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Ms J Bransgrove
Price Control Study - Airports
Commerce Commission
PO Box 2351
WELLINGTON
Email airport@comcom.govt.nz

Dear Ms Bransgrove

We refer to your media release issued 4 June 1998/48 seeking comments on:

- the approach the Commission proposes to take in its Price Control Study on Airports;
- any preliminary issues interested parties might wish to raise about the scope and nature of the Minister of Commerce's request to the Commission; and
- the use of electronic communications to gather and distribute information.

The Proposed Procedure

We note your comments that the proposed procedure follows closely that set out in the Commerce Act for determining authorisation applications. We note also that this process has been used on many occasions in the past. Air New Zealand, for its part, is comfortable with the procedural steps the Commission proposes to take.

However, Air New Zealand believes that the proposed timeframe for the carrying out of these steps is too compressed. The 4 June press release indicated that the final report would "bring together the information from the Commission's preliminary research, the submissions and the conference". The timeframes set out in the Commission's proposed timetable do not appear to allow sufficient time for the Commission to consider and take account of the submissions of interested parties before organising the printing and release of its draft report. The time allowed between the closing of the conference and the completion of the final report also seems to be insufficient for views expressed at the conference, and information generated from it, to be absorbed by the Commission and incorporated in any meaningful manner in the final report.

Parts of the proposed timetable are also likely to be unworkable for some of the interested parties, including Air New Zealand. The time allowed between the release of the Commission's draft report and the due date for submissions from interested parties is inadequate for in-depth consideration of the report, as well as for the preparation of detailed submissions. This is particularly so if economic and other experts need to be consulted, as is likely to be the case. Likewise, the time between the filing by interested parties of submissions on the draft report, and



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the intended conference, is inadequate for each party to consider other parties' submissions and to file submissions in reply where necessary. A suggested modified timetable therefore follows:

Commission's Proposed Dates	Suggested Alternative Dates	Phase	Time Before Next Step
4 June 1998	✓	Initiate request for comments on the proposed procedures	
30 June 1998	✓	Submissions on procedural issues close	
31 July 1998	✓	Commission publishes formal procedures and timetable	
2 August 1999	1 June 1999	Formal phase of study commences	
31 August 1999	28 June 1999	Submissions due from interested parties	4 weeks
10 September 1999	26 July 1999	Commission's draft report released	6 weeks
1 October 1999	6 September 1999	Submissions from interested parties due on draft report	4 weeks
13-14 October 1999	5-6 October 1999	Conference on draft report	3-4 weeks
29 October 1999	✓	Final report completed	

The exact alternative dates suggested for the various steps are not themselves particularly important. What is important is that sufficient time be allowed after each step:

- for the previous step to be considered, reviewed and analysed;
- for any consultation with experts which may be required; and
- for the information gained and views developed to be incorporated into the next step.

Air New Zealand therefore requests a modified timetable (such as that suggested above) which fairly allows interested parties the time, in conjunction with their experts, to develop submissions and to advance their views in an effective manner.

Finally on the proposed procedure, we note that there is no provision made to provide the parties with a full list of interested parties to the Inquiry. This should be done when the formal

procedures are published on 31 July 1998. There should also be provision for updating the list of interested parties as may be necessary from time to time.

The Scope and Nature of the Minister of Commerce's Request to the Commission

We note that there has been correspondence between the Commission and the Minister regarding the scope of the request. It seems that the correspondence has not succeeded in reflecting the intended scope of the Inquiry.

The minutes of a meeting of the Cabinet Committee on Industry and Environment, held on Tuesday, 4 November 1997, entitled "Airport Authorities Amendment Bill: Future Progress" CIE (97) M31/1, record that:

"The Committee:

- d. invited the Minister of Commerce, consistent with the power referred to in paragraph (c) above, and in accordance with section 54(1) of the Commerce Act 1986, to write to the Commerce Commission following the passage of the Airport Authorities Amendment Bill:
 - (i) requesting that it report to him by the end of December 1999 on:
 - A. whether there is evidence of monopolistic pricing by the three major international airports; and
 - B. whether he should therefore recommend to the Governor General an Order in Council invoking price controls over aeronautical charges of the three airports;
 - (ii) requesting from the Commerce Commission a further review by December 2003 on any specific issues identified by the Commission in the 1999 review as requiring further investigation"

The resolution of the Cabinet Committee was clearly directed to evidence of monopolistic pricing at the three major airports in respect of "aeronautical charges". It was not limited to either "airfield facilities" or "airfield activities", both of which were referred to by the Minister of Commerce in his letters dated 27 March and 26 May 1998.

The rather broader nature of the intended price control inquiry is confirmed by the following statements in Hansard (at 5486-7) during the third reading debate on the Airport Authorities Amendment Bill on 19 November 1997. The Hon Maurice Williamson, Minister of Local Government, said on behalf of the Minister of Transport:

"These are the two things that we will be requesting: a report to the Minister of Commerce by the end of December 1999 on whether there is evidence of monopoly pricing by the three major international airports, and whether he should recommend to the Governor-General an Order in Council invoking price controls over the aeronautical charges at those three airports."

And:

"Also there is the request from the Commerce Commission for a further review by December 2003 - about 6 years out or so - on any specific issues identified by the commission in the 1999 review as requiring further investigation ... A further review may be requested of the commission by December 2003 on any specific issues identified by the commission in the 1999 review as requiring further investigation."

It is clear to Air New Zealand that the Cabinet Committee intended the Inquiry to involve examination of issues pertaining to monopolistic pricing in respect of all aeronautically-based activities undertaken at the relevant airports. Such activities are those which carry a possibility of monopolistic pricing, regardless of whether the activity is an airfield activity, an aircraft and



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freight activity, or a specified passenger terminal activity. With this in mind, Air New Zealand contends that the Inquiry should encompass “identified airport activities” as defined in the Airport Authorities Amendment Act 1996.

To restrict the Inquiry only to “airfield activities”, as defined in the Airport Authorities Amendment Act, is to ignore the potential for monopolistic pricing of other activities and amenities critical to the conduct of aviation services. We will be making separate representations on this point to the Minister of Commerce.

A further matter relates to the proposed 2003 review, identified in paragraph d(ii) of the minutes set out above. The Minister of Commerce did not refer to this further review in his letters of either 27 March or 26 May. It would be desirable for the Commission to confirm that it is to conduct a further review by December 2003 in the event that specific issues are identified in the 1999 review which require further investigation.

The Use of Electronic Communications

Air New Zealand supports the use of electronic communications as a speedy and efficient method of communication, except to the extent that elements of submissions are commercially sensitive and therefore the subject of confidentiality applications.

However, the airline believes that electronic communications should be used concurrently with traditional hard copies of all substantive documents. The electronic copies of materials received by Air New Zealand to date have failed to show information such as letterhead, date stamps or received stamps, and signatures. Air New Zealand therefore considers that electronic communications should be seen as a convenient means of communication in the Inquiry, but should not supplant traditional paper versions of all important documents. In line with this approach, these comments will be transmitted electronically to the Commission, with a paper copy following in the mail – the same approach as that adopted by the Commission with its 4 June communications.

We hope that these comments assist the Commission in finalising the scope and nature of the Inquiry and the proposed procedural framework for its conduct. Please do not hesitate to contact the writer if you have any queries arising out of these comments.

We conclude by commenting that Air New Zealand will do everything it can to assist the Commission during the study phase of the Inquiry, as well as with the preparation of its report.

Yours faithfully

L F Doolan
General Manager Corporate Affairs