Targeted Assessment of Airport Regulation

Overview

1. We have undertaken a short, targeted review to examine whether current regulatory settings give confidence that major airport investment decisions promote the long-term benefit of consumers and found that there is more that could be done to achieve this.

2. As part of the review, we have considered the merits of initiating a section 56G inquiry under the Commerce Act 1986 and concluded that we will not do so at this time. This is because of the high-cost nature of this process, and the lack of flexibility of any resulting regulatory changes, which we think would likely result in over-regulation across the regulated airport sector.

3. We have identified additional Information Disclosure (**ID**) requirements relating to major capital expenditure (**major capex**) decision processes that we consider could deliver some benefit, including requiring an independent verifier's report. We also consider that some targeted changes to the Commerce Act could enable a more proportionate regulatory response, for example, amendments that would allow us to specifically target one airport or issue (for example, major capex) without fully committing to one kind of regulation for the whole price setting event at all three regulated airports.

Introduction

4. Following MBIE officials' recent informal consultation with airport stakeholders and its finding that the Commission could improve ID, we received a letter from Greg Foran, Chief Executive of Air New Zealand, requesting that the Commission undertake a section 56G inquiry into airport regulation. In this context, we initiated this review to consider how well the current regulatory settings under Part 4 of the Commerce Act are supporting major airport investment decisions that deliver long-term benefits to consumers. As part of our review, we considered whether changes to regulatory tools or processes could better promote efficient investment outcomes.

Background

5. Auckland, Wellington and Christchurch airports are currently subject to ID regulation under Part 4 of the Commerce Act. ID regulation enables the Commission to require

regulated businesses to publicly disclose sufficient information to ensure anyone interested (including us) can assess whether airports are acting in the long-term interest of consumers, consistent with the Part 4 purpose.

6. Current ID requirements for regulated airports include annual disclosure of historical performance information and additional information at the time of a Price Setting Event (PSE).

7. The focus of our regulatory efforts is on assessing the regulated airport PSE decisions against the Part 4 purpose. This includes assessing: how prices are set, the level of prices, expected profitability, and, to some extent, how prices are structured (ie, who pays).

8. When conditions are stable and there is broad agreement over major capex plans, pricing is predictable, and the ID regime enables us to identify outcomes that do not align with the purpose of section 52A(1). Airports have responded to the Commission's reports by adjusting pricing decisions, such as Wellington Airport reducing charges after our 2014 report by $33m, and Auckland Airport reducing charges after our 2018 report by $33m and again in 2025 by about $150m.

9. However, recent experience, particularly with large capital programmes, has highlighted limitations in our ability under the current ID regime to assess whether investment decisions are consistent with the long-term benefit of consumers.

10. MBIE's recent review of airport regulation settings reinforced these concerns. Following targeted consultation with stakeholders, MBIE found that "there is more the Commission could do to improve its scrutiny of major investment under information disclosure and before progressing legislative reform".[1]

Issues we have considered

11. Our review identified and considered several potential limitations in the current regulatory framework that, taken together, may reduce the incentive that major airports have to make investment decisions that deliver long-term benefits to consumers. These limitations are closely connected: the timing of regulatory scrutiny, the information disclosed, and the absence of mechanisms to resolve disputes.

Timing misalignment and its flow-on effects

12. The current disclosure requirements tie scrutiny of major capex decisions to the five-yearly PSE reviews. However, major investment decisions can occur outside of this cycle, meaning our assessments may occur after decisions are made. In addition, major investments may occur over more than one PSE, which is beyond the focus of current ID settings. We consider that this timing gap reduces our ability to influence

[1] Ministry of Business, Innovation and Employment: "Regulation of airport services: feedback from targeted consultation and next steps," recommendation e.

outcomes before they are locked in and may reduce the effectiveness of the regime in promoting efficient investment aligned with the Part 4 purpose.

