AIR NEW ZEALAND

10 August 2026

Commerce Commission

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Tēnā koe Hristina,

Re: Changes to Airport Information Disclosure 2026: Air New Zealand cross-submission

Air New Zealand welcomes the opportunity to cross-submit on the responses to the Commission's draft decisions. This cross-submission should be read with Air New Zealand's submission dated 23 July 2026.

Executive Summary

a) **The draft is a necessary first step.** In its 2025 targeted review, the Commission found that current regulatory settings do not provide sufficient confidence that major airport investment decisions will promote the long-term benefit of consumers. It identified the timing of scrutiny, the information available and the absence of a mechanism to resolve disputes as connected failures in the current framework. The proposed ID changes should therefore proceed. The Commission also recognised that ID is limited to transparency and may not be sufficient where major investment disputes cannot be resolved. New Zealand is highly dependent on air connectivity, while airline margins are notoriously thin and domestic route economics are already under pressure. The absence of a credible backstop therefore increases the risk of inefficient outcomes for consumers through higher costs and reduced connectivity, with consequences that extend well beyond aviation to regional economies, productivity and New Zealand's wider economic performance. Air New Zealand therefore supports the draft, while continuing to seek a credible regulatory backstop where major investment disputes cannot be resolved.

b) **The submissions show substantial common ground.** Airport submitters generally accept the objective of greater transparency, the 20% RAB threshold and much of the proposed information content, including the project rationale and options, Level of Service where used, allocation information and disclosure of existing assurance. Their main objections concern timing, form, commercial sensitivity and the Commission's role. The gap between the parties is therefore narrower than the airport submissions may suggest. The remaining question is whether disclosure will be early and detailed enough to be useful.

c) **The statutory consumer interest is direct, not incidental.** The High Court has confirmed that airlines are the immediate consumers of regulated airport services.[1] It also rejected the suggestion that lower airport charges would benefit airlines but not final consumers, finding that lower charges would be expected to flow through to final consumers to some extent and improve allocative efficiency. Air New Zealand's interest in efficient airport costs is therefore directly protected by the Part 4 purpose. Passengers, freight customers and communities

[1] *New Zealand Airports Association Inc v Commerce Commission* [2025] NZHC 239

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experience the downstream consequences of airport costs through fares, capacity, frequency, route viability and connectivity.

d) **Implementation concerns can be managed without weakening the package.** Early estimates can be identified as point-in-time and updated when material matters change. Genuine procurement/commercial sensitivity can be protected through targeted redaction, ranges or confidential schedules. Some major programmes are already well advanced which makes it more important that the final requirements apply, as far as possible, to live consultations, upcoming price-setting processes and remaining or materially revised investment decisions

1. The High Court confirmed the approach to Part 4 consumers

ACI asks the Commission to be cautious about equating airline cost concerns with the long-term benefit of consumers, referring in particular to Air New Zealand's position in downstream airline markets. That submission is inconsistent with the High Court's recent description of the Part 4 framework.[2]

The Court in *New Zealand Airports Association Inc v Commerce Commission* [2025] confirmed that "airlines are the immediate consumers of the regulated airport services".[3] It considered limited competition in some downstream airline markets and nevertheless expected lower airport charges to flow through to final consumers to some extent. Air New Zealand is therefore not merely representing the consumer interest; it is itself a consumer whose long-term benefit Part 4 is designed to promote.

The Court also restated that the workably competitive outcome sought by Part 4 is one in which prices reflect efficient costs, including an appropriate return on capital. The objective is not investment at any cost. It is efficient investment, services at a quality that reflects consumer demand, lower prices from efficiency gains, and limits on excessive profits. That is why the scope, timing, cost, allocation and service outcome of major airport investment must be capable of meaningful scrutiny.

The airport submissions place considerable weight on certainty and investment flexibility. The High Court confirmed that regulatory certainty is not a stand-alone purpose and is subordinate to the long-term benefit of consumers.[4] The draft decision is, in any event, predictable and tightly targeted. Requiring airports to explain major investments in this way supports confidence in efficient investment rather than undermining it.

2. Timely disclosure is transparency not approval

The principal airport objection is that disclosure at the decision-to-consult stage converts ID from ex-post transparency into ex-ante control. Air New Zealand submits that this concern is over-stated.

The High Court has described airport ID as lighter-handed regulation that operates alongside airport consultation and, despite not directly controlling charges, acts as a constraint on prices. Consultation and ID are therefore complementary, not competing, mechanisms. Civil Aviation Act consultation enables substantial customers to engage with an airport. ID provides consistent, public information for the Commission and all interested persons to assess whether the Part 4 purpose is being met.

