Tripartite Deed Post Implementation Review

Post Implementation Review of the extension of the existing Tripartite Deeds from 20 to 50 years for 12 Australian federally leased airports and the offer of Tripartite Deeds to 9 remaining federally leased airports for the remainder of the current airport lease.

Contents

Executive Summary

A tripartite deed (TD) is an agreement between the Commonwealth (as Lessor), an airport lessee company (ALC) and its secured financiers. The TD sets out a process to provide for financier step-in to cure breaches of the airport lease and avoid termination of the Airport Lease. If the airport lease is terminated it provides a mechanism for the airport lease to be either sold or valued and for the secured moneys owed to the financiers to be paid out of the sale proceeds or valuation amount. TDs were initially offered to larger airports for a 20 year term. The airport leases have 50 year terms with an option for a further 49 years.

The Government's decision to extend TDs beyond the initial 20 year term and to offer TDs to airports that did not have them was intended to facilitate continued access by ALCs to domestic and international financial markets. TDs have proven to be necessary and effective in providing flexibility for funding options for airports and increased security for financiers. The TD decision has been implemented efficiently and effectively with no obvious negative unforeseen consequences.

Key findings of the review are:

Finding 1. Changes in financial markets caused by the Global Financial Crisis, particularly related to a reduction in investors' appetite for risk and a contraction of funds in the domestic market, meant that airport lessee companies faced difficulty in sourcing funds for refinancing and new investment as the original tripartite deeds moved towards the expiry date

Finding 2. The Government action to renew current or offer new TDs was intended to facilitate access to finance by ALCs. The Government accepted that financiers had concerns over:

- the limited duration of the original TD;
- the leasehold nature of the airport asset; and
- the ability for the Government to resume assets in the event of the ALC defaulting on the lease.

Finding 3. The Government action is confirmed as needed and appropriate.

Finding 4. The implementation of TDs has been managed in an effective and efficient manner.

Finding 5. The high rate of uptake of TDs, which are voluntary, indicates their importance to the ALCs that need to raise funds in financial markets.

Finding 6. Although it has highlighted the complexities of airport finance and corporate structures, the extension and creation of new TDs were found to provide sufficient security for financiers to attract domestic and overseas finance.

Finding 7. While some large airports may have been able to secure domestic finance without extended TDs, for smaller airports, the TDs were considered a critical element in securing all funding, including in refinancing existing debt.

Finding 8. TDs are an important, if not critical element for ALCs in securing international finance.

Finding 9. TDs appear to have facilitated ALCs accessing more finance in absolute terms and being able to spread maturities across a greater time period following the TD decision. ALCs have also increased capital expenditure post the TD decision.

Finding 10. TDs have improved equitability of the terms of finance provided to ALCs by financiers.

Finding 11. The TD decision has had little apparent effect on businesses using airport land. As a result of TDs, ALCs can access finance on a similar footing to an equally sized freehold corporation, which does not necessarily provide ALCs with a competitive advantage over off-airport competitors.

Part A - Introduction

1. Review Purpose

The purpose of this review was to assess how effective and efficient the decision to extend current or provide new Tripartite Deeds to the 21 federally leased airports was in meeting its objectives. The review also addresses the Office of Best Practice Regulation's (OBPR's) requirement for a post implementation review (PIR).

2. Tripartite Deed Objectives and Background

The objectives of Tripartite Deeds (TDs) are to:

- facilitate access to foreign and domestic finance for airport investment by ALCs; and
- encourage equitable financing terms in line with freehold corporates for ALCs.

TDs, with capped 20 year terms, were part of a negotiated commercial arrangement for major passenger airports following the tender process to privatise airport assets between 1997 and 2003. TDs are a voluntary contract signed between the Commonwealth, each ALC and the ALCs' senior financiers. The deeds addressed concerns of senior financiers about the termination clauses in the airport head lease by allowing financiers to attempt to cure any breach of the lease conditions before the Commonwealth steps in to terminate the lease and either resell the lease or value the assets of the ALC. Further detail of the rationale for TDs is set out in response to Term of Reference (TOR) 1.

Following changes to the financial environment after the 2008 Global Financial Crisis (GFC), ALCs requested the Government extend existing TDs to cover the same period as the airport leases (50 years). Smaller ALCs not offered TDs at the time of privatisation requested they also be granted TDs.

On 8 March 2011 the then Acting Prime Minster agreed (via letter) to extend airport tripartite deed arrangements to the end of the current 50 year leases. Approval was conditional on airport agreement to financial and capital expenditure reporting (which, as it aligned with reporting for the Australian Competition and Consumer Commission (ACCC) requirements, does not impose unnecessary compliance costs to some ALCs). These conditions were settled between the Departments of Infrastructure and Transport, the Prime Minister and Cabinet, Finance and the Treasury and were negotiated with ALCs following extensive consultation. The Government subsequently decided to offer TDs to ALCs without current deeds.

Since the decision to offer new and extended TDs, thirteen deeds have been finalised.

3. Scope

The scope of this review covered the impacts of TDs on the ability of ALCs to access funding at competitive terms from financial markets, and does not consider broader financial market conditions such as an individual ALC's credit worthiness. It should also be noted that TDs are voluntary, and not all ALCs have exercised the option for a new or extended TD. As such this review applies only to the relevant Australian airports with new or extended TDs in place.

The review also examined potential impacts on competitive neutrality conferred directly by the TD decision.

4. Terms of Reference

Three Terms of Reference (ToR) were developed to meet the purpose of the Review:

ToR 1 What was the rationale for the TD decision and implementation?

ToR 2 To what extent have TDs facilitated access to foreign and domestic finance for airport investment by ALCs?

ToR 3 To what extent have TDs facilitated equitable financing terms for ALCs and what effect has this access to funding by airports had on businesses using airport land?

Key evaluation questions were also developed to guide data collection and assist in answering each of the ToR. ToR and key evaluation questions are set out in the data matrix at Appendix 1.