Limitations with the current information disclosed

13. The current regulatory settings, including the scope and timing of information disclosure, may not provide sufficient information on the needs that are driving investment, the options considered and why the proposed approach is preferred. This limits stakeholders' ability to assess whether proposed investments are efficient or aligned with the long-term interests of consumers, particularly where projects are complex or have significant interdependencies.

Absence of mechanisms to resolve disputes

14. Further, without timely scrutiny or a mechanism to resolve disputes as part of the ID regime, disagreements over major investments can persist. This increases the risk of inefficient outcomes, including avoidable delays or decisions that are not in consumers' long-term interests. When assessing the suitability of options, there can be a wide spectrum of what is considered reasonable. Articulating what the issues are could narrow the scope of disagreement.

Approach to this Review and Assessment of Regulatory Options

15. This review followed our PSE4 review of Auckland Airport, MBIE's targeted review of airport regulation settings and correspondence from Air New Zealand requesting a section 56G inquiry. Our assessment has been largely desktop in nature, focused on understanding at a high level the extent to which different regulatory tools could address the issues discussed above. One of the questions we have considered is whether there are sufficient grounds for a section 56G inquiry, which enables us to consider recommending to the Minister either negotiate/arbitrate regulation or price-quality regulation, in addition to information disclosure regulation.

16. As part of our analysis, we engaged with Australian regulators to understand how airport investment regulation operates under a different set of institutional and legislative settings. The Australian model is markedly different, relying heavily on commercial negotiation and including a prescribed ministerial approval process for major developments at 21 of Australia's largest airports. It is underpinned by long-term federal leases of airports to private operators under strict conditions, including obligations to provide services to airlines.

    16.1 Australian airports negotiate with individual carriers on bespoke price and service quality agreements, with major capex decisions being a key input into those negotiations. In contrast, New Zealand airports consult collectively with airlines on both major capex decisions and pricing decisions under the Civil Aviation Act 2023. There is no requirement to consult on both at the same time.

16.2 Australian Federal airport "Master Plans" and "Major Development Plans" must receive Ministerial approval.[2] The Minister must have regard to matters including the present and future requirements of civil aviation and the consultations undertaken in preparing draft plans. There is no equivalent process for major New Zealand airports. While New Zealand airports are required to produce and consult on spatial plans under the Civil Aviation Act, often also referred to as Master Plans, they do not go through an independent review process. And while we review major capex as an input to airports PSE decisions, there is no explicit independent approval process for major capex.

17. These insights have helped us identify which elements of the Australian approach may be adaptable to the New Zealand context, and which are not.

18. We identified three key areas for potential improvement:

18.1 Timing of Regulatory Influence—we considered the extent to which earlier, targeted reviews of major capex decisions, separate from our PSE reviews, could address the problem. Earlier, targeted reviews of major capex decisions could allow us to assess whether the processes used to develop and consult on proposals are robust, transparent, and aligned with the Part 4 purpose, without necessarily assessing the merits of individual projects.

18.2 Additional Information Disclosure—we considered the extent to which enhanced ID requirements could enable interested parties (including ourselves) to assess the merits of forward-looking investment plans, decision rationales, and consultation processes.

18.3 New Tools for Engagement and Dispute Resolution—we considered the extent to which additional regulatory mechanisms or changes in regulatory approach could result in better investment decision-making and outcomes. This could include tools to resolve impasses where the stakes for consumers are high.

19. The key aspects of our assessment included:

19.1 Undertaking an initial assessment of the extent to which different options might promote the Part 4 purpose more effectively than the status quo.

19.2 Considering the proportionality of regulatory requirements to the risks posed by poor investment decisions, including impacts on cost, service quality, and availability.

19.3 Considering the likely costs of regulatory reform and the time it would take to effect meaningful change.

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[2] https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/airports/ministerial-decisions

20. In doing so, we have kept in mind our role in airport regulation. We do not make investment decisions. Ultimately, that is the role of the airport. Our role is to apply regulations to promote particular outcomes consistent with the long-term benefit of consumers. We currently do this by assessing outcomes under ID.

Options we considered to address the problem

21. Improvements to ID offer a practical starting point for strengthening airport major capex decision-making and promoting outcomes consistent with the Part 4 purpose, and we discuss this in further detail below.

