



Airport Services – s 56G Reports

Update on process and scope

Release Date:

27 July 2012

Purpose

1. The purpose of this paper is to:
 - 1.1 update all interested persons on our process to report to the Ministers of Commerce and Transport under s 56G of the Commerce Act 1986 (Act)
 - 1.2 confirm that the conference in relation to disclosures by Wellington International Airport Limited (WIAL) under Part 4 (of the Act) information disclosure regulation will be held on 7 August 2012
 - 1.3 summarise and respond to submissions and cross-submissions on our proposed process and scope for the s 56G reports as outlined in our Process and Issues paper released on 31 May 2012.
2. We are not seeking submissions on this paper.

Our updated process

3. We plan to hold a conference on 7 August in Wellington to engage with interested persons on the information disclosed by WIAL under Part 4 information disclosure regulation. There will be an opportunity for cross-submissions after the conference.
4. Following consideration of all relevant material, we will prepare our draft report on how effectively information disclosure regulation is promoting the purpose of Part 4 in respect of specified airport services supplied by WIAL. We will provide all interested persons the opportunity to comment on our draft report.
5. Following consideration of all submissions and cross-submissions on our draft report, we will finalise our report and provide it to the Ministers of Commerce and Transport. We will publish a copy of the final report on our website.
6. Our updated process is set out in Table 1 below.

Table 1: Key steps and indicative timeframe

Key steps	Indicative timeframe
Conference paper	31 July 2012
Conference	7 August 2012
Cross-submissions	17 August 2012
Draft report	21 September 2012
Submissions	Due 19 October 2012
Cross-submissions	Due 26 October 2012
Final report to Ministers	December 2012

Submitters' views and our response

7. We have summarised submitters' views on the scope, timeframes and process for the s 56G reports below. Our response to these views is also set out below.

Submitters' views

Timing of the Review

8. Air New Zealand Ltd (Air New Zealand) and Board of Airline Representatives of New Zealand (BARNZ) (together Airlines) agree that the Commission should commence the s 56G reviews now.¹
9. BARNZ also agree with the Commission's approach in undertaking the analysis under ss 53B(2) and 56G concurrently.²
10. New Zealand Airports Association (NZAA), Auckland International Airport Ltd (AIAL), WIAL and Christchurch International Airport Ltd (CIAL) (together Airports) oppose the timing of the review. Airports submit that it is too early to commence the s 56G reviews³ due to:

¹ Air New Zealand Limited, *Submission to the Commerce Commission on Airport Services – s 56G Commerce Act 1986 Review*, 29 June 2012 (Air NZ Submission), page 31, paragraphs 130-131; Air New Zealand Limited, *Cross-Submission to the Commerce Commission, Commerce Act 1986, Part 4, Section 56G Review*, 20 July 2012 (Air NZ Cross-submission), page 6, paragraph 2.13 and pages 18-19, paragraph 3.7; Board of Airline Representatives New Zealand (Inc), *Responses to Commerce Commission Questions Relating to Process*, 28 June 2012 (BARNZ Submission), page 1, paragraph 6, and Board of Airline Representatives New Zealand (Inc), *Cross-Submission on Matters of Process raised by the Airports*, 20 July 2012 (BARNZ Cross-submission), pages 1-2.

² BARNZ Cross-submission page 3, paragraph 2.

³ Auckland International Airport Limited, *Submission on the Commerce Commission's Process and Issues Paper (Airport Services – Section 56G Reports)*, 29 June 2012 (AIAL Submission), page 1 paragraph 5;

- 10.1 *Lack of information* – Airports submitted that the information required to make an assessment is not available at this time.⁴ In particular the submissions note that there is insufficient time series data from annual disclosures and that any conclusions drawn about historical performance will be limited.⁵
- 10.2 *Summary and analysis* – Airports submitted that s 56G reports should not be undertaken prior to the Commission conducting and publishing its summary and analysis under s 53B(2).⁶ Airports submitted that s 53B reports would provide valuable evidence for the review and improve the information available.⁷ Airports also submitted that s 53B could influence Airports' behaviour, even after the price setting event, and that they are an important part of the ID regime. WIAL requested that the Commission expressly acknowledge in its reports the absence of a s 53B(2) report and "the lack of opportunity for airports to engage in self-initiated behaviour change (if required)" in response to such a report.⁸

