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Dear Mr ~~Chow~~ *Andrew*

Melbourne Airport Taxi fee - ESC request for information

Thank you for making the time to meet with me recently and your letter of 10 February 2014 which helpfully sets out the ESC's view of its role in reporting on taxi fares in Victoria. Please find to follow Melbourne Airport's understanding of the relevant statutory framework within which the ESC is required to provide a report to the Victorian Government.

In the ESC Letter of 10 February the ESC states:

"Under section 186 of the Transport (Compliance and Miscellaneous) Act 1983, the Commission must assess the appropriate taxi 'fare or hiring rate' paid by passengers. The Melbourne Airport taxi parking fee is one component of the overall taxi 'fare or hiring rate'. As a result our report must consider the taxi parking fee paid by passengers for taxi services."

This suggests, together with the burdensome request for information regarding how the calculation is determined, that the ESC considers that it has the power to review how the charge was determined and the level of the charge. However, Melbourne Airport suggests that the ESC is only entitled to **make limited inquiries and assessments into the Melbourne Airport taxi fee for the purposes of the ESC's report and does not need to satisfy itself about how the MA taxi charge is calculated or whether it is reasonable.**

It is Melbourne Airport's view that in exercising its statutory functions the ESC need only be satisfied that a prudent and efficient taxi operator cannot avoid the Melbourne Airport taxi fee and that such fee is set on an arm's length basis. Once these two conditions are satisfied the ESC must recommend to the Government that taxi operators be entitled to recover in full the Melbourne Airport taxi fee, regardless of how the charge is determined or its level. Accordingly, Melbourne Airport suggests that it is beyond the scope of the legitimate role of the ESC to enquire into the basis for the determination of the Melbourne Airport taxi fee or recommend the recovery of other than the full amount of such fee.

ESC to exercise power to promote efficiency

In fulfilling its statutory functions in providing the report requested of the Government the ESC, amongst other matters, is to:

- 'promote the efficient provision and use of commercial passenger vehicle services' as required by section 162B of the *Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013* and
- 'provide incentives for dynamic, productive and allocative efficiency and promotes the long term interests of Victorian consumers' as required of the ESC in performing its regulatory and advisory functions by section 1 of the *Essential Services Commission Act 2001*.

Accordingly, the prime objective of the ESC in the exercise of its statutory functions is the promotion of efficiency.

Full recovery of unavoidable arm's length charges promotes efficiency

Melbourne Airport submits that the ability of taxi operators to recover the full amount of the Melbourne Airport taxi fee promotes efficiency. Alternatively, if a prudent and efficient taxi operator cannot recover the full amount of an unavoidable cost imposed on an arm's length basis then there will be allocative inefficiency from the pricing of taxi services originating at Melbourne Airport, contrary to the long term interest of Victorian consumers.

The Melbourne Airport taxi charge is clearly unavoidable for any taxi operator providing a taxi service originating at Melbourne Airport. Further the taxi fee is incurred on an arm's length basis and is not between related parties. Therefore, to not permit full recovery of the taxi fee would not fulfil the prime statutory objective of the exercise of the statutory powers in this case.

ESC's methodology for the determination of taxi fares

Melbourne Airport is unaware of the methodology being applied by the ESC in assessing the 'appropriate' or 'maximum' taxi fare. However, we note that the ESC is expressly required by the ESC Act to adopt an approach and methodology in regulating prices which the ESC considers will best meet its statutory objectives (s.33(2) ESC Act). However, within these constraints, the ESC is empowered to regulate the relevant prices in any manner its considers appropriate (s.33(5) & (6) ESC Act). Notwithstanding that taxi services are not currently a 'regulated industry' for the purposes of ESC we expect that the ESC will in the exercise of its powers and functions act consistently with all such provisions. Accordingly, Melbourne Airport suggests that the ESC must adopt a methodology that promotes efficiency.

As the ESC is assessing the 'components' of the overall taxi fare it appears that the ESC is applying a building block type methodology in its assessment of the efficiency. Building block methodologies are commonly applied in Australia as part of regulated price control regimes with the objective of promoting efficiency for the long term interest of consumers. For example, the ESC has since 2001 applied a building block methodology in its electricity and gas distribution price reviews. In doing so the ESC has always permitted the full recovery of charges that a prudent and efficient distribution business could not avoid and which were set on an arm's length basis. Accordingly, Melbourne Airport suggests that the ESC's own past decisions provide the precedent for the treatment of the Melbourne Airport taxi charge.

If however the ESC is applying a methodology other than a form of building block approach, such as benchmarking, then an assessment of the 'components' of an overall charge are irrelevant to the exercise that the ESC is undertaking.

Conclusions and the way forward

For the reasons set out above Melbourne Airport suggests that the ESC need not burden itself with a review of the basis of the calculation of the Melbourne Airport taxi charge and that the ESC can, consistent with Australian regulatory practice (including its own prior determinations) recommend to the Government the taxi charge be permitted to be passed through in full. If this position is accepted by the ESC then there is no need for Melbourne Airport to provide any further information to the ESC.

If however the ESC does not accept the propositions set out above we request that the ESC explain in writing, the basis for any contrary position or conclusion. Following any such explanation we suggest that we then meet to discuss any residual points of disagreement.

Yours sincerely



Carly Dixon
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Melbourne Airport