22. However, the ID regime is not a mechanism for resolving disputes. The role of ID is limited to providing transparency that can help enable us and other parties to assess whether airports are acting in consumers' interests. While this creates incentives for airports to align outcomes with the Part 4 purpose, decisions ultimately rest with the airport. A different form of regulation, with an independent decision maker or arbiter, may be needed if the incentives under ID are insufficient.

Alternatives available through section 56G

23. We assessed whether the alternative regulatory options provided for through a section 56G inquiry could address the issues identified above. This includes:

    23.1 Alternative 1: Negotiate/arbitrate regulation on prices and quality standards

    23.2 Alternative 2: Price-quality regulation

24. We considered the costs and complexity of alternatives 1 and 2 relative to their potential benefits. As we discuss below, we concluded that these are poorly targeted to the problem we have identified. They would require the same regulation to apply to all regulated airports, and cover prices and quality standards, alongside any other matters such as major capex.

Alternatives targeted to the identified problem: major capex

25. We have also considered the merits and practicality under the Part 4 framework of more targeted options:

    25.1 Alternative 3: Negotiate/arbitrate regulation for major capex decisions only

    25.2 Alternative 4: Commission approval of major capex

26. Our conclusion is that, under the current legislation, we cannot implement these targeted alternatives (as Part 4 only allows full price-quality regulation through section 56G).

In summary

27. We have concluded that in practice:

27.1 Alternatives 1 and 2 would be disproportionate to the problem identified and would involve significant costs with uncertain benefits.

27.2 Under current legislation, alternatives 3 and 4 could not be implemented (as Part 4 only allows full price-quality regulation through section 56G). Achieving the targeted benefits of alternatives 3 and 4 therefore would require legislative change, to allow interventions that apply to a single airport or issue.

28. We expand on our assessment below.

Alternative 1: Negotiate/arbitrate regulation on prices and quality standards

29. This option would be a significant change in the current commercial dynamics. It would require airports to negotiate binding contracts with airlines covering both prices and service quality standards. If negotiations fail, either party could move to arbitration. An arbitrator could set the terms of a binding commercial contract.

30. The main benefit is that it would provide a strong tie-breaker for disputes and creates incentives for airports and airlines to reach agreement. It would also help address timing misalignment, as contracts would need to have a mechanism to accommodate major capex projects, whether through renegotiation or some other approach.

31. However, this option represents a major shift from the current regime, where airports set prices unilaterally after consultation. It is not clear how negotiate/arbitrate regulation aligns in practice with the consultation requirements in the Civil Aviation Act (see paragraph 16.1 above).

32. It would involve significant implementation costs and complexity, and its success would depend on careful regulatory design. For example, the counterparties and design of any arbitration process would require careful thought so as not to undermine competition in the airline sector.[3] Consideration would need to be given to the implications for investment, as this would be an explicit move away from the airport Board acting as decision-maker. Negotiation is not a guaranteed solution for avoiding disputes, so the arbitration mechanism would need to act as a credible and balanced tie-breaker.

33. We do not believe that the option is proportionate to the problem we have identified, because:

[3] The ACCC has granted authorisation to the Board of Airline Representatives of Australia, under Part VII of the Competition and Consumer Act 2010, to collectively bargain on behalf of its members with international airports, providers of essential aviation services, and suppliers (or potential suppliers) of Australian Government-mandated security services. Similarly, airlines (or the Board of Airline Representatives of New Zealand) would likely require authorisation from the Commerce Commission, under Part 5 of the Commerce Act, should we move to negotiate/arbitrate regulation.

33.1 it applies to the full price and service package, whereas the problem relates to major capex decisions; and

33.2 under current legislation, would have to apply to all three regulated airports.

34. It could also increase the frequency and complexity of negotiations, adding administrative burden that ultimately falls on consumers. The high stakes of arbitration could encourage strategic behaviour. However, should this option lead to more long-term contracts, for example, 10-year agreements, this would help reduce negotiation frequency.[4]

35. Negotiate/arbitrate regulation of prices and quality standards is an available option the Commission could recommend following a section 56G inquiry.