5. Structure of this Report

This Report is structured around the Review's ToR and sets out Findings and ensuing discussion and analysis for each Finding (in Section 2 following). Please note that while key evaluation questions guided data collection and analysis under each of the ToR, they are not answered separately in this Report.

The OBPR's PIR reporting requirements and OBPR PIR Guidance Notes have been integral to the development of this report. The reference table provided at Appendix 2 maps the OBPR PIR guidance questions to the relevant parts of this Report.

6. Methodology

The review drew upon a range of qualitative and quantitative data including:

- existing publically available information such as correspondence, media releases and ALC annual reports;
- a Productivity Commission review of airport economic regulation;
- interviews with representatives from:
  - three relevant lending banks;
  - nine ALCs; and
  - key program departmental staff.

The data matrix at Appendix 1 maps each of the above data sources against the relevant ToR and key evaluation questions.

7. Consultation

Key stakeholders consulted as part of this review were:

- Australian Airports Association (AAA)
- Lending institutions (banks)
- ALCs
- Minister for Infrastructure and Regional Development
- Secretary of the Department of Infrastructure and Regional Development

Part B – Discussion and Analysis

Section 2 analyses data obtained throughout the evaluation by ToR and provides discussion and findings or the deductions from that analysis. In the following, findings for each ToR are presented along with ensuing discussion of the data analysis which lead to each of the findings.

1. ToR 1 - What was the rationale for the tripartite deed decision and implementation?

1.1 What was the problem the tripartite deed decision addressed?

Discussion

Many airport infrastructure projects are long term investments with lifespans beyond 20 years and certainly beyond the remaining term of the original tripartite deeds, which were to terminate in the 2017 – 2023 period. Also, given the cost of aeronautical infrastructure, airport planning and investment requires a stable investment platform to enable access to long term debt funding.

With the continuing operation of airport leases and the expiration of existing tripartite deeds approaching, the perceived risk of financing airport investment without the financier protections of tripartite deeds became an emerging problem for a number of airport lessee companies toward the end of the last decade. The Global Financial Crisis in 2008 led to a substantial tightening of credit markets domestically, and increased risk aversion by international investors. Due to these factors, several airport operators made representations to the Government to extend the lifespan of their existing tripartite deeds. These representations were further substantiated by correspondence from financiers, who re-iterated the importance of TDs in ensuring security over the airport businesses that they lend against, and the difficulty U.S Private Placement investors would have lending to any Australian airports without TDs.

The airports stated that without deed extension;

- Finance would be limited for some airports and be unavailable for others;
- Costs of finance would increase;
- Accessing overseas finance would be more difficult or impossible; and
- Refinancing cycles would be constrained.

The airports also stated that without tripartite deeds, long term cost to finance airport infrastructure investment would increase substantially. This would have had a significantly adverse impact on the ongoing investment in critical airport infrastructure, limiting the industry’s plans to alleviate current and future capacity constraints, and potentially increase costs for airlines, and in turn travellers.

In 2010-11, airports with existing tripartite deeds argued that the original 20 year term of their deeds severely limited their access to offshore finance and significantly increased their borrowing costs. This was because finance from overseas sources, with terms that extended beyond the life of the current deeds, would be required to fund large scale projects. Further, to consider lending, overseas banks expected to see long term deeds in place for all leased airports. Smaller non-tripartite airport operators also reported difficulties in raising finance. These airports argued that they were disadvantaged in attracting financiers in comparison to airports with tripartite deeds.

The industry's call for new tripartite deeds for all 21 federally airports was also supported by one of Australia's four major lenders. This bank informed the Government that without a tripartite deed, airports would have a higher risk rating and the domestic capital market would be unable to provide a higher level of debt. Consequently, longer tenor loans from offshore markets would be significantly more difficult to secure. Further, lenders would require a higher interest margin, resulting in increased pricing for financing. In turn, financiers would be less inclined to provide new or interest-only finance, thus severely limiting the ability of airports to raise necessary funding to meet expansion objectives.

Outcome

In comparison to freehold operations, the lapsing of tripartite deeds could have jeopardised the ongoing financial viability of Australian airports seeking to access credit in order to pursue much needed expansion and development in line with aviation capacity forecasts.

- **Finding 1. Changes in financial markets caused by the Global Financial Crisis, particularly related to a reduction in investors' appetite for risk and a contraction of funds in the domestic market, meant that airport lessee companies faced difficulty in sourcing funds for refinancing and new investment as the original tripartite deeds moved towards the expiry date.**

1.2 Objective of Government Action

Discussion

An objective of tripartite deeds is to support continued and long term investment in aeronautical infrastructure through providing increased certainty for financiers, both domestic and international. This, in turn, is intended to ensure Australia's airports are able to access the significant capital required to invest in the infrastructure development needed to meet the current and future aviation capacity demands and remain financially viable.

The Commonwealth was initially reluctant to extend tripartite deeds as apprehension associated with the privatisation of airports appeared to have mostly dissipated after the first decade of privatisation, at least within the Australian market. However, continuing advice from ALCs and significant airport financiers noted changing market conditions including the Global Financial Crisis meant ALCs needed to expand funding sources further than the traditional local markets.

These overseas funding sources were not familiar with Australian airports as investments and mostly required tripartite deeds to be in place to limit perceived sovereign risk arising from a the possibility of the Commonwealth terminating the airport head lease and taking possession of the airport. As one of only two parties to the lease, the Commonwealth was the only entity that could afford the financiers an opportunity to remedy potential or actual defaults of airport lessee companies.

In the face of this information, the Government agreed to extend existing deeds and offer new deeds and in return the Government required ALCs to report financial viability information to the Commonwealth annually to better assess the contingent liability of the TDs.

Finding 2. The Government action to renew current or offer new TDs was intended to facilitate access to finance by ALCs. The Government accepted that financiers had concerns over:

- **the limited duration of the original TD;**
- **the leasehold nature of the airport asset; and**
- **the ability for the Government to resume assets in the event of the ALC defaulting on the lease.**

1.3 What other options were considered?

Discussion

In seeking to address the perceived sovereign risk of leasehold airports, and ensuring ALCs were able to access required levels and types of finance, the Government considered a number of options.

