

10 October 2024

Regulation Branch
Commerce Commission of New Zealand
Wellington

By email: infrastructure.regulation@comcom.govt.nz

Re: Review of Auckland Airport's 2022-2027 Price Setting Event – Cross submission

Thank you for the opportunity to cross submit with reference to the views of interested persons regarding the Draft Decision of the Commerce Commission on prices set by Auckland International Airport Limited (AIAL) for Price Setting Event 4 (PSE4). The Board of Airline Representatives New Zealand (BARNZ) represents 25 member airlines, all operating services to and from Auckland Airport. On behalf of our member airlines, BARNZ meets the definition of substantial customer. We note that some of our members will make independent submissions to this consultation process

Submissions demonstrate price consultation has not appropriately concluded

BARNZ has read with interest comments made by substantial customers Qantas Group and Air New Zealand. As consultation with substantial customers is conducted individually, and under individual non-disclosure agreements (NDAs), this material was the first BARNZ had seen setting out the depth of engagement, the range of proposals, and the specific withdrawals of support for the capital plans proposed by AIAL.

This material should have been more widely available in the consultation process. Despite the commercial sensitivities between airlines, it would be good practice for views of substantial

customers to be shared in the consultation process. In this way, parties could work together to design capital planning solutions – together with border agencies and Airways New Zealand. NDAs insisted on by AIAL have limited complete consultation and have stymied the ability of airline customers to work with AIAL to problem solve and solution find together.

As well as necessary consultation with airlines as substantial customers, BARNZ is concerned that AIAL is not consulting sufficiently with Airways New Zealand and with border agencies. Airways New Zealand and border agencies are not substantial customers of AIAL – but they are essential system participants. The needs of those agencies and state-owned enterprises do impact capital planning. While these parties do participate in ‘MACPAC’ consultative meetings, BARNZ is not aware that they are provided with detailed and costed plans, make written submissions to those plans, or sign off proposals.

The Ministry of Transport is currently consulting on operational policy for Regulated Aeronautical Spatial Undertakings (RASUs) as will be a feature of the Civil Aviation Act 2023 when enacted early in 2025. These RASUs essentially require airports to take into account the spatial needs of border agencies when making capital plans and allow enforceable undertakings to ensure space *is* provided for those agencies. It is a shame that New Zealand has had to further legislate to ensure that consultation with border agencies occurs, and requests for space are complied with – consultation with border agencies and SOEs such as Airways New Zealand should happen without legislative direction.

Given the settings in the New Zealand system, AIAL does not feel costs that may arise from urgent infrastructure change via RASU or as might be required by parties such as Airways New Zealand. Costs for any ‘knock-on’ capital investments are passed to airlines. Until the RASU regime is in effect border agencies cannot ensure they have sufficient space for efficient passenger screening. BARNZ concludes there is insufficient incentive for New Zealand’s largest airport monopoly airport to consult effectively with airlines, border agencies or SOEs in designing infrastructure that airlines will fund and border agencies and SOEs must work with.

BARNZ supports Qantas' call for an independent party to resolve design needs and options. Should the Commission consider a s56 Inquiry a best next step, that Inquiry could consider options for further regulation which would appoint an independent party as arbitrator (as under negotiate arbitrate) or as independent verifier (as under individual price path regulation).

Impact of AIAL's commercial developments on PSE4 prices should be considered

Given regulatory settings, this PSE4 review does not include consideration of AIAL's commercial developments. Despite the settings of the regulatory and commercial tills, AIAL should not be able to impose significant commercial infrastructure on its aeronautical precinct such as has occurred with the opening of the outlet mall in recent weeks. This commercial infrastructure has impacted aeronautical prices. BARNZ asks that the Commission's review of PSE4 carefully consider allocation of roading cost of airlines which is in pursuit of outlet mall connectivity. Airlines fund 70% of precinct roading under an allocation mechanism designed by AIAL. Proposals made by BARNZ during consultation to reduce this to 50% allocation in line with AIAL's commercial and aeronautical income splits were declined. BARNZ contends that the roading development which takes traffic to the new outlet mall serves a 100% commercial purpose.

BARNZ notes that it is essential that commercial developments by AIAL are considered in the context of what should be the primary service provided – the aeronautical service. The imposition of a mega-outlet mall on the precinct is a step change from AIAL's usual property development. The outlet mall permanently drives retail traffic toward the precinct according to retail peaks. It is essential that commercial developments AIAL chooses to make are considered for possible impact on aviation.¹ Under current settings, there is no oversight of commercial developments. As the Commission considers next steps for regulation for AIAL, it may wish to consider information disclosure reporting on substantial commercial developments which impact the provision of aeronautical services.