Alternative 2: Full price-quality regulation

36. Under this option, the Commission would set maximum allowable revenues and quality standards *ex ante* for regulated airports. Planned major capex and the allocation of costs between aeronautical and non-aeronautical services would be considered as inputs to setting these limits. Major capex during a regulatory period could be dealt with by way of a reopener or other specific process.

37. This option would provide stronger assurance that prices and quality outcomes reflect consumer interests and the purpose of Part 4. It would also indirectly address timing misalignment, as major capex would be assessed as part of setting the price-quality path and airports would face a risk of under-recovery.

38. However, ongoing price-quality regulation is broader than the problem we have identified and would likely have a disproportionate impact on the sector. There would be a cost to develop and deliver this regulation. Compliance costs for airports would also increase, although the current ID requirements provide some of the information that would likely be required.

39. Given the ongoing nature of this regulation and associated costs, it is not clear that the potential benefits of this option would outweigh the costs relative to the status quo or more targeted alternatives.

40. This option could be implemented through default/customised or individual price-quality regulation following a section 56G inquiry. A capex input methodology (**IM**) could be developed to control which major investments enter the regulated asset base (**RAB**).

[4] While this option allows more flexibility for airports to negotiate longer-term contracts with their customers, it is not clear how feasible or likely this would be in practice.

Alternative 3: Negotiate/arbitrate regulation for major capex decisions only

41. Under this option, airports would still be required to consult with substantial customers when setting prices, and before approving planned major capex over the relevant threshold amount.[5]

42. A targeted back-stop arbitration mechanism would be available for disputes over major capex decisions. If agreement cannot be reached on significant projects, either party could move to arbitration. An independent arbitrator would decide whether to approve or reject the airport's proposed major capex.

43. The main benefit is that this would provide a credible tie-breaker for major investment disputes, in conjunction with ID at a PSE.

44. For this option to be effective in deterring unapproved aeronautical investments, we would rely on the threat of further regulation. We could do this by taking the arbitrator's decision into account when assessing pricing and profitability under ID. For example, repeated or unresolved disputes could indicate a need for stronger intervention, such as full negotiate/arbitrate or price-quality regulation.

45. In this way, the option could act as a credible threat, reinforcing incentives for airports to align investment decisions with the long-term interests of consumers. This would be more effective if section 56G allowed the intervention to apply to an individual airport.

46. Design and implementation of a targeted arbitration mechanism would increase costs, compared to current regulatory settings:

    46.1 It would require clear rules on when arbitration can be requested and the criteria for Commission acceptance of applications.

    46.2 There would be a risk of strategic behaviour, as parties may position themselves for arbitration.

    46.3 Compliance and administration costs would likely increase for both airports and the regulator.

    46.4 We could also consider making inclusion of major capex in the RAB conditional on the outcome of the negotiation/arbitration process, through prudency and efficiency reviews once major capex is commissioned. This would be a significant increase in the level of intervention, and associated costs. (We note no other businesses regulated under Part 4 are subject to such reviews).

47. As for alternative 1, the success of this option would depend on careful regulatory design. The counterparties and design of any arbitration process would require careful thought so as not to undermine competition in the airline sector.

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5 Civil Aviation Act 2023, sections 230 and 231.

48. Part 4 does not currently allow for a major capex-only negotiate/arbitrate regime. The legislation requires that such regulation must apply to prices and quality standards as well. Implementing this option, as set out above, would therefore require legislative change to allow for a targeted mechanism.

Alternative 4: Commission approval of major capex

49. This option draws on the "Capex IM" process for Transpower, and the "capital expenditure governance" process for Heathrow Airport. Major capex would be subject to a process for regulatory approval before proceeding.

50. To be eligible for approval, an airport would need to follow a specified process for major capex planning, including consultation and information requirements. Approval would likely involve assessing compliance with this process, the outcomes of consultation, and whether the proposal aligns with the long-term interests of consumers under Part 4 of the Commerce Act.

