

1 August 2023

[REDACTED]
Head of Economic Regulation and Pricing
Auckland Airport
PO Box 73020
Manukau 2150

By email only: [REDACTED]

Dear [REDACTED]

Request for clarification on an exemption relating to price setting event disclosures under the Airport Services Information Disclosure Determination 2010

1. We write in response to Auckland International Airport Limited's (**Auckland Airport**) letter dated 21 July 2023 requesting that the Commerce Commission (**Commission**) confirm or make amendments to the existing exemption granted on 28 July 2022 (**the 2022 exemption**).^{1,2}
2. The 2022 exemption provided Auckland Airport with an exemption from the requirement, under clause 2.5(1) of the Airport Services Information Disclosure Determination 2010 (**the ID Determination**), to disclose, by 1 August 2022, information relating to its forecast total revenue requirement. The exemption was granted on the condition that Auckland Airport disclosed the information required under clause 2.5(1) of the ID Determination by the revised due date of 30 August 2023.
3. Having considered Auckland Airport's request, we have decided to amend the 2022 exemption, with the amendments described in paragraph 15 of this notice.

¹ Auckland International Airport Limited, *Exemption for Auckland International Airport Limited information disclosure for the price setting disclosure granted on 28 July 2022 – request for confirmation or amendment*, dated 21 July 2023.

² Commerce Commission, *Exemption request response – Exemption for Auckland International Airport Limited information disclosure for the price setting disclosure due 1 August 2022 – 28 July 2022*, available [here](#) on our website.

Background

4. Clause 2.5 of the ID Determination sets out Auckland Airport's disclosure requirements following a price setting event.
 - 4.1 Clause 2.5(1) of the ID Determination requires Auckland Airport to disclose certain information relating to its forecast total revenue requirement. This disclosure must be made either within 40 working days following a decision to fix or alter a price (which triggers a price setting event (**PSE**)), or within five consecutive years of the airport's previous disclosure under clause 2.5(1).
 - 4.2 Clauses 2.5(3) – (4) of the ID Determination require Auckland Airport to disclose additional information following a price setting event, with disclosure required within 40 working days following a decision to fix or alter a price (which triggers a PSE).
 - 4.3 Clause 2.5(2) of the ID Determination is not mandatory, and sets out disclosures relating to a PSE, which may be made within 40 working days following a decision to fix or alter a price (which triggers a PSE), or within five consecutive years of the airport's previous disclosure under the clause.
5. Auckland Airport's most recent disclosure under clause 2.5(1) was made on 1 August 2017. The 2022 exemption granted Auckland Airport an exemption to disclose the information required by clause 2.5(1) of the ID Determination by 30 August 2023.
6. On 7 June 2023, Auckland Airport reset its aeronautical charges for Price Setting Event 4 (**PSE4**), meaning that some disclosures required under clause 2.5 of the ID Determination will become due on 3 August 2023 (40 workings days following a decision to fix or alter a price (which triggers a PSE)).

The 2022 exemption

7. On 17 March 2022³, we received a letter from Auckland Airport requesting an exemption from disclosing certain information as required by clause 2.5(1) of the ID Determination. The request was that the Commission exempted Auckland Airport from disclosing this information until 30 August 2023.
8. On 28 July 2022, we granted Auckland Airport a conditional exemption for the PSE disclosure for the pricing period starting 1 July 2022, which exempted it from the requirement under clause 2.5(1) of the ID Determination to disclose by 1 August 2022, information relating to its forecast revenue requirement.
9. The 2022 exemption was granted on the condition that Auckland Airport disclosed the information required by clause 2.5(1) of the ID Determination by 30 August 2023.

³ Auckland International Airport Limited, *Exemption request – Price Setting Event 4 information disclosure*, dated 17 March 2022.