The Commission's own 2025 review reached a similar conclusion about the limits of the current regime.[5] It identified the timing of scrutiny, the information disclosed and the absence of a mechanism to resolve disputes as connected limitations and described improved ID as a practical

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[2] *New Zealand Airports Association Inc v Commerce Commission* [2025] NZHC 239 at [13]-[18], [22]-[26], [31], [103] and [131]-[140].
[3] [17]–[18]
[4] [131]–[132]
[5] Commerce-Commission-Targeted-Assessment-of-Airport-Regulation-6-October-2025.pdf

starting point. Importantly, it also recognised that ID cannot resolve disputes and that a different form of regulation, with an independent decision-maker or arbiter, may be needed where the incentives created by ID are insufficient.

Air New Zealand agrees. The present changes should be implemented now, but they should not be treated as the end point of airport economic regulation. Air New Zealand continues to consider that negotiate/arbitrate or price-quality regulation may be required where the current regime is unable to produce outcomes consistent with the long-term interests of consumers. The Commission's draft remains a modest change to New Zealand's existing light-handed regime: it requires disclosure, not approval.

Disclosure remains useful even if the Commission does not review the project during consultation. Its immediate value is that the investment case becomes publicly and consistently visible at the point at which the airport says it is ready for meaningful consultation. The Commission may later analyse selected matters without becoming a participant in the consultation or delaying the decision.

Air New Zealand accepts that information disclosed at consultation will be point-in-time and may evolve. That supports a clear material-change update requirement, not post-decision disclosure. Wellington Airport's example of a proposal reducing from $541 million to $299.1 million through consultation illustrates the value of showing both the initial case and how it changed. It does not show that the initial case was irrelevant.

The final determination should retain the 10-working-day trigger, state that the disclosure is point-in-time and require an update where there is a material change to scope, total cost, timing, demand, pricing impact, preferred option, Level of Service, allocation, deliverability risk or consumer benefits. Routine changes should not trigger repeated disclosure, but an airport's choice not to formally re-consult should not determine whether materially changed information remains undisclosed.

The fact that some major airport programmes are already well advanced is not a reason to defer this reform. The final determination should apply from publication to new consultations and, as far as legally and practically possible, to live consultations and upcoming price-setting processes where material investment decisions remain open or the proposal is subsequently revised. Otherwise the regime may identify the right problem but arrive too late for the next major investment cycle.

3. The disclosure must reveal what consumers will pay and receive

For Air New Zealand, the most important information is the link between the physical investment and the charges imposed on consumers of the regulated service. A major capex disclosure should show the total cost envelope, the proportion expected to enter the aeronautical RAB, the proposed allocation between regulated and unregulated activities and customer groups, and the expected effect on aeronautical charges over the full recovery period, including beyond the current price-setting event.

The airport submissions' proposed alternative (disclosure of a high-level business case or confirmation that an existing allocation methodology will be used) would not provide that information. The relevant question is not only which methodology is named, but how it applies to the project: what percentage of shared infrastructure is allocated to aeronautical consumers, what remains with commercial activities, and what the result means for charges passed to consumers.

The commercial and contracting model is also a material cost driver

Airports should disclose the proposed delivery and procurement model and how material design, interface, delay, escalation and cost-overrun risks are allocated between the airport, contractors and aeronautical customers. This can be done without revealing live bids or negotiation positions. Where risk can be passed through to the RAB and airport charges, or is priced into contractor bids, consumers need visibility of the resulting risk premium and incentives.

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The same focus should guide the cost-benefit requirement (CBA)

Air New Zealand does not consider the Commission must prescribe a Treasury-style document or treat a single benefit-cost ratio as determinative. Flexibility in format is sensible. The form is less important than whether the disclosure enables consumers to test the need, demand evidence, do-nothing and least-cost alternatives, total costs, expected benefits, key assumptions, risks, downside sensitivities and reasons for the preferred option. Where material costs and benefits can reasonably be quantified, they should be.

Air New Zealand is also not persuaded that the cost of producing a CBA is a reason to remove the requirement. Wellington Airport estimates that a bespoke CBA could cost in the order of $150,000–$200,000 or more. For investments large enough to trigger these requirements, we would expect the airport already to have undertaken much of the analysis needed to satisfy itself that the investment is necessary, appropriately scoped and represents value for money. The disclosure requirement should principally require that analysis, assumptions and evidence to be brought together and shared in a form that consumers and the Commission can assess, rather than requiring an entirely new piece of analysis to be commissioned. If that work has not already been done for an investment of this scale, that only strengthens the case for requiring it.

The airports' argument that CBA is a public-sector tool misses the regulatory question. An airport board may conclude that an investment supports its commercial strategy. Part 4 asks a different question: whether the resulting cost and service outcomes are consistent with those expected in a workably competitive market and promote the long-term benefit of consumers. A business case is acceptable only if it discloses the substance needed to answer that different question.

For investments of this scale, the key cost, demand and benefit assumptions underpinning the CBA should also be subject to appropriately scoped independent assurance, with the scope, findings, limitations and airport response disclosed.