- Option One – Status quo**.** The option of letting the existing TDs expire was considered very high risk due to the likelihood of some airports being unable to refinance even short term debt, and the real possibility of this resulting in insolvency. At the time of the decision, credit markets in Australia were tight while aviation demand was increasing, requiring significant investment by ALCs in airport infrastructure. Maintaining the status quo was therefore considered inappropriate.
- Option Two – Letters of Comfort. A letter of comfort is a form of reassurance that may be used to facilitate an action or transaction that might not otherwise occur. Unlike indemnities or guarantees, letters of comfort are not intended to give rise to legal obligations. Provision of letters of comfort was not supported by Department of Finance practice notes, and may not have satisfied financiers in re-financing existing borrowings. They were therefore considered inappropriate.
- Option Three - Extension and Creation of New TDs**.** The TD decision provides ongoing security to financiers, both domestic and international, for the term of current airport leases. It facilitates ALCs seeking finance on terms similar to those which could be obtained by non-leasehold businesses, while removing the requirement for seeking letters of comfort to secure each additional finance opportunity, as considered in option two.

  Once the extension of existing and creation of new TDs were identified as the most appropriate option, the Department considered whether a customised or a standard template approach would be most appropriate. Adopting customised TDs for each airport may have created inequity between ALCs in accessing finance, potentially providing an advantage to certain ALCs able to negotiate more favourable or liberal terms. Furthermore, consultation with financiers and ALCs indicated a preference for a standard template TD.

Outcome

Ultimately, extended and/or new TDs were offered on a standard template basis, with some flexibility through scope for parties to elect the most appropriate form in certain clauses for their organisation's structure (i.e. the definition of secured monies).

The extension of existing and creation of new TDs were ultimately determined to be the best option in order to ensure the ongoing accessibility of finance for ALCs.

Finding 3. The Government action is confirmed as needed and appropriate.

1.4 Implementation of the tripartite deed decision

Discussion

On 8 March 2011 the then Acting Prime Minster agreed to extend airport tripartite deed arrangements to the end of the current 50 year leases. Approval was conditional on airport agreement to provide financial and capital reporting and that the proposed reporting requirements did not impose unnecessary compliance costs to ALCs. Conditions relating to financial and capital reporting required airports to forward annual financial information and capital expenditure reports for the current year and projected for the next 10 years. These conditions were settled between the Departments of Infrastructure and Transport, the Prime Minister and Cabinet, Finance and Deregulation and the Treasury and were negotiated with ALCs following extensive consultation.

On 20 April 2012, the then Prime Minister approved the proposal to offer tripartite deeds to all federally leased airports. The costs of implementing TDs for the ALCs are primarily the initial legal costs to negotiate and execute the TDs.

Outcome

Once the standard template deed noted above had been prepared, the Department negotiated with airports collectively on its contents. This consultation resulted in further refinement of the template deed. The negotiations then moved towards the individual circumstances around the financing approach for each airport, which required minor changes to particular clauses. This approach minimised the time and cost to airports.

The finalisation and signing of the new tripartite deeds typically reflected the funding priorities and refinancing schedules for each airport. For example, Perth, Essendon, Hobart and Brisbane airports finalised new or extended tripartite deeds ahead of refinancing for existing borrowings. In the cases of Perth and Brisbane airports, the deeds also allowed them to obtain capital required to undertake significant investment such as new runways and terminals. The Department was able to reach agreement with ALCs and their financiers in time to meet these funding deadlines.

The table below outlines airports which have extended existing tripartite deeds and airports which have negotiated new tripartite deeds.

#	Airport	Date signed	New/Extended	Original TD Expiry Date
1	Perth	25 June 2012	Extended	May 2017
2	Essendon	28 November 2012	New	n/a
3	Hobart	1 February 2013	New	n/a
4	Adelaide	13 May 2013	Extended	March 2018
5	Melbourne	1 July 2013	Extended	July 2017
6	Launceston	1 July 2013	Extended	May 2018
7	Darwin	2 July 2013	Extended	April 2018
8	Alice Springs	2 July 2013	Extended	April 2018
9	Sydney	28 July 2013	Extended	June 2022
10	Brisbane	31 July 2013	Extended	July 2017
11	Jandakot	8 August 2014	New	n/a
12	Gold Coast	16 February 2015	Extended	May 2018
13	Townsville	16 February 2015	Extended	June 2018

Airports yet to extend or negotiate new tripartite deeds typically have funding arrangements that do not extend beyond the term of existing tripartite deeds. Airports that have expressed interest but are yet to extend or negotiate new tripartite deeds are set out in the following table.

#	Airport	New/Extended	Original TD Expiry Date
1	Bankstown	Extended	November 2023
2	Parafield	New	n/a
3	Canberra	Extended	May 2018

Airports which have not expressed interest in TDs typically have low levels of debt funding and therefore do not require the certainty TDs provide for financiers.

Additional financial and corporate information required in return for the new deeds was structured to reflect the information already supplied to the ACCC by some airports and to ALC boards, thus minimising the cost to the airports. The regulatory burden associated with TDs is estimated at $58,414 in the first year and $9,654 per annum for subsequent years. These costs relate to additional reporting requirements, and are an average across all ALCs with a new or extended TD. Further information is provided at Appendix 3.

Finding 4. The implementation of TDs has been managed in an effective and efficient manner.

Finding 5. The high rate of uptake of TDs, which are voluntary, indicates their importance to the ALCs that need to raise funds in financial markets.

2. ToR 2 - To what extent have tripartite deeds facilitated access to foreign and domestic finance for airport investment by ALCs?

