

20 July 2012

Karen Murray
Manager, Regulatory Branch
Commerce Commission
44 The Terrace
Wellington 6140

Dear Karen

CROSS SUBMISSION ON SECTION 56G REPORTS: PROCESS AND ISSUES PAPER

- 1 This letter is Christchurch International Airport Limited's (CIAL) cross submission on the Process and Issues Paper on Airport Services – Section 56G Reports (*Process and Issues Paper*).
 - 2 CIAL is also a party to, and has contributed to, the New Zealand Airports Association's (*NZ Airports*) cross submission on the Process and Issues Paper. CIAL is supportive of the NZ Airports cross submission addressing the issues and concerns on behalf of Auckland International Airport, Wellington International Airport and CIAL. CIAL's cross submission should be read in conjunction with the NZ Airports cross submission.
 - 3 This cross submission focuses on identifying the correct scope of the review. This is in response to the BARNZ¹ and Air New Zealand² submissions, which demonstrate a misunderstanding of the proper scope of the review.
- How does information disclosure promote the Part 4 Purpose?**
- 4 The scope of the review is defined and limited by section 56G which requires the Commission to "report to the Ministers of Commerce and Transport as to how effectively information disclosure regulation under this Part is promoting the purpose in section 52A in respect of the specified airport services".
 - 5 To assess how effectively information disclosure is promoting the Part 4 Purpose, it is necessary to first understand how information disclosure promotes the Part 4 Purpose. Information disclosure makes transparent the performance of airports. Combined with the threat of heavier handed regulation, the possibility of adverse publicity, and pressure from customers armed with information, that transparency creates *incentives* for airports to behave consistently with the Part 4 Purpose.
 - 6 This point is precisely captured in the following statement of the Commission:³

¹ BARNZ *Response to Commerce Commission Questions Relating to Process* (28 June 2012).

² Air New Zealand *Submission to the Commerce Commission: Section 56G Review* (29 June 2012).

³ Commerce Commission *Information Disclosure (Airport Services) Reasons Paper* (22 December 2010), paragraph 2.27.

Specified Airport Services are regulated under Part 4. Given the Part 4 purpose, it is clear that the supply of those services is likely to be, and is intended to be, influenced by information disclosure regulation. This effect should help to promote outcomes consistent with those produced in workably competitive markets, for the long-term benefits of consumers. (emphasis added)

- 7 CIAL agrees that, *in a light handed way*, information disclosure is intended to promote and reinforce conduct that is consistent with the Part 4 Purpose. In a similar vein, price control is intended to promote and reinforce conduct that is consistent with the Part 4 Purpose, but in a heavy handed way.

How should effectiveness be assessed?

- 8 How, then, should the Commission assess the effectiveness of information disclosure in promoting the Part 4 Purpose?
- 9 In doing this the first question the Commission needs to ask is whether the correct incentives for airports to behave consistently with the Part 4 Purpose exist. The existence of the correct incentives is a first-order priority, as without those incentives airports cannot begin to respond in a way that is consistent with the Part 4 Purpose.
- 10 The correct incentives will exist if the information disclosure regime compels disclosure of the right information, so that interested persons can properly assess the performance of airports. In other words, if the airports information disclosure regime meets the purpose of information disclosure regulation, the correct incentives should exist. This is the crucial aspect of the effectiveness assessment that is lacking from the scope of the review proposed in the Process and Issues Paper. Instead, the Commission has largely skipped this important step and moved straight to the second question to be asked.
- 11 That second question is: if the correct incentives exist, are they working?

This can be broken down into two more explicit questions:
 - 11.1 Is airport performance consistent with the Part 4 Purpose?
 - 11.2 Is airport behaviour changing in response to information disclosure such that airport performance is more likely to be consistent with the Part 4 Purpose?
- 12 The answers to these questions requires the Commission to assess the performance and conduct of the airports, which by the nature of the business should be over a period – likely the 5 years covered by pricing resets, rather than by discrete periods covered in the annual Information disclosure process. Over this time, it should become evident whether airports are consolidating or changing behaviour such that it is consistent with the Part 4 Purpose – in other words, that airports are appropriately responding to the correct incentives.
- 13 But, as CIAL emphasised in its submission on the Process and Issues Paper, it is simply too early to reach any concrete conclusions on the performance and conduct of the airports. The incentive effects of information disclosure will take time to bed-

in. Incentives take time to react to, certainly more time than has passed so far in this regime.

- 14 For this review, the best the Commission can do is to assess whether there are any indications of behaviour change or consolidation. At this early stage, it may be that consolidation or changes in behaviour are subtle or more directional in nature. The fact that there are already indications of behaviour change (such as airports having considerable regard to the input methodologies in pricing decisions) does however point to the beginnings of an effective information disclosure regime.

Recommendation

- 15 CIAL therefore reiterates its recommendation from its submission on the Process and Issues Paper that the scope of the review needs to be adjusted. While performance and behaviour are relevant, a greater focus is needed on whether the regime is producing the right information to influence behaviour over time and to enable interested persons to assess whether the Part 4 Purpose is being met.
- 16 CIAL therefore necessarily rejects the BARNZ and Air New Zealand submissions on scope. CIAL agrees with the NZ Airports cross submission that BARNZ and Air New Zealand have pre-judged the question of the effectiveness of the regime, and appear to be committed to the pursuit of a more heavy handed regulatory regime. This has led to those parties suggesting a scope for the review which is outside the lawful bounds of section 56G.

Yours sincerely,



Neil Cochrane

GENERAL MANAGER BUSINESS SERVICES