Demand and affordability must be explicit

Aviation is a notoriously low margin business.[6] Airlines do not have unlimited margin headroom to absorb sustained increases in monopoly airport charges. Aviation demand is price-sensitive, and once total journey costs move beyond a point on the pricing curve, demand can fall materially. The response is then felt through some combination of fares, capacity, frequency, route viability and investment in growth. The disclosure should therefore show how the investment performs if passenger demand is lower than forecast, costs rise, delivery is delayed, or the expected benefits are not realised. Uncertainty is a reason to disclose scenarios and ranges, not a reason to omit the impact.

Level of Service disclosure should remain practical and non-prescriptive. The airport should explain the standard or range used, why a particular point was selected, how it will be measured, and the trade-off between service quality and affordability. Consumers should be able to see what additional cost is associated with the proposed service outcome.

4. The threshold must remain meaningful as airport RABs grow

Air New Zealand supports a RAB-based threshold as a starting point, but a percentage-only threshold will become progressively less effective as the RAB grows. Air New Zealand's original submission estimated that 20% of Auckland Airport's RAB could be approximately $1.2 billion by the end of PSE5. It also estimated that a $200 million investment would represent approximately $29 million in additional aeronautical charges. Projects can therefore be highly material to consumers well below 20% of a growing RAB.

[6] IATA has forecast that the global net margin for 2026 will be 2%.

The Commission should add a fixed-dollar backstop - Air New Zealand proposed $200 million - or at minimum a defined review mechanism that prevents the threshold from drifting beyond investments that are material to consumers. The Civil Aviation Act's $30 million consultation threshold is not an equivalent safeguard because consultation and public ID serve different purposes.

The programme definition must also prevent artificial fragmentation. Functionally connected projects should be aggregated where they share a purpose, dependency, benefit, delivery pathway, cost-recovery approach or consumer impact, even if they are staged, approved through separate business cases, initiated or delivered across price periods, or described as enabling or temporary works.

The renewals exclusion should be confined to genuine like-for-like replacement. Where a project materially increases capacity, changes Level of Service or resilience, extends asset life, alters allocation or affects the price path, the enhancement component should count toward the threshold.

Finally, disclosure should not stop once prices are set. Where prices include major forecast capex, annual ID should show actual spend, the updated forecast cost to complete and the reasons for material variance. That information is essential to understand whether consumers are paying on the basis of a programme that has been delayed, reduced, re-scoped or become more expensive.

5. Assurance and confidentiality can still support scrutiny

The Commission has already chosen a restrained approach to assurance: disclosure of independent assurance or peer-review reports held by the airport, rather than mandatory verification or project approval. The airport submissions should not now narrow that compromise so far that only selected "final" reports, stripped of their assumptions and limitations, are visible.

Air New Zealand maintains its preference for appropriately scoped independent assurance on investments of this scale. At minimum, the disclosure should identify the reviewer's relationship with the airport, scope and instructions, assumptions and information tested, material findings and limitations, and the airport's response. It should also state whether assurance was obtained and, if not, why not.

There will be genuinely sensitive material, particularly contractor bids, negotiation positions and privileged legal advice. Those matters can be protected through aggregation, ranges, targeted redaction, confidential schedules to the Commission and a meaningful public summary. A general commercial-sensitivity carve-out should not conceal the total cost envelope, unit-cost drivers, risk allowances, allocation percentages, demand assumptions, charge impacts or material assurance findings.

6. Recommendation

The Commission has identified the right problem and proposed a measured response within the current ID regime. Air New Zealand supports that response, while recognising that improved disclosure is not a substitute for a credible regulatory backstop. The Commission should therefore make these reforms as effective as possible and continue to consider whether stronger intervention is needed where ID is insufficient.

To that end, Air New Zealand recommends that the Commission:

1. retain the 10-working-day disclosure trigger, clarify that disclosure is point-in-time rather than an approval, require updates for material changes, and apply the requirements as far as possible to live and upcoming processes;
2. retain the substantive major capex analysis, with flexibility of form but clear disclosure of options, costs, benefits, sensitivities, Level of Service, allocation, contracting and risk allocation, and pricing and demand impacts;

3. add a fixed-dollar backstop or a defined threshold review mechanism to the 20% RAB threshold, and clarify aggregation and the treatment of mixed renewal and enhancement projects;
4. require annual cost-to-complete information for major forecast capex, including actual spend and explanations for material variance; and
5. ensure assurance and confidentiality settings are targeted, so sensitive details are protected without obscuring the information needed to assess efficiency and consumer impact.

These changes would strengthen the existing light-handed regime without transferring investment decisions to the Commission or to airlines. They are necessary near-term improvements even as the case for stronger economic regulation remains.

Ngā mihi nui,

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