Discussion

Financing of airport infrastructure is viewed as high risk compared to the majority of other infrastructure classes. In the 2011 Productivity Commission Inquiry into Economic Regulation of Airport Services[1], Hastings Fund Management stated its airport portfolio was higher risk than all other asset classes in its infrastructure portfolio apart from renewable gas power generation. Airports were viewed as riskier than seaports, mature toll roads and gas pipelines due to their exposure to traffic and concentration risk.

Hastings Fund Management gave the comparative example of a mature toll road like the M5 in Sydney, which has a very stable traffic forecast. Conversely, with airports, domestic traffic is concentrated through Virgin, Qantas, Jetstar and Tiger, and if any one of these carriers is lost, as in the case of Ansett, the carrier does not return straight away and if it does it is under very different circumstances. ALC respondents advised that ALCs are operated prudently to maintain investment grade ratings, based on credit ratings agencies' assessment of individual ALC credit attributes such as

[1] Productivity Commission Inquiry Into Economic Regulation Of Airport Services, transcript of proceedings at Melbourne on Thursday, 6 October 2011 9am (pp207-214)

market position and business profile. Without TDs it is unlikely ALCs would be viewed as highly credit worthy borrowers given the possibility that default could lead to breaches of lease conditions and thus termination of the airport lease with no valuable assets available for lenders to recoup the principal of their loans.

Each airport also has individual credit attributes associated with factors such as: size of an ALC, whether an ALC is a regular public transport or general aviation airport, whether an airport handles international or domestic traffic and the composition of aeronautical and non-aeronautical earnings.

Outcome

Individual ALC attributes influence the nature of funding sought by ALCs as reflected in responses by ALCs to interview questions posed during the review, as follows:

- Of the nine ALCs interviewed, the importance of the TD decision to finance availability was rated as critical by five ALCs, very important by three ALCs and important by one ALC.
- The importance of the TD decision to increasing the potential pool of investors was rated as very important by four ALCs, important by four ALCs and as having no relevance to it, by the remaining ALC

A common theme to emerge through interviews of both ALCs and financiers was that respondents felt it was standard industry practice for leasehold infrastructure to have a TD in place, and felt it unusual the original TDs did not align with the full term of the airport lease. ALCs noted there is an expectation from finance markets in general that in the case of leased infrastructure, an agreement will be in place allowing step-in rights. State based concessions where State Governments ensure TDs cover the life of a lease from execution were provided as an example of how airport TDs may have been better constructed.

2.1 Have tripartite deeds provided security for financiers

Discussion

Financiers view the airport lease system as cutting across financiers' rights to recover borrowed funds in the event of breach of lease conditions, and felt that TDs reinstate these protections. TDs mean financiers know how each party is supposed to act if there is a problem, and that secured money is covered if there is a re-sale process. Financiers also identified the unique nature of airport businesses and associated financing requirements as furthering the need for ongoing security. ALCs have long-term assets and associated long payback periods, while the compositions of loans are generally interest only. Financiers stated most ALCs are highly geared and the payback period is typically longer than the tenor of debt. Financiers need to cover any downside risks, and advised the assumption ALCs would be able to refinance this debt without TDs is mistaken.

When asked how important the extension and/-or creation of TDs was to finance availability for airports, two financiers responded critical and one financier said very important. The 'very important' respondent further explained that there are ways around TDs in the short term, but in the long term they are critical.

Outcome

The decision to extend existing and create new TDs was considered essential by surveyed financiers in providing security in the event of breaches of lease conditions leading to the termination of the lease and in allowing comfort in providing finance to ALCs. Financiers stated that finance is compromised without TDs and that in their absence, security provisions would need to be built in elsewhere in the lease or in other documents.

Finding 6. Although it has highlighted the complexities of airport finance and corporate structures, the extension and creation of new TDs were found to provide sufficient security for financiers to attract domestic and overseas finance.

2.2 Has the tripartite deed decision facilitated access to domestic finance?

Discussion

ALCs indicated that domestic funding is predominantly accessed through the big four banks, and in the case of ALCs with existing TDs the effect of the TD decision is dependent upon the term of the existing TD and whether finance terms extend beyond the existing TD expiry. Some ALCs indicated there was an expectation by domestic banks TDs are in place to cover the term of borrowings.

Outcome

Some new TD ALCs stated banks would not consider lending to them without a TD in place. However, some larger ALCs believe domestic funding may still have been achievable in the absence of TDs, although likely to be on less favourable terms.

When ALCs were asked if, as a result of TD facilitation they had accessed domestic debt funding, eight responded yes and one ALC was unable to answer. When asked whether the TD decision had made accessing domestic debt funding easier, seven ALCs responded yes, one ALC responded no and one ALC was unable to answer.

All three financiers interviewed believed the TD decision facilitated domestic debt funding for ALCs.

Finding 7. While some large airports may have been able to secure domestic finance without extended TDs, for smaller airports, the TDs are considered a critical element in securing all funding, including in refinancing existing debt.

2.3 Has the tripartite deed decision facilitated access to international finance?

Discussion

When original TDs were executed in the late 1990's, few ALCs raised debt overseas. ALCs now seek finance from a diverse range of funding sources in order to obtain the required capital to undertake large infrastructure projects, as well as to spread debt payments across a longer time horizon. ALCs believe that leasehold risk is perceived as a bigger issue for international finance in the European and U.S bond markets as well as the U.S Private Placement market.

Outcome

In responding to the question of "to what extent the TD decision removed barriers to obtaining different types of financing", one ALC stated it would be impossible for it to access the U.S. Private Placement market without a TD. Another felt the number of available finance markets accessible to it would have shrunk had the TDs not been extended or had they been withdrawn.

ALCs also felt that the TDs enhance the security of lenders to the airports, and are therefore very important to the class of lenders (e.g. U.S. Private Placements) that required senior secured positions in order to lend at relevant pricing and on terms that are favourable to the ALC. Two of the nine ALCs interviewed indicated they had accessed overseas debt funding as a result of TD facilitation, with both also indicating this had been easier as a result of the TD decision.

Five of the nine ALCs interviewed indicated they accessed overseas bond issues as a result of TD facilitation, with all indicating this had been easier as a result of the TD decision.