¹ This includes potential impact to Airways, and to all obligations to the Civil Aviation Authority (and Avsec) as Part 139 holder. For example, Part 139 includes obligations to protect and allow for air traffic control.

PSE4 Review should consider other regulated services

Airlines have recently received notice of new office lease costs for spaces inside the Transport Hub, at prices which are up to 300% higher than extant office lease arrangements. These other regulated services have not (so far as BARNZ is aware) been considered by this PSE4 Review, despite being noted as worthy of further examination during the Commission's PSE3 Review. Airline members of BARNZ consider they have limited bargaining power in requesting variations. BARNZ would welcome examination of AIAL's other regulated services – or inclusion of these in the scope of a s.56 Inquiry considering options for further regulation of AIAL.

Comments in response to submissions on cost of capital

BARNZ appends an independent report from TDB Advisory who have prepared a cross-submission on the cost of capital matters. BARNZ considers that the approach taken by Christchurch International Airport (CIAL) remains the most appropriate course – described as scenario one by the Commission. This approach is based on the 2016 Input Methodologies which applied at the time that AIAL applied its period and struck prices.

Comments in response to submissions from New Zealand Airports Association (NZAA)

NZAA submits seeking guidance on what innovation is, as innovation is a requirement of information disclosure regulation.² BARNZ considers that guidance on innovation should not be necessary. By its nature innovation can include any novel way of efficiently providing consumer benefit. BARNZ submits that innovation can include both practical innovations and can also include novel approaches to pricing. This might include long run price paths introduced with support from AIAL's commercial till, as BARNZ proposed during price consultation.

BARNZ disagrees that analysis of PSE5 capex and pricing is speculative.³ The capital plan decided on by AIAL despite the clearly communicated views of substantial customers, and that AIAL publicly committed to while price consultation was on foot, will unavoidably impact pricing for PSE5 and likely PSE6. Indeed, AIAL shared information about this capex and pricing with airlines as part of price consultation. It is on the basis of information provided to airlines during price consultation

² NZAA submission, page 4

³ NZAA submission page 5

that analysis including PSE5 impact has been carried out. Capital works undertaken in PSE4 commit all system participants to impacts to delivery and cost of air services in PSE5 and beyond. Analysis of PSE5 capex and pricing is not speculative; the impact is very real.

BARNZ notes that NZAA struggled to understand how proposed price impacts by AIAL would impact demand. As it has now been provided with unredacted access to the BISOE Domestic Demand studies, including the methodology for assessment, results, and peer reviews of this study, we look forward to their further comments on demand destruction anticipated for other airports across New Zealand.

BARNZ notes that its members do not oppose investment, as claimed by NZAA.⁴ Rather, BARNZ members consider the capital costs proposed for PSE4 and PSE5 to be too expensive, and that paying for these will impact demand for air services - with the greatest impact felt by domestic and Tasman air services.

BARNZ also notes that despite the scale of the investment, the additional capacity delivered for international airlines is too low – we see only four additional contact gates over two price periods, and no particular increase in check-in space, for example. Conversely, BARNZ supports comments made by Air New Zealand, Qantas and IATA, who consider that the integrated international / domestic jet space delivers far too much headhouse space for domestic jet passengers than that operation needs.

BARNZ disagrees with NZAA when it says⁵ that AIAL was simply applying and updating the 2016 Input Methodologies in setting its returns. It is clear to everyone (including the Commission as set out in its Draft Report) that AIAL chose inputs to the cost of capital calculation that conflict with one another, and which serve no other purpose than to generate uplift. That said – given the weak regulatory settings for AIAL, it would be more surprising if AIAL **had not** targeted excess profit. Over several price periods, AIAL has taken the approach that it should set a high target return, and then allow the Commission to set an acceptable WACC parameter, to which it makes partial steps toward

⁴ NZAA submission, page 6

⁵ NZAA submission, page 6

in a price reduction. It is BARNZ's position – as also stated by others in submissions – that the information disclosure regime is no longer effective in ensuring AIAL does not target excess profits.

BARNZ considers that NZAA's submission noting how happy it is with the Commission's assessment of AIALs capital plan as further evidence that the regulatory regime is insufficient. When the regulated airport and the industry body are pleased with the regulator's assessment of the capital plan, despite that the plan represents the most expensive infrastructure investment New Zealand has ever made and that the payers for that infrastructure consider the cost will damage demand for air services – something is wrong.

Further - The Commission's assessment of the capital plan in the draft report was not informed by the BISOE demand studies as have now been provided by BARNZ. This evidence of demