

26 September 2011

Karen Murray  
Manager (Acting) Regulation Branch  
Commerce Commission  
PO Box 2351  
WELLINGTON 6014

Dear Karen

**EXEMPTIONS UNDER CLAUSE 2.9(1)(a) OF THE COMMERCE ACT (SPECIFIED AIRPORT SERVICES INFORMATION DISCLOSURE) DETERMINATION 2010**

Auckland International Airport Limited ("**Auckland Airport**") has considered the Commerce Commission's technical guidance and clarifications ("**guidance**") on the requirements for disclosure pursuant to clause 2.10(3) of the Commerce Act (Specified Airport Services Information Disclosure) Determination 2010 ("**Determination**").

The guidance is helpful, and Auckland Airport appreciates the time and resources dedicated by the Commission and its staff to provide greater certainty regarding the transitional disclosure requirements. Auckland Airport also thanks the Commission for granting a one month extension for the transitional disclosure.

As you appreciate, the particular challenge for Auckland Airport in completing the disclosure is caused by the differences in the form of information that was prepared and used for the last price setting event (1 September 2007) and the way in which the Determination requires information to be compiled. Essentially, Auckland Airport did not compile some information at the time, which is now required to be disclosed.

In its guidance, the Commission has indicated where it is willing to grant exemptions, based on discussions and correspondence to date between the airports and Commission staff (these exemptions are noted "as pending" in the guidance). Accordingly, subject to the Commission advising otherwise, Auckland Airport is proceeding on the basis that, for the purpose of disclosure pursuant to clause 2.10(3), it has been granted exemptions as set out in the **Appendix**. Where the guidance states that a request has been "resolved", Auckland Airport understands that it is entitled to follow the Commission's guidance and is not required to seek further exemptions in respect of those matters.

**Directors' certification**

The Commission has also sought clarification of whether, in light of the guidance, Auckland Airport still wishes to seek an exemption (or partial exemption) from the requirement for two directors to certify the disclosure. For the following reasons, Auckland Airport seeks an exemption from the certification requirement. Essentially, although the guidance is helpful, it does not mitigate the significant concerns presented by the requirement for directors to certify historical information.

The guidance states that if the Determination contains any ambiguity regarding the requirement to provide directors' certification, then the Reasons Paper makes it clear that certification is required for disclosure under clause 2.10(3) of the Determination.

Auckland Airport disagrees. There is no express statement in the Reasons Paper (section 7.3 in particular) that directors' certification is required for disclosure pursuant to clause 2.10(3) of the Determination. Given the uncertainty regarding the requirements for certification of historical information, and the inappropriateness of this requirement as discussed below, Auckland Airport considers that the best way to resolve the issue is for an exemption to be granted (for this historical disclosure only).

In Auckland Airport's view, it is unreasonable to require directors to provide certification of historical information. As noted in the Reasons Paper, the Commission intends the certification requirements to strike an appropriate balance between incentivising companies to take care in preparing disclosures and imposing additional cost and administrative burden. There is no such balance in relation to the historical disclosure under clause 2.10(3).

To meet the "reasonable enquiry" standard under the certificate, an extensive due diligence process is required to provide directors with adequate comfort regarding the accuracy of information, explanations and descriptions for events that occurred five years ago. Among other things, this requires the identification and engagement of advisors and staff, some of whom are no longer employed by the company, who can provide reliable and credible advice to the directors regarding the accuracy of the disclosure. Furthermore, those directors may not have been directors at the time of the price setting event.

The Reasons Paper states that the purpose of the historical disclosure is to place future disclosure in context. Auckland Airport considers that it is extremely difficult to justify the significant additional cost that will result from requiring certification by directors, in an effort to ensure greater accuracy of contextual information only.

In any event, it is difficult to identify how certification will provide an additional incentive for airports to take care in preparing the historical disclosure. The penalties available under the Commerce Act 1986, and Auckland Airport's commitment to providing full and accurate disclosure for interested parties, are more than sufficient for that purpose.

In light of the above reasons, it is very difficult to justify the requirement for certification of the historical disclosure as being consistent with section 53C(3)(f) of the Act, which only allows the Commission to impose additional requirements that are "necessary or desirable" to promote the purpose of information disclosure. Or put another way, exempting certification in this case could not possibly have an adverse impact on the purpose of information disclosure.

In conclusion, Auckland Airport looks forward to receiving confirmation from the Commission that the attached exemptions, and an exemption from the directors' certification requirement, have been granted.

Yours faithfully



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**APPENDIX - AUCKLAND AIRPORT EXEMPTIONS**