Two financiers indicated the TD decision had made it easier for ALCs to access overseas debt funding, while one financier was unable to comment. Similarly, two of three financiers indicated the TD decision had made it easier for ALCs to access overseas bond issues, while one financier was unable to comment.

Finding 8. TDs are an important, if not critical, element for ALCs in securing international finance.

2.4 How has the tripartite deed decision impacted on ALC borrowings and investment?

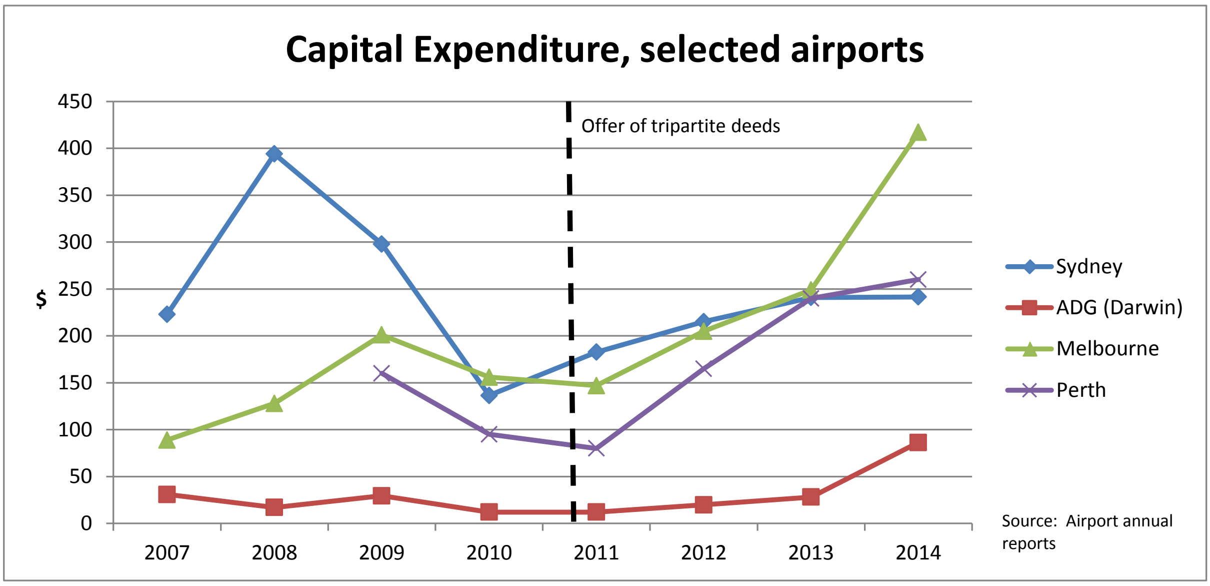
Discussion

The TD decision has supported accessibility to finance through ensuring domestic debt can be accessed or refinanced beyond the initial TD term as well as allowing ALCs to obtain long term finance overseas. This has in turn facilitated increased investment in capital projects at a number of Australian airports, with ALCs able to access more diverse finance markets on more favourable terms than would have been available in the absence of extended or new TDs.

Outcome

Figure 1 below depicts total capital expenditure pre and post the TD decision for a selection of ALCs. It is recognised capital expenditure decisions can also be attributed to factors external to the TD decision such as demand, capacity, business models and macroeconomic factors, and the recent improvement in markets recovering from the Global Financial Crisis (GFC). However, the trend indicated below post the TD decision is further supported by the fact that a number of ALCs finalised US Private Placements or foreign bond issues immediately following the execution of new or extended TDs. (Figures 2-5).

Figure 1

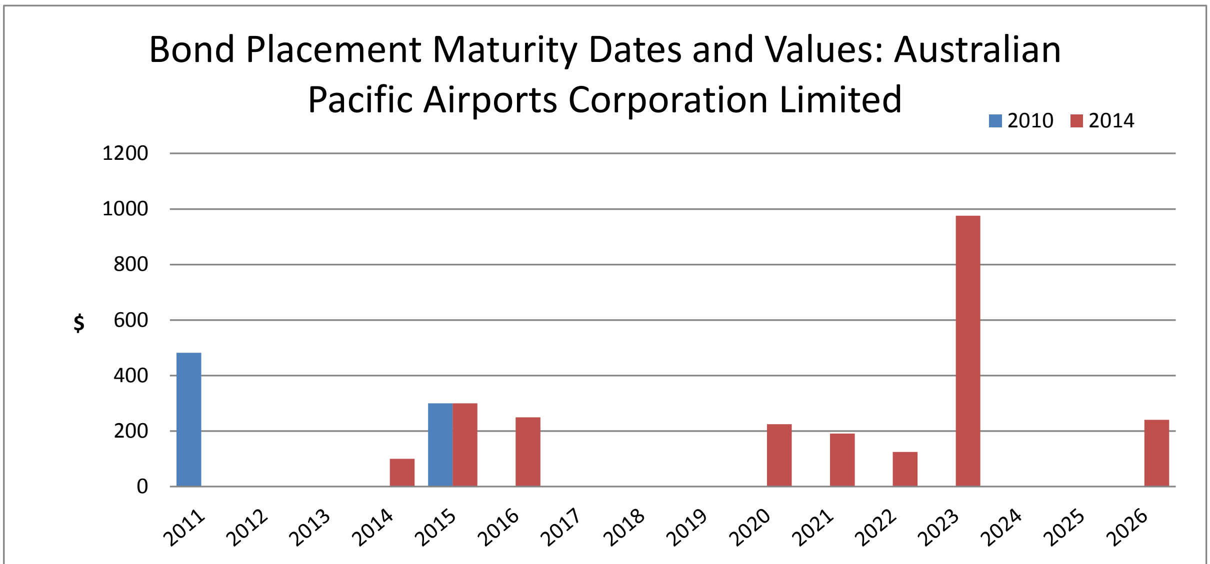


The TD decision has also assisted ALCs in spreading debt maturities more evenly and over a longer period, providing business stability and reducing rollover risks associated with being forced to refinance large amounts of debt at any one time.

