures due to infrastructure failures (e.g. a broken contact gate), which involves significantly less than full compensation for the

relevant loss. The rebate regime may operate on an individual airline or as an aggregate outcome.

Some airport operators also seek to limit their accountability to the modest rebates through a 'sole remedy' clause. A sole remedy clause may negate the commercial consequences of other service commitments.

The current rebate regimes do not compensate airlines for the additional costs they incur, including delays and lost baggage. As such, international airlines should have the right to seek the usual commercial remedy (i.e. to claim damages for financial compensation) if there are material or repeated breaches.

Liability limits

Airport operators may argue that they cannot offer the right to financial compensation beyond the modest rebate amounts as it would expose them to an uncertain level of financial risk.

BARA would consider this position as 'throwing out the baby with the bathwater'. As commonly occurs, the parties can negotiate liability limits that provide boundaries over an airport operator's financial exposure for its service delivery failures.

One of the most common forms of limitation is an overall dollar cap on the amount recoverable by the innocent party. Limitations can also involve time limits on claims or other restrictions on the right to claim. Liability limits therefore offers a path to an appropriately balanced commercial agreement that provides certainty to both the airport operator and international airline.

BARA will seek to achieve the following in future agreements:

- 1. the right to service availability within a reasonable time**
- 2. the right to seek financial remedy outside existing rebate provisions**
- 3. appropriate liability limits over the value and timing of claims**