

4 October 2021

Attn: Adam van Lohuizen
Head of Economic Regulation and Pricing
Auckland International Airport Limited

By email only: adam.vanlohuizen@aucklandairport.co.nz

Dear Adam,

Response to Auckland International Airport Limited's request for an exemption from disclosure requirements under the Airport Services Information Disclosure Determination 2010

1. We write in response to Auckland International Airport Limited's (**AIAL**) letter on 15 March 2021 requesting the Commission:
 - 1.1 provide an exemption from the requirement under clause 2.4(2) of the Airports Services Information Disclosure Determination 2010 (**ID Determination**) to June 2022; and
 - 1.2 consider the mitigating circumstances, outlined in the letter, as it deliberates on how to respond to the compliance matter.
2. We respond to your exemption request below. We outline the background and the basis against which our decision is made.

Background

3. Under clause 2.4(1) of the ID determination, within five months after the end of each disclosure year, every airport regulated under Part 4 of the Commerce Act 1986 (**Act**) (**regulated airport**) is required to disclose information relating to the quality of its specified airport services.
4. Clause 2.4(1)(a)(iv) requires the disclosure of the *Report on Passenger Satisfaction Indicators* set out in Schedule 14, and clause 2.4(1)(b) requires the public disclosure of those reports.

5. Under clause 2.4(2) of the ID Determination, every three months, every regulated airport must complete a passenger satisfaction survey for:
 - 5.1 passengers about to board a domestic flight (**domestic surveying**);¹ and
 - 5.2 passengers about to board an international flight (**international surveying**).²
6. On 31 March 2020, through our powers under clause 2.9(1)(a) of the ID Determination, the Commission granted regulated airports (including AIAL) an exemption from:
 - 6.1 the requirement to complete a passenger satisfaction survey in accordance with clause 2.4(2) of the ID Determination, for the first two quarters of calendar year 2020; and
 - 6.2 the requirement to publicly disclose the associated Passenger Satisfaction Indicators for those quarters in Schedule 14 of the ID.³

Current Exemption Request

7. On 15 March 2021, AIAL requested a further exemption from requirements to complete international surveying and publicly disclosing the associated passenger indicators, as required under clauses 2.4(1)(a)(iv), 2.4(1)(b) and 2.4(2)(b), until June 2022.
8. AIAL presented the view that COVID-19 (**Covid**) continues to have a substantial effect on its operations, and as such, has impacted its ability to measure international passenger satisfaction.

Exemption granted

9. The Commission considers it appropriate to grant AIAL an exemption from 1 July 2021 for the reasons outlined below.

¹ Airport Services ID Determination 2010 (consolidated 18 June 2019), clause 2.4(2)(a), page 67.

² Ibid, clause 2.4(2)(b).

³ The exemption issued to AIAL on 31 March 2020 can be found [here](#) on the Commission's website.

10. We acknowledge the airports industry continues to deal with the effects of Covid. As such, we understand the regulated airports are struggling to meet the surveying requirements of passengers boarding international flights for several reasons, including:
 - 10.1 an unclear path to recovery for international tourism;
 - 10.2 health and safety considerations relating to field workers and data collection; and
 - 10.3 the volume of international passengers remains very low compared to pre-Covid levels and as such, robust sampling of data may not be possible.
11. Earlier this year, the New Zealand government implemented a 'Trans-Tasman bubble' with Australia to support the recovery of international tourism. Due to multiple outbreaks of Covid in recent months, periodic and regional lockdowns continue to be put in place across Australia and New Zealand. As such, it is likely to be some time before the industry can return to a normal operating environment.
12. We understand, since the previous exemption expired, AIAL has not completed international surveying and publicly disclosed the associated passenger indicators due to health and safety concerns. Further, AIAL implies that even if these surveys were carried out, the relatively small number of respondents would make it difficult to undertake robust sampling of data.
13. We agree that, based on the limited volume of international travellers, the dataset of international passengers is likely to be too small to enable sampling measures that would result in an accurate representation of the population.
14. We consider that, under these circumstances, the purpose of ID is currently unable to be fully met because of insufficient passenger numbers, and the passenger satisfaction data being unavailable as a result of Covid.
15. Under clause 2.9(1)(a) of the ID determination, by this notice, the Commission grants AIAL an exemption from:
 - 15.1 the requirement to complete a passenger satisfaction survey in accordance with clause 2.4(2)(b) of the ID Determination for international surveying, for the quarters starting 1 July 2021 and ending 30 June 2022; and
 - 15.2 the requirement to complete and publicly disclose the associated Passenger Satisfaction Indicators for those quarters in Schedule 14 (*Report on Passenger Satisfaction Indicators*) of the ID Determination.
16. We notified AIAL staff of the decision via e-mail on 31 August 2021.

Our expectations

17. AIAL's request arrived on 15 March 2021 with the exemption requested to take effect from 1 April 2021 (Q2 of calendar year 2021), after Auckland moved to alert level 3 on 28 February 2021.
18. As set out in our administrative guidance⁴ parties should not presume in advance that exemptions will be granted, and short notice requests reduce the scope for the Commission to grant any requested exemption. However, we recognise that the on-going effects of Covid-19 on the industry may have impacted the regulated airports' ability to submit exemption requests in a timely manner.
19. The Commission does not provide an exemption where non-compliance has already occurred i.e. a retrospective exemption. Where non-compliance occurs, the Commission considers this in line with our enforcement criteria, which are extent of harm, seriousness of conduct, and public interest.⁵
20. We expect AIAL to closely monitor international travel volumes and to keep us informed of any change in circumstances that may allow them to re-instate international surveying when reasonably practicable.

Further information

21. 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.
22. A copy of this exemption response letter will be published on the Commission's website.
23. If you have any questions regarding this matter, please contact Rhys Williams at rhys.williams@comcom.govt.nz.

Yours sincerely



Sue Begg
Deputy Chair

⁴ Our administrative guidance for exemption requests can be found [here](#) on the Commission's website.

⁵ More information about our Enforcement Criteria can be found [here](#) on the Commission's website.