Scope of the Review

11. Air New Zealand submitted that parallel reviews (e.g. Commission inquiry, Ministry of Economic Development⁹ review) should be undertaken alongside the s 56G review to consider other types of regulation.¹⁰
12. BARNZ submitted that s 56G gives the Commission scope to consider other types of regulation.¹¹ BARNZ also submitted that the Commission should consider whether information disclosure should extend to airport services currently not subject to any regulation.¹²

Christchurch International Airport Limited, *Submission on the Process and Issues Paper*, 29 June 2012 (CIAL Submission), page 1, paragraphs 3- 4; Wellington International Airport Limited, *Initial Submission to the Commerce Commission Section 56G Process and Issues Paper*, 29 June 2012 (WIAL Submission), page 3 paragraph 8; New Zealand Airports Association, *Submission on the Commerce Commission's Process and Issues Paper Airport Services – Section 56G Reports*, 29 June 2012 (NZAA Submission), page 1, paragraph 4.

⁴ NZAA Submission, page 1, paragraph 4 and page 4, paragraph 19(b); AIAL Submission page1, paragraph 6; CIAL Submission page 1, paragraph 4.1.

⁵ NZAA Submission, page 1, paragraphs 4.6 and page 4, paragraph 19(b); AIAL Submission, page 1, paragraph 6; WIAL Submission, page 5, paragraph 20.

⁶ NZAA Submission, page 2, paragraph 8(b)&(c); page 4, paragraph 17(a); page 8, paragraphs 18-24; AIAL Submission page 2, paragraph 10(a); page 4, paragraph 19(a); CIAL Submission page 2, paragraph 7.3; WIAL Submission pages 3-4, paragraphs 8-15.

⁷ Ibid, above n 5.

⁸ WIAL Submission page 4, paragraph 15.

⁹ Now incorporated into the new Ministry of Business Innovation and Employment.

¹⁰ Air NZ Submission, page 31-32, paragraph 134.

¹¹ BARNZ Submission pages 4-5.

¹² BARNZ Submission pages 4-5.

13. Airports support the Commission's interpretation of the scope of the review, namely that s 56G is limited to assessing information disclosure and that the Commission cannot consider or recommend other forms of regulation.¹³

Timeframes

14. Airlines do not oppose the timeframes set by the Commission,¹⁴ although BARNZ submitted that in the case of AIAL more time should be provided for submissions due to a larger number of airlines operating out of Auckland.¹⁵
15. Airports oppose the timeframes set for the process, i.e. time provided for submissions, cross-submissions, conference preparation etc. Airports submitted that the timeframes for submissions are too tight.¹⁶

Information the Commission may consider

16. Airlines submitted that the information the Commission proposed to have regard to when assessing effectiveness of information disclosure under s 56G is appropriate and within the scope of this review.¹⁷ Airlines support the Commission's view that other information may assist us by providing additional insights in the manner in which information disclosure has had an impact.¹⁸
17. NZAA submitted that, while Airports do not consider that the Commission is precluded from seeking and considering further information under s 56G the information disclosed under the information disclosure regime should be sufficient for the review.¹⁹ Moreover, Airports have expressed a concern that seeking further information may pre-judge the outcomes of the review as this may signal that the information disclosure regime is not effective.²⁰

Separate reports for each airport

18. Airlines agree with the Commission's view that s 56G requires reviews to be undertaken in relation to each regulated supplier after it sets a new price.²¹
19. Airports submitted that the appropriate approach is for the Commission to produce one report which assesses the effectiveness of the information disclosure regime in

¹³ NZAA Submission page 2, paragraph 7; AIAL Submission page 12, paragraphs 49-50; AIAL Cross-submission page 2, paragraph 9 and pages 5-6, paragraphs 26-37; CIAL Submission page 3, paragraph 8.

¹⁴ Air NZ Submission page 31, paragraphs 130, 131; Air NZ Cross-submission pages 9-11, paragraph 3.3; BARNZ Submission page 1, paragraph 6.

¹⁵ BARNZ Submission page 3, paragraph 4.