The exemption amendment request

10. On 21 July 2023, Auckland Airport requested that the Commission make certain amendments to the 2022 exemption.⁴ These are:
 - 10.1 an amendment to the 2022 exemption such that it expressly applies to the disclosure within 40 working days following a decision by an airport to fix or alter a price that will cause a PSE (which would be due by 3 August 2023) under clause 2.5(1) of the ID Determination; and
 - 10.2 an amendment such that Auckland Airport has until 30 August 2023 to make all of the required disclosures under the entirety of clause 2.5 of the ID Determination.
11. The request was made as a result of Auckland Airport identifying a potential alternative interpretation of the 2022 exemption, specifically, that the 2022 exemption could be read as only applying to the requirement to disclose within five consecutive years of the previous disclosure under clause 2.5(1) of the ID Determination (which would otherwise be due 1 August 2022), and not the requirement to disclose within 40 working days following a decision by an airport to fix or alter a price that will cause a PSE (which is due by 3 August 2023).
12. Auckland Airport's working interpretation of the 2022 exemption had been that the exemption covered both the five consecutive years, and the 40 working days requirements under clause 2.5(1) of the ID Determination. This was also the Commission's intention in granting the 2022 exemption.
13. Auckland Airport had also planned to disclose all the disclosure materials under clause 2.5 of the ID Determination (clause 2.5(1), 2.5(3) and 2.5(4)) at the same time (by 30 August 2023). The 2022 exemption only applies to disclosures under clause 2.5(1) of the ID Determination, and so disclosures under clauses 2.5(3) and 2.5(4) of the ID Determination are currently due by 3 August 2023.

Legal framework

14. Clause 2.9(1)(a) of the ID Determination allows the Commission, by written notice to an airport, to grant an exemption from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies in that notice. Furthermore, clause 2.9(1)(b) of the ID Determination gives the Commission the power to amend or revoke any such exemption.

⁴ Auckland International Airport Limited, *Exemption for Auckland International Airport Limited information disclosure for the price setting disclosure granted on 28 July 2022 – request for confirmation or amendment*, dated 21 July 2023.

Exemption amendment decision

15. Having considered Auckland Airport's request, by this notice, under clause 2.9(1)(b) of the ID Determination, we have decided to amend the 2022 exemption by:
 - 15.1 replacing the text "*by 1 August 2022*" in paragraph 9.1 with "*either within 40 working days following a decision to fix or alter a price that will cause a price setting event, or within five consecutive years of the airport's previous disclosure under clause 2.5(1)*";
 - 15.2 inserting a new paragraph as paragraph 9.2 stating "*The Commission also exempts Auckland Airport from the requirement under clauses 2.5(3) and 2.5(4) of the ID Determination to disclose the information required by these clauses, within 40 working days following a decision to fix or alter a price that will cause a price setting event.*"; and
 - 15.3 replacing the text "*clause 2.5(1)*" in the current paragraph 9.2 (amended to paragraph 9.3) with "*clause 2.5*"; so that instead, paragraphs 9 – 9.3 read:
 - 9 Therefore, under clause 2.9 of the Airport ID Determination, the Commission grants Auckland Airport the following exemption for the Price Setting Event disclosure for the pricing period starting 1 July 2022.
 - 9.1 The Commission exempts Auckland Airport from the requirement under clause 2.5(1) of the Airport ID Determination to disclose, **either within 40 working days following a decision to fix or alter a price that will cause a price setting event, or within five consecutive years of the airport's previous disclosure under clause 2.5(1)**, information relating to its forecast total revenue requirement.
 - 9.2 **The Commission also exempts Auckland Airport from the requirement under clauses 2.5(3) and 2.5(4) of the ID Determination to disclose the information required by these clauses, within 40 working days following a decision to fix or alter a price that will cause a price setting event.**
 - 9.3 This exemption is granted on the condition that Auckland Airport discloses the information required by **clause 2.5** of the Airport ID Determination by 30 August 2023.
16. The reasons for granting the 2022 exemption are outlined in the exemption notice and still apply to this amendment.⁵
17. Regarding the amendment described in paragraph 15.2 of this notice, we consider that it is reasonable that all disclosures under clause 2.5 of the ID Determination be made at the same time, by 30 August 2023.

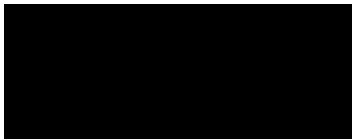
⁵ Details of the 2022 exemption can be found in the exemption notice, available [here](#) on our website.

18. We have considered the impact of the exemption amendment on the purpose of ID under section 53A of the Commerce Act 1986 and have concluded that the purpose will still be met if this exemption, as amended, is granted.

Further information

19. This exemption may be revoked or further amended by the Commission at any time in accordance with clause 2.9(1)(b) of the ID Determination.
20. A copy of this exemption response letter will be published on the Commission's website.
21. If you have any questions regarding this matter, please contact Ali Scholes at infrastructure.regulation@comcom.govt.nz.

Yours sincerely



Vhari McWha
Commissioner