The graphs below depict timelines and amounts of bond maturities, both domestic and international, drawn from selected ALC annual reports before the TD decision and after the TD decision in 2011. As depicted, the spread of bond maturities is more evenly distributed and the time horizons longer post the TD decision.

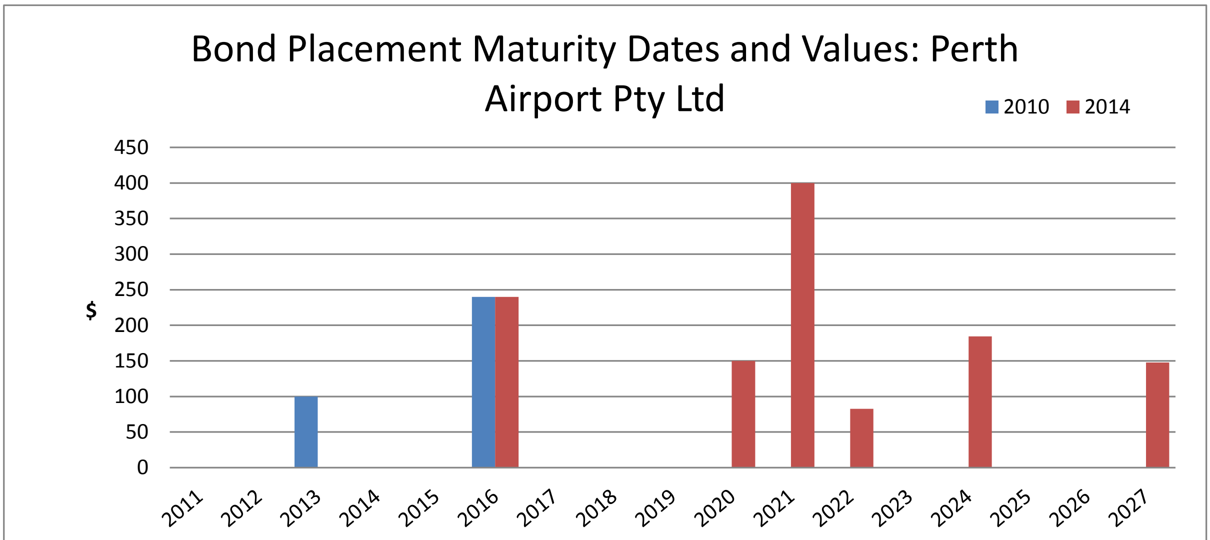
It is notable that in 2010 the ALCs for Brisbane, Melbourne and Perth airports had no bonds maturing after the time the TDs expired. Since the TDs have been extended, the volume of bonds has also increased for these airports.

Figure 2



Source: APAM Annual Reports, 2010 and 2014

Figure 3



Source: Perth Airport Annual Reports, 2010 and 2014

Figure 4

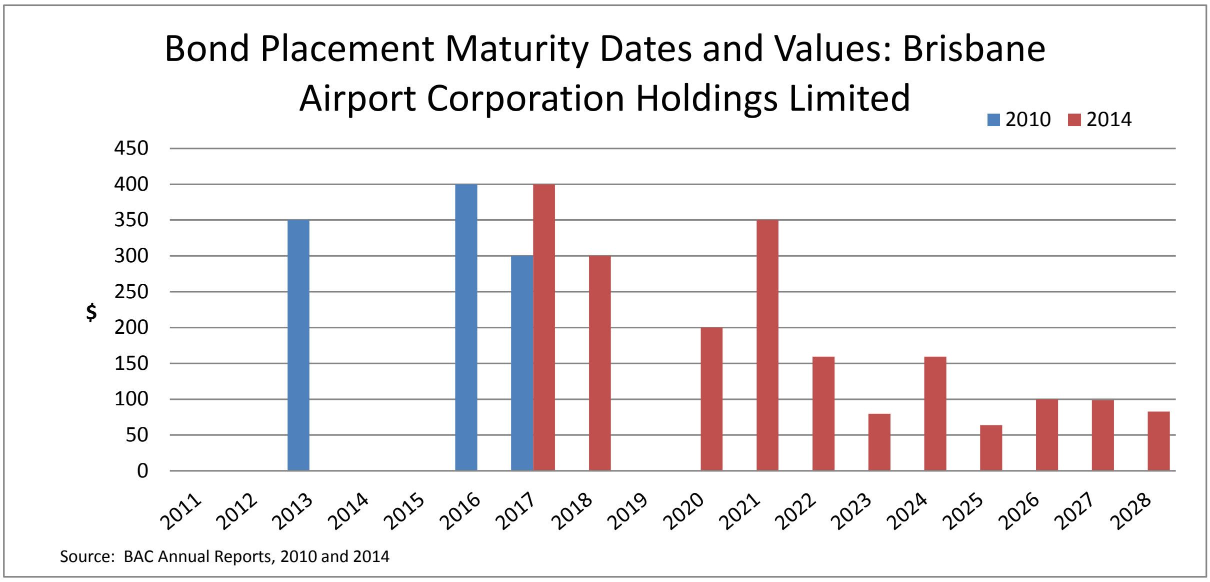
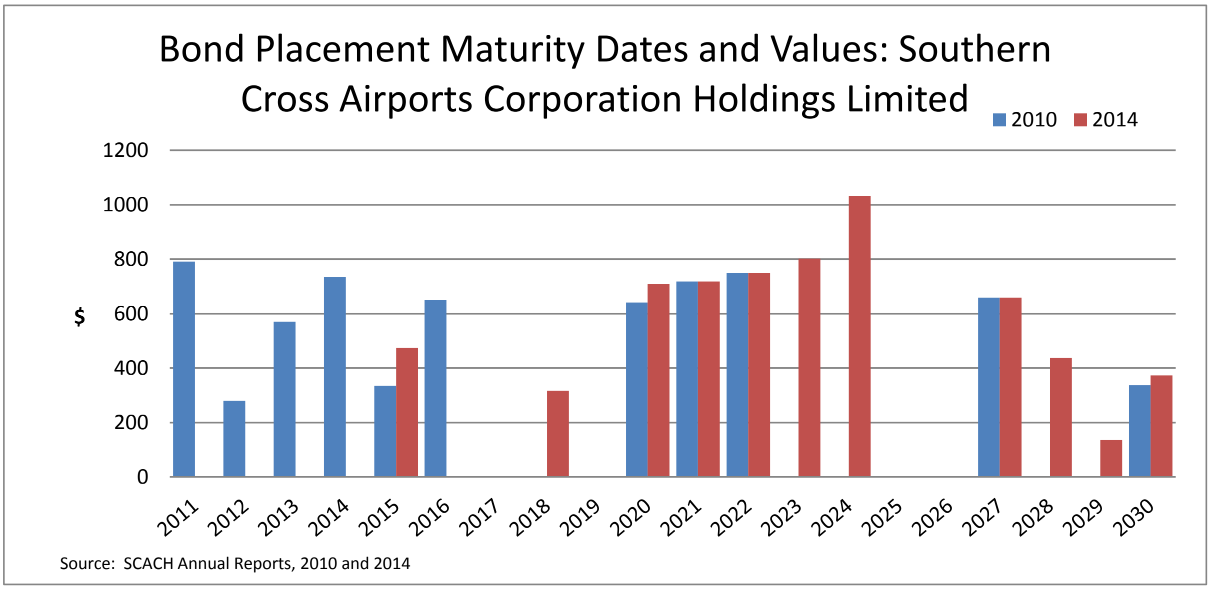