¹⁶ NZAA Submission page 2, paragraph 8(a) and page 3, paragraph 13-16; AIAL Submission page 5, paragraphs 24-26; CIAL Submission page 2, paragraph 7.1; WIAL Submission page 2, paragraph 4.

¹⁷ Air NZ Submission page 31, paragraph 136; BARNZ Submission page 5.

¹⁸ Ibid n 15, BARNZ Cross-submission pages 5-6.

¹⁹ NZAA Submission page 3, paragraph 12.

²⁰ NZAA Submission pages 12-13, paragraph 50; AIAL Submission page 9, paragraph 43.

²¹ Air NZ Submission page 31, paragraph 133, Air NZ Cross-submission pages 8-9, paragraph 3.2; BARNZ Submission pages 2-3, BARNZ Cross-submission pages 3-4.

relation to all airports, and that all three airports should be reviewed at the same time.²²

Input methodologies

20. Airlines agree with the Commission's view that the Commission should consider the airports' recent and expected performance based on annual disclosures under Part 4 against the relevant IMs, where possible.²³ BARNZ submitted that it supports the Commission's view that it should not wait for the outcome of the merits review process and that s 53(2) is clear that input methodologies will apply irrespective of any pending merits appeal.²⁴
21. Airports submitted that a s 56G review is not practicable until the outcome of the merits appeal is settled.²⁵

Assessing effectiveness of information disclosure under s 56G

22. Airports request that the Commission set out its full analysis of the tests to be used for assessing effectiveness of information disclosure in promoting the purpose of Part 4 prior to such assessment being conducted.
23. Airports submit that the Commission's approach should be consistent with the wording used in s 52A and examine whether WIAL has *incentives* to innovate and invest and *incentives* to improve efficiency and provide services at a quality that reflects consumer demands.²⁶ Airports submit that the questions in the process and issues paper, which instead focus on assessing WIAL's behaviour, i.e. whether WIAL is innovating, investing, improving efficiency and providing services at a quality that reflects consumer demands, should be reframed as suggested above.²⁷

Commission's response to submissions

Timing of the review

24. The Commission's view is that the trigger for the review is the setting of any new price by a supplier as set out in s 56G, namely:

as soon as practicable after any new price for a specified airport service is set in or after 2012 by a supplier of the service.
25. The Commission acknowledges Airports' submissions and notes the limitations concerning lack of time series data at this point in time. The Commission will

²² NZAA Submission page 3, paragraph 11 and page 12, paragraphs 45-48; AIAL Submission, page 5, paragraphs 21 -23; CIAL Submission, page 2, paragraph 7.2.

²³ Air NZ Submission page 32, paragraph 136; BARNZ Submission, page 1, BARNZ Cross-submission page 2, paragraph 9.

²⁴ BARNZ Submission, page 1.

²⁵ NZAA Submission page 4, paragraph 17(b); AIAL Submission page 4, paragraph 19(c), AIAL Cross-submission page 7, paragraph 42; CIAL Submission page 3, paragraph 11.

²⁶ AIAL Submission page 14; CIAL Submission page 15; CIAL Cross-submission page 2, paragraph 9.

²⁷ Ibid n 24.

acknowledge these limitations in the reports to the Minister. Nonetheless, the Commission is of the view that the price setting event provides the key information required for it to carry out the s 56G review, given that prices have been set for the next five year period.

26. The Commission does not consider that the Act requires availability of s 53B(2) summary and analysis reports in order for the s 56G review to be triggered or undertaken. Section 53B(2)(b) provides that the Commission:

must, as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time

27. There is no requirement in the Act that sets out a chronological order for the two tasks, or that prescribes their interdependence, chronological or otherwise. However, in the current circumstances the timing for the completion of these two tasks does overlap.

28. Summary and analysis is intended to aid interested persons in understanding the performance of suppliers. The purpose of the s 56G report is to provide an *assessment* to the Minister of the effectiveness of information disclosure regulation in promoting the Part 4 purpose. Section 56G therefore goes beyond summary and analysis as it requires an assessment of not only the information disclosed but the effectiveness of the information disclosure regime on the promotion of the purpose in s52A(1), namely:²⁸

to promote the long-term benefit of consumers in markets referred to in section 52 by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—

(a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and

(b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and

(c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and

(d) are limited in their ability to extract excessive profits.