51. Independent approval directly addresses the problems we have identified. It would provide greater confidence that major capex proposals promote long-term benefits to consumers and reflect consumer demand. Moving from reliance on consultation to approval by an independent party (the Commission) would also reduce the potential for significant disputes, by incentivising parties to act in the long-term interests of consumers.

52. For this option to be effective in deterring unapproved aeronautical investments, as for alternative 3, we could rely on the credible threat of further regulation. We would comment in our reviews of major capex decisions whether or not airports are effectively applying the process, relying on the threat of price-quality regulation if required. As for alternative 3, this would be more effective if section 56G allowed the intervention to apply to an individual airport.

53. There would be a cost to develop and deliver this regulation. It would require upfront work to design the approval framework and our ongoing involvement to assess proposals and monitor compliance.

54. As for alternative 3, we could also consider prudency and efficiency checks of commissioned assets before they enter the RAB, although this would add significant costs. As noted above, no other businesses regulated under Part 4 are subject such reviews.

55. Either way, this represents a substantial increase in regulatory intervention. It could also introduce delays and uncertainty for investors, dampening incentives to invest. The additional burden raises questions about proportionality, given the targeted nature of the problem.

56. From a legal perspective, Commission approval of major capex cannot be implemented under the current legislation, except as part of full price-quality regulation. (As noted above, full price-quality regulation would likely have high costs

and a disproportionate impact on the sector, relative to the targeted problem we have identified).

57. Implementing this option as we have specified it here, would require changes to the legislation to allow for a targeted mechanism.

Implementation via section 56G of the Commerce Act

58. Our legal assessment is that, to implement alternatives 1 and 2 we would need to conduct an inquiry under section 56G. Legislative change would be needed to implement alternatives 3 and 4 independently of the current negotiate/arbitrate or price-quality regulation for the full price-quality path.

59. Section 56F of the Commerce Act allows us to conduct an inquiry into the regulatory regime of airport services if required to by the minister or on our own initiative.

60. Section 56G of the Commerce Act describes what must be considered during the inquiry. It involves considering if in addition to ID regulation, additional types of regulation should be imposed. As part of the inquiry, we would be required to determine IMs and assess the benefits and costs of imposing additional regulation. Depending on our recommendation, we may also have to set out a proposed first price-path.

61. An inquiry is a significant, high-cost undertaking, and would likely take 18 months or more to complete. Therefore there should be at least a realistic possibility that through a section 56G inquiry we would conclude that one of options enabled by a section 56G inquiry would deliver sufficient benefits relative to the status quo before proceeding. Based on our initial assessment we have not found reasonable grounds to commence a section 56G inquiry.

62. In particular, we think that the options available through section 56G—negotiate/arbitrate regulation of prices and quality standards, default/customised price-quality regulation, or individual price-quality regulation are:

    62.1 disproportionately broad for the problem we have identified, and

    62.2 specified in the legislation at a level of detail that does not readily accommodate the more targeted options we have identified.

Information disclosure

Improvements to information disclosure

63. Given the difficulties with delivering the alternative options and the disproportionality of those options, we considered the improvements that could be made to the timing and type of information we could require under ID that would increase our ability to assess if a major capex plan is meeting the purpose of Part 4 of the Commerce Act.

Substance (what information we could require)

64. We are considering requiring an independent verifier's report of major capex proposals and additional disclosures about major capex plans, including:

    64.1 a cost-benefit analysis (including reasons why a specific project was chosen and submissions from airlines/reasons for rejecting other plans);

    64.2 further information on costing and cost allocation, including the proposed future allocation for new assets; and

    64.3 disclosure of service levels targeted by proposed investments, including how the airport has responded to stakeholder submissions, the extent of independent verification and audit, and the extent of consultation and agreement with consumers.

Timing (when we could require this information)

65. Our PSE reviews are ex-post and occur after aeronautical prices have been set. Additional disclosures should be made before significant funds have been spent.

