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Passenger representation within the light-handed regulation – Insights from the Australian air transport market

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ABSTRACT

This article critically reviews the representation of passengers within the light-handed regulation (LHR) that has been in place in the Australian air transport market since 2002. The focus is the commercial negotiations between airlines and airports concerning investments that affect passengers as key stakeholders, end-users, and payers. The article draws on literature on consumer representation and willingness to pay, as well as data from 21 in-depth interviews. The findings suggest that within the current arrangement, passengers are dependent on airlines as their representatives, although their interests may differ concerning investments in airport infrastructure and services. This dependency is leveraged by the current airline duopoly in the Australian domestic air transport market because passengers have no transport alternatives among which to choose. Airports charging passengers their fees (and eventually negotiating prices for improved services) directly is not deemed a suitable option because it could increase the airports' market power and affect the passenger experience negatively. Recommendations, such as involving an independent representation body and diversifying service provision at the airport, are discussed as possibilities for increasing passengers' influence.

1. Introduction

Deregulation has provided many opportunities for the air transport sector, particularly regarding reducing costs, diversifying service provision and utilising synergy effects with key stakeholders (Bilotkach et al., 2012; Fu et al., 2011). In most regulatory regimes, however, the voice of the passenger as the end-user is neglected, particularly regarding their specific needs and willingness to pay for new infrastructure developments (Schiefelbusch, 2005; Thao et al., 2017). This is specifically the case in markets that lack competition or substitutes (Hanson, 1999), as is the case in the Australian domestic air transport market. In Australia, with very few exceptions (e.g., Brisbane and Gold Coast), the majority of the population in large cities has only one airport option to fly from (in some cases, airports are available but with few commercial route options), coupled with the domination of the domestic market by a duopoly of airlines. Alternative means of intercity transport such as train and coaches are scarce and highly inefficient. As a result, there is a considerable risk that the passengers' voices are not appropriately considered in negotiations concerning investments in airport infrastructure and services. For example, while passengers can typically choose freely between different services provided by an airline (e.g., business or economy class), they have little say about the services provided by an airport.

The weak position of the passenger as the customer and key stakeholder is problematic because the Australian air transport market is not regulated per se but merely monitored as part of the light-handed regulation (LHR) (Forsyth, 2008; Littlechild, 2012). This framework encourages commercial negotiations between airports and airlines (Arblaster, 2017). The passenger is not represented during these negotiations, however, and any increases in airport pricing that result from these negotiations are passed on to them directly. Consequently, during the negotiations, airlines might primarily focus on their specific interests (e.g., maximising operational productivity) rather than on those of the passengers (e.g., improving the passengers' airport experience or convenience). In turn, airports are monitored regarding their quality of service levels owing to their market power position. Airports must negotiate and reach an agreement with airlines on any possible fee increases related to quality-improving airport investments (Lohmann and Trischler, 2017). If no agreement is reached, airports must either delay the investment or find alternative sources of funding (as was the case with the construction of the new runway at Brisbane Airport).

In line with Yang and Fu's (2015, p. 122) recommendation that LHR is “worth preserving subject to monitoring and continuous

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improvement", this study critically reviews the representation of passengers within the Australian air transport market. The focus is thus on passenger representation in commercial negotiations between airlines and airports as is defined in the following overarching research question:

RQ1: How can passengers be meaningfully represented in negotiations between airports and airlines?

Addressing this research question is important because passengers, as a key stakeholder, should have a voice in investment decisions that affect them as end-users. *RQ1* is underpinned by two sub-questions focusing on investigating passenger representation in the context of the LHR, as it is instantiated in the Australian air transport market (*RQ1a*), as well as exploring possible alternatives to the current charging system. This includes the consideration of direct charge in combination with the passengers' willingness to pay as a possible way to bypass the negotiations with airlines, and in so doing, give the passengers the possibility to more directly influence decisions regarding new infrastructure developments (*RQ1b*):

RQ1a: Within the current LHR design, who represents passengers during negotiations between airports and airlines?

RQ1b: Can direct charge (i.e., airports directly charging passengers for airport fees) be an alternative to the current charging system?

Derived from the evaluation of the current literature and the analysis of data generated through in-depth interviews with stakeholders and experts in the field, this paper investigates the perception of the current negotiation and charging framework that is in place in the Australian air transport market. With a specific focus on passenger representation, the study additionally explores possible new mechanisms that can help policymakers to more effectively incorporate the voice of the passenger, including the consideration of their specific needs and willingness to pay.