29. In the current circumstances, both the timing and much of the work required for these two tasks overlaps. We consider that the section 56G reviews will promote a greater understanding of the airports' performance. We therefore intend to proceed with the section 56G reviews as our first priority. We intend to publish a separate summary and analysis of the disclosed information as soon as practicable after we have completed the section 56G reviews. Much of this work will have been

²⁸ s 52A(1) of the Act.

completed during the reviews anyway. We consider that this approach is the most logical and efficient use of resources in the current circumstances.

Scope of the review

30. Section 56G requires the Commission to assess and report on the extent to which ID regulation is promoting the purpose of Part 4 as set out in s 52A, in particular s 52A(1)(a)-(d). This involves assessing the extent to which information disclosure regulation under Part 4 has had an impact on the airport's performance and conduct. Section 56G does not give the Commission the power to consider, and potentially recommend to the Minister, other types of regulation that could apply to the airports. The Commission is therefore not given the scope to assess how effectively ID is promoting the purpose of Part 4 relative to other types of regulation provided for under Part 4; nor does it have scope to recommend whether alternative types of regulation should apply.

Timeframes

31. The Commission considers that the timeframes set for the process are adequate. We have included steps additional to those required by s 56G. Interested parties have a number of occasions on which to submit their views to the Commission, and respond to views submitted by other parties.

Information the Commission may consider

32. The Commission is required to carry out an assessment and review of the information disclosed pursuant to information disclosure regulation under s 56G. The Act does not contain any explicit limitations on other information the Commission may take into consideration when conducting its analysis of the effectiveness with which the purpose of Part 4 is, or is not, being promoted. In our view further information is required to make a meaningful assessment of whether information disclosure is promoting the Part 4 purpose, including its impact on the objectives listed in s 52A(1)(a)-(d).
33. The Commission does not consider that seeking additional information in any way pre-judges the outcomes of the review by pre-supposing that information disclosure is not effective. The task required of the Commission under s 56G is broad, in that it requires not only a review of information disclosed,²⁹ but an assessment of how effectively the information disclosure regulation is promoting the purpose in section 52A.³⁰ The task clearly goes beyond a mere review of the information disclosed.³¹

²⁹ S 56G(1)(a) of the Act.

³⁰ S 56G(1)(c) of the Act.

³¹ Section 56G requires both the review of information disclosed (s 56G(1)(a)), and the assessment of effectiveness, namely s 56G(1)(c): "report to the Minister as to how effectively information disclosure regulation under this Part is promoting the purpose in section 52A in respect of the specified airport services". The purpose of the s 56G review is not limited to considering whether information disclosure is serving its own purpose contained in s 53A (to ensure sufficient information is readily available to

Separate reports for each airport

34. The Commission remains of the view that it should prepare a separate report for each of the three airports. We believe this is the best interpretation of s 56G, acknowledging that each airport's price setting decisions are occurring at different times, and that information disclosure regulation may be having a different impact across each of the three airports.

Input methodologies

35. The Commission notes that in accordance with s 53(2), input methodologies which are currently in effect are applicable to this review. Moreover, waiting for the outcome of the merits appeals could delay this review considerably, which would be contrary to the requirements of s 56G, namely that the Commission should carry out the review:

as **soon as practicable** after any new price for a specified airport service is set in or after 2012 by a supplier of the service.

Assessing effectiveness of information disclosure under s 56G

36. The Commission acknowledges the proposed refinements to the questions asked in the process and issues paper as outlined in paragraph 23 above. We agree that a relevant issue is whether the Airports have incentives to innovate and invest and incentives to improve efficiency and provide services at a quality that reflects consumer demands. For the purposes of this review we believe the practical test of whether incentives are working is whether airports are responding to those incentives. We therefore believe that it is appropriate to examine airport behaviour and performance in response to the incentives they face.
37. We do not believe it is feasible to assess whether information disclosure is promoting outcomes consistent with those produced in workably competitive markets without examining evidence of the performance of regulated suppliers.
38. The Commission considers the test for assessment outlined in our Process and Issues paper adequately reflects the task of s 56G.

Final remarks

39. There will be a further opportunity to submit on these points during the submissions on the draft report.

interested persons), it is much broader, and as such it cannot be meaningfully achieved by limiting the assessment to review of information disclosed only.