#	Information disclosure requirement	Issue with compliance	Exemption sought
1.	Clause 2.5(1)(a) requires that Schedules 18 and 19 be completed by inserting all information relating to the specified airport services supplied by the airport for the relevant disclosure year.	Auckland Airport acknowledges that the intention of the disclosure under clause 2.5(1)(a) is to disclose information regarding the total revenue requirement for all specified airport services.  However, as accepted by the Commission, some specified airport activities, such as aircraft and freight activities, were not part of the revenue forecasting that was prepared for the purpose of Auckland Airport's last price setting event in FY08.	An exemption from the requirement to disclose "all information relating to the specified airport services supplied by the airport" under clause 2.5(1)(a) of the Determination, such that only information relating to the services that were consulted on to set landing and terminal charges must be disclosed and the relevant components in Schedules 18 and 19 should be interpreted accordingly.
2.	Schedule 18b(iii) requires the disclosure of Year 0 for the Forecast Asset Base and Forecast Works Under Construction, but only if the pricing period starting year and the year of the most recent disclosure do not coincide.	The Commission has confirmed that the disclosure of Year 0 values is not applicable for the purpose of the transitional disclosure.	An exemption from the requirement to disclose the Year 0 values under Schedule 18b(iii) for the Forecast Asset Base and Forecast Works Under Construction.
3.	Auckland Airport is required to disclose "forecast operational expenditure".	"Forecast operational expenditure" is defined in the Determination as the forecast "operational expenditure". However, "operational expenditure" is defined as the operating costs after applying Part 2 of the Input Methodologies Determination.  The Commission has accepted that there is an error in the definition of "forecast operational expenditure" in that the definition is not intended to refer to the defined term "operational expenditure".	In the event the definition of "forecast operational expenditure" is not amended before disclosure is required by 31 October 2011, an exemption from the requirement to apply that definition.
4.	Schedule 18b(iv) requires disclosure of forecast operational expenditure into three categories: corporate overheads; asset management and airport operations; and asset maintenance.  Clause 2.5(1)(g) also requires public disclosure of any assumptions or justifications of the airport's forecast operational expenditure "by category as disclosed in accordance with Schedule 18".	For the purpose of Auckland Airport's last price setting event in FY08, Auckland Airport did not split its forecast operational expenditure into the categories required under Schedule 18b(iv). Auckland Airport therefore does not have the information to comply with this requirement.  It follows that because Auckland Airport did not split its forecast operational expenditure into the categories required under Schedule 18b(iv), Auckland Airport is unable to provide assumptions or justifications by category, as required by clause 2.5(1)(g).	An exemption from the requirement to disclose its forecast operational expenditure for the last price setting event by category as required by Schedule 18(b)(iv).  An exemption from the requirement to disclose assumptions or justifications by category as required by clause 2.5(1)(g) of the Determination.  <i>Auckland Airport will disclose its total forecast operational expenditure and will provide the key assumptions and justifications of its total forecast operational expenditure.</i>
5.	Schedule 18 requires disclosure of: <ul style="list-style-type: none"> <li>Forecast capital expenditure for the period FY08 to FY17 (ten year forecasts); and</li> <li>Capital expenditure by key capital expenditure project for the period FY08 to FY17 (ten year forecasts) (together "forecast capital expenditure information").</li> </ul>	Auckland Airport did not consult on ten year forecasts for capital expenditure for the purpose of its last price setting event in FY08. It only consulted on forecasts for the period FY08 to FY12 and only in relation to landing and terminal charges.	An exemption from the requirement to disclose forecast capital expenditure information under Schedule 18 if the forecast information was not used by Auckland Airport in its decision to set prices for the price setting event in FY08 (for the transitional disclosure only).  <i>Where Auckland Airport is required to</i>



			<p><i>provide information regarding ten year forecasts, Auckland Airport will provide information in relation to the five year forecasts consulted on for the price setting event in FY08 and which were included in the final prices.</i></p>
6.	<p>Clause 2.5(1)(e) requires public disclosure of "the aims and objectives of any proposed investments" for a ten year forecast period.</p>	<p>The Commission has confirmed that the aims and objectives description in clause 2.5(1)(e) is intended to relate to key capital expenditure projects only, not a broader range of investments.</p>	<p><b>In the event clause 2.5(1)(e) is not clarified through drafting amendments before disclosure is required by 31 October 2011, an exemption from the requirement to publicly disclose "the aims and objectives of any proposed investments".</b></p> <p><i>Following the Commission's guidance, for the purpose of clause 2.5(1)(e), Auckland Airport will disclose the aims and objectives of the key capital expenditure projects for the five year forecast that was prepared for and used in the last price setting event in FY08 (this is already a requirement under clause 2.5(1)(g) of the Determination).</i></p>
7.	<p>Schedule 19 requires disclosure of:</p> <ul style="list-style-type: none"> <li>• Passenger terminal demand information for the period FY08 to FY17 (ten year forecasts); and</li> <li>• Aircraft runway movements information for the period FY08 to FY17 (ten year forecasts) (together "forecast demand information").</li> </ul>	<p>Auckland Airport did not consult on ten year forecasts for demand for its last price setting event in FY08. It only consulted on forecasts for the period FY08 to FY12.</p> <p>Auckland Airport only consulted on forecasts for FY15 for busy hour passenger numbers for the purpose of its last price setting event in FY08.</p>	<p><b>An exemption from the requirement to disclose forecast demand information under Schedule 19 for FY13 to FY17.</b></p> <p><b>An exemption from the requirement to disclose busy hour passenger numbers under Schedule 19a, except for FY15.</b></p> <p><b>An exemption from the requirement to disclose busy hour aircraft movements under Schedule 19b, except for FY15.</b></p> <p><b>An exemption from the requirement to disclose busy day aircraft movements under Schedule 19b.</b></p> <p><i>Where Auckland Airport is required to provide information regarding ten year forecasts, Auckland Airport will provide information in relation to its AAA capital expenditure consultation which informed the five year forecasts consulted on for the price setting event in FY08, except for busy hour passenger numbers under Schedule 19a and busy hour and busy day aircraft movements under Schedule 19b.</i></p> <p><i>Auckland Airport will provide the busy hour passenger and aircraft movement numbers forecast for FY15 consulted on in relation to its AAA capital expenditure consultation which informed the price setting event in FY08.</i></p>