66. Earlier disclosures would allow our view on an airport's major capex plans to be known ahead of funds being committed, and publicly expressing this view has a better chance to influence investment decisions. The early disclosures could be triggered by:

    66.1 investments over a certain dollar threshold eg, $30m (matching the level in the Civil Aviation Act that requires consultation with substantial customers); or

    66.2 investments which would increase the RAB by a certain percentage when commissioned eg, an increase to the RAB of 20%. This would need to apply to the whole investment programme (even if it does not fit into one PSE period) in aggregate as otherwise investments could be artificially split up to avoid the threshold; or

    66.3 a stakeholder applying to us to require further disclosures when agreement has not been reached or is unlikely to be reached during major capex consultation under the Civil Aviation Act.

Other matters for consideration in relation to ID requirements for airports

67. We note that airlines have suggested shifting from the current dual till structure under ID to a hybrid or single till model.

68. In relation to this issue, our priority is to ensure cost allocation under the current dual till framework is working as intended. For investments that support both aeronautical and non-aeronautical services, such as terminal developments, how costs are allocated is a critical input to a PSE. More robust and timely information on cost allocation would help us assess whether major capex decisions are promoting the Part 4 purpose. How airports respond may inform future consideration of

whether cost allocation rules under the IMs need refinement, or whether changes to the till structure or the boundaries of aeronautical services should be considered.

69. We also note that some stakeholders have suggested adopting a tilted depreciation profile as a standard approach when there are step changes in the RAB due to major capex. As we noted in our review of Auckland Airport's PSE4, for long-lived assets (which are not subject to inflation-indexation), it is unlikely that setting charges based on straight-line recovery of depreciation best promotes the long-term benefit of consumers.[6] While this does not relate directly to the ID improvements discussed above, we intend to consider this when we next review the IMs for ID.

Potential legislative changes to strengthen the regime

70. Changes to ID timing and substance may go some way toward improving capital investment outcomes for the regulated airports, if designed well. However, we are not convinced that these would completely address the issues:

    70.1 There have been semi-frequent high-level reviews of the effectiveness of ID disclosure for airports, each recognising the limited impact the regime has on influencing major capex decisions but not recommending any further regulation. Each time such a review occurs, it may weaken the implicit threat of further regulation that ID relies on to be effective.

    70.2 In other sectors such as electricity distribution businesses, we rely on internal and external engineer experts who have in-depth knowledge of those sectors to effectively assess investments. We do not currently have this expertise for the airport sector and retaining it is costly.

    70.3 A strong indicator for regulatory regimes that deal well with major capex proposals is the presence of commercial negotiations. We have observed good regulatory outcomes from Christchurch and Wellington Airports—the problem is where negotiations fail and there is no backstop. ID-only options where there is no negotiation requirement or backstop/tiebreaker mechanism when negotiations fail give us less confidence that outcomes consistent with the Part 4 purpose would be met in the future.

71. We consider that some targeted changes to the Commerce Act could enable a more effective and proportionate response to the problem identified (when regulation over and above ID is considered necessary), including:

    71.1 **Changes to the 56G inquiry process**—it is currently challenging because it requires too many of the specific regulatory settings to be determined prior to the recommendation/decision to change the type of regulation. Changing the section 56G inquiry process, by repealing specific parts of sections 56G and 56H, should strengthen the threat of additional regulation.

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[6] Commerce Commission, "Review of Auckland Airport's 2022-2027 Price Setting Event: Final report" (31 March 2025), paragraph X2.3.

71.2 **Enabling more flexible additional regulation** to enhance the regulatory threat and enable targeting a specific airport or issue (for example, major capex).

71.2.1 Targeting a specific airport could be a straightforward amendment, such as requiring a change to the definition of specified airport services and consequential amendments through the subpart to limit regulatory types to specified airport services supplied by a specified airport company.

71.2.2 Targeting major capex only or allowing a mix of two regulatory approaches (negotiate/arbitrate and price path) through a section 56G inquiry may require further policy analysis during a targeted Part 4 review.