Figure 5



Southern Cross Holdings (Sydney Airport) did have limited bond issues maturing after the original tripartite deed expired in 2023 (Figure 5), however it is notable that the company has been able to greatly increase bond issues post 2023 since the extension of the tripartite.

Conversely, financiers were asked what their ability to provide finance would have been in the absence of new or extended TDs. Responses included they would have been unable to provide finance, financial operations of the ALCs would have been restricted, finance would have been withdrawn under certain circumstances, the available finance would have been short term only and TD absence would have impacted the quantum and pricing of finance.

Ultimately, the TD decision has improved stability for ALC businesses by allowing a smoothing of debt maturity over time and facilitated ALCs accessing the required finance for capital expenditure on reasonable terms.

Finding 9. TDs appear to have facilitated ALCs accessing more finance in absolute terms and being able to spread maturities across a greater time period following the TD decision. ALCs have also increased capital expenditure post the TD decision.

3. ToR 3 - To what extent have tripartite deeds facilitated equitable financing terms for ALCs and what effect has this access to funding by airports had on businesses using airport land?

3.1 Has the tripartite deed decision facilitated access to equitable finance terms?

Discussion

Both ALCs and financiers felt that the TD decision reduced the risk associated with ALCs by virtue of their leasehold structure, allowing financiers to offer terms more commensurate with an equivalent freehold corporate into the foreseeable future. Financiers indicated that the TDs make financing ALCs comparable to other corporate property transactions, and a majority of investors see TDs as a critical factor of their security package.

Outcome

Financiers were asked how important the extension and or creation of TDs was to supporting increased lengths of finance terms and reducing the interest rate of finance available to airports. All three respondents felt TDs were critical to supporting increased lengths of finance, while two financiers responded critical and one important to the question of reducing the interest rate available to airports.

These questions were also asked of ALCs. The importance of the TD decision to supporting increased lengths of finance terms was rated as irrelevant by two ALCs, important by one ALC, very important by five ALCs and critical by one ALC.

The importance of the TD decision to reducing the cost of available finance was rated as irrelevant by one ALC, not important by three ALCs, important by two ALCs, very important by one ALC, critical by one ALC while one ALC was unable to comment. The range in responses to these questions reflects the individual circumstances of ALCs.

Finding 10. TDs have improved equitability of the terms of finance provided to ALCs by financiers.

3.2 What was the effect of the tripartite deed decision on businesses using airport land?

Discussion

As demonstrated in terms of reference two, and the discussion surrounding equitable finance terms, in the absence of TDs ALCs would be at a severe disadvantage in accessing finance on competitive terms or conditions commensurate with an equivalent freehold corporation. In providing step-in rights in the event of a default on an airport lease, TDs facilitate ALC finance more in line with a corporate that provides a freehold title as security.

Outcome

TDs, do not however, create a competitive advantage for ALCs through allowing ALCs to offer lower rents to sub-lessees than those available to off-airport competitors. When asked if TDs create a competitive advantage for ALCs, two financiers responded “no” and one was unable to answer. All three financiers were unaware of any adverse reaction from off-airport landlords associated with the TD decision. One financier stated that an ALC still has unique attributes not remedied by a TD, and that it cannot be subdivided to de-leverage if required. Financiers also felt that the decision by sub-lessees to locate at an airport was derived from a choice of location and were unaware of any significant rent discounts available.

None of the nine ALCs reported any adverse reaction from off-airport landlords regarding perceived advantages to on-airport sub-lessees arising from with TDs. One ALC felt that property was viewed separately to financing, and that the vast majority of funding facilitated through TDs is invested in aeronautical assets. ALCs were unaware of any complaints from off-airport businesses.

Since the 2011 decision, DOIRD has not received any specific complaints concerning TDs’ effect on off-airport businesses. The execution of individual new or extended TDs was publicised by DOIRD via media release. No complaints have been received or concerns expressed to the Minister or Government concerning TDs providing ALCs a competitive advantage, indicating the TD decision has not adversely impacted off-airport businesses.

Finding 11. The TD decision has had little apparent effect on businesses using airport land. As a result of TDs, ALCs can access finance on a similar footing to an equally sized freehold corporation, which does not necessarily provide ALCs with a competitive advantage over off-airport competitors.