2. Literature review

2.1. Consumer representation in regulatory environments

Consumer representation in a regulatory environment concerns procedures and structures that allow consumers, including passengers, "to express their interest directly, efficiently and in a timely manner" (Schiefelbusch, 2005, pp.263-4). In cases where a market is sufficiently competitive, it is questionable whether a sector-specific independent consumer body is needed, given that consumers can freely choose from a selection of options (Harker et al., 2006). It puts the consumer in a stronger position because they have a choice and can make a decision based on their specific needs and preferences. This market mechanism may not always function, however, as the consumer might not possess all of the information needed or may simply lack appropriate choice or alternatives owing to market entry barriers such as scarce resource availability, or a lack of substitutes (Hanson, 1999; Porter, 1979). For example, in privatised utilities or sectors (e.g., telecommunication, energy, and transportation), consumers are typically represented by independent bodies to give them a stronger position in, e.g., negotiations with the respective service provider (Thao et al., 2017).

Consumer representation can be facilitated by consumer bodies in the following five ways (Cartledge, 1992; Harker et al., 2006): 1) ensuring that the consumer's voice is heard, especially in markets where there is a monopoly; 2) protecting the consumer's ability to choose and switch between products or services; 3) advising consumers in disputes with the service provider; 4) supervising the sector's regulator, and as such, serving as a voice for the media, government and public; and 5) monitoring and reporting on the quality of service provided to the consumer. An illustrative example of a consumer representation body covering the first three roles listed above is the Communications Consumer Panel in the UK. Established under the Communication Act 2003, this panel is an independent policy advisory body that represents consumer interests in telecommunications, broadcasting and spectrum markets (Communications Consumer Panel, 2016). While the stated objective of this panel is to protect and promote consumers' interests, Tambini (2012) points out that such bodies might, in fact, be semi-independent (e.g., their members are selected by the regulator, with the panel being dependent on the regulator's budget allocations). This arrangement means that some consumer representation bodies may not be fully independent of the government or the regulator itself. In turn, in Australia, the Australian Competition and Consumer Commission (ACCC) acts as the national competition regulator concerned with promoting competition and fair trade in markets to benefit consumers, businesses, and the community (ACCC, 2017). Its main responsibility is "… to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws - in particular, the Competition and Consumer Act 2010" (ACCC, 2017, p.1). While the ACCC is promoting competition and fair trade as well as protecting the consumer, its role is not to promote or represent the consumer's voice.

Consumer representation bodies are also common in the air transport sector, specifically in countries where the market is less regulated (Adler et al., 2015; Thao et al., 2017). For example, in the UK, the Civil Aviation Authority (CAA UK) has set up a semi-independent consumer panel (i.e., with members appointed and the panel funded by the regulator) to scrutinise and challenge the work of the CAA UK and to be a 'champion' of the consumers' interest (CAA Consumer Panel, 2013, 2017). Notably, the CAA UK calls for the greater involvement of passengers because of concerns that the mutual interests of airports and incumbent airlines might not be in passengers' best interests (see Littlechild, 2018 for a recent review). In Australia, the ACCC indirectly represents the consumer by monitoring the prices and quality of service of the four largest airports (i.e., Sydney, Melbourne, Brisbane and Perth) (Trischler and Lohmann, 2018). Also, in 2012, the Airline Customer Advocate (ACA) was established to facilitate an effective complaint resolution process between airline customers and the five major Australian airlines: Jetstar, Qantas, Regional Express (REX), Tigerair and Virgin Australia (ACA, 2017). The ACA's role is "to represent the interests of airline customers of the participating airlines and play a leading role in customer advocacy within the Australian airline industry" (ACA, 2017, p.1). Thus, while the ACA represents a service provided indirectly by the airlines to their passengers through a third-party body to resolve complaints more effectively (i.e., third role of consumer representation), it does not necessarily act in the passengers' interest or represent the passengers' voice.

The above review shows that consumer representation is common across industries, including the air transport sector. There are often limitations in the way consumers are represented (i.e., the true independency of the bodies), as well as in what areas consumers are represented (e.g., complaints, consumer protection, promoting competition). As underscored by Thao et al. (2017), although various forms of consumer representation have been established due to ongoing regulatory reforms, only some are effective in safeguarding passengers' interests. Focusing on the Australian market, no representative bodies could be identified that represent the passengers' voice (i.e., the first role of consumer representation) and give them the opportunity to express their opinions and preferences in the negotiation processes between airlines and airport operators. This lack of representation is a common problem in the transportation sector, where owing to a monopoly position held by the transport provider, "customers cannot express dissatisfaction with the service on offer by switching to another operator" (Schiefelbusch, 2005, p.261). The same is true for the Australian air transport market: owing to the long distances between the major population areas as well as the lack of alternatives such as high-speed rail, the customer has limited possibilities in choosing or switching between different transport modes or airports (Arblaster, 2016). The following section examines this issue in more detail to