Part C - Conclusion

1. Overall Findings

A. The Government's decision to extend tripartite deeds beyond the initial 20 year term and to offer TDs to airports that did not have them was intended to facilitate continued access by ALCs to domestic and international financial markets. . Tripartite deeds have proven to be necessary and effective in providing flexibility for funding options for airports and increased security for financiers. The tripartite deed decision has been implemented efficiently and effectively with no obvious negative unforeseen consequences

B. As a security mechanism for financiers in the event of an airport lease default, tripartite deeds have proven essential in facilitating finance required to fund airport infrastructure and ensure ALCs remain financially viable.

C. ALCs have been able to increase the source of funds as well as even out refinancing requirements as a result of the tripartite deed decision.

Appendix 1: Data Collection Matrix

	Desk based review and analysis					Interviews			
	Dept background materials including correspondence.	Dept media sources	Dept Investment tracking	Productivity Commission Review	ALC Annual reports	Department staff	ALCs	AAA	Lending banks
ToR 1: What was the rationale for the TD decision and implementation?									
1.1 What problem did the TDs address?	x	x	x	x	x	x			
1.2 Why was government action needed and appropriate?	x	x				x			
1.3 What other policy options were considered?	x	x		x		x			
1.4 How were TDs implemented?	x	x				x			
1.5 Have there been any unintended consequences following TD implementation?	x					x	x	x	x
ToR 2 To what extent have TDs facilitated access to foreign and domestic finance for airport investment by ALCs?									
2.1 Have airport investment volumes increased pre and post the TD decision?	x		x	x	x		x	x	
2.2 Have loan conditions (e.g., type of finance and length of loan) for ALCs facilitated increased finance accessibility since the TD decision?			x				x	x	x

	Desk based review and analysis					Interviews			
	Dept background materials including correspondence.	Dept media sources	Dept Investment tracking	Productivity Commission Review	ALC Annual reports	Department staff	ALCs	AAA	Lending banks
2.3 Has the existence of TDs reduced the level of difficulty for airports to access finances? *(Note possible interview questions could cover: level, source and rate.)*	**x**		**x**				**x**	**x**	**x**
ToR 3 To what extent have TDs facilitated equitable financing terms for ALCs and what effect has this access to funding by airports had on businesses using airport land?									
3.1 Have TDs resulted in equitable financing between leasehold borrowers (ALC and on-airport businesses) and freehold borrowers (off-airport businesses)?									**x**
3.2 Have TDs resulted in a competitive advantage for on-airport businesses?									**x**
3.3 Have TDs created a competitive advantage, for example through lower ALC cost structures, allowing ALCs to offer lower rents than off-airport competitors?									**x**
3.4 Has there been an adverse reaction, in particular from competitors of on-airport businesses, regarding perceived advantages associated with TDs?	**x**						**x**	**x**	**x**

Appendix 2: OBPR Guidance Note Reference Table

OBPR Guidance	Addressed in Review
1. What problem was the regulation meant to solve?	Section 1.1
2. Why was government action needed?	Section 1.2
3. What policy options were considered?	Section 1.3
4. What were the impacts of the regulation?	TOR 2
5. Which stakeholders have been consulted?	Methodology/Data Collection Matrix
6. Has the regulation delivered a net benefit?	TOR 2/3
7. How was the regulation implemented and evaluated?	Part A/Section 1.4

Appendix 3: Regulatory Burden Measurement Table

New or Extended Tripartite Deeds Compliance Costs to Industry	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Average Annual cost
No. of Airport Lessee Companies (ALCs) affected annually (ALCs that have entered into new or extended TDs to date)	13	13	13	13	13	13	13	13	13	13	
Value of ALCs' time $37.40 X 1.75 on costs = $65.45 per hour. Generally set as average economy-wide wage of $37.40/hour, plus on-costs of 75%, per OBPR guidance.	$ 65.45	$ 65.45	$ 65.45	$ 65.45	$ 65.45	$ 65.45	$ 65.45	$ 65.45	$ 65.45	$ 65.45	
ALCs that reported to the ACCC - Time (hours) required for ALCs to collate and provide required reporting information. [22.5 hrs per ALC x 5 ALCs year 1 setup, 7.5 hrs per ALC x 5 ALCs years 2 to 10 ongoing])	112.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	
ALCs that did not report to the ACCC - Time (hours) required for ALCs to collate and provide required reporting information. [97.5 hrs per ALC x 8 ALCs year 1 setup, 15 hrs per ALC x 8 ALCs years 2 to 10 ongoing])	780.00	110.00	110.00	110.00	110.00	110.00	110.00	110.00	110.00	110.00	
			-	-	-	-	-	-	-	-	
Annual cost (+) or saving (-)	**$ 58,414**	**$ 9,654**	**$ 9,654**	**$ 9,654**	**$ 9,654**	**$ 9,654**	**$ 9,654**	**$ 9,654**	**$ 9,654**	**$ 9,654**	**$ 14,529.90**

Explanation

In return for the offer to extend existing and offer new tripartite deeds, ALCs are required to report certain financial information on an annual basis to the Department of Infrastructure and Regional Development (the Department). Some aspects of this requirement incur costs for the ALCs, although most should be able to be gained through changes to existing reporting approaches.

Reporting Requirement

Template Financial Reports
The ALC must provide as at the latest financial year end, completed template financial reports the same as the reports used to provide information to the ACCC for annual price and quality of service monitoring. Therefore, ALCs with reporting systems already in place for the ACCC should have no additional costs. ALCs that did not report to the ACCC at the time the deed was signed will have set-up costs develop the template format. The table provides for 10 days work for initial set up and a day per year subsequently for these airports.

Other Reports
The ALC must provide reports on current and projected capital expenditure, the company structure and a schedule of borrowings. This information is not dissimilar to that prepared for Board meetings and other purposes. The table allows for 3 days for each ALC for initial report set up and 1 day per year thereafter.

Time
Assumes a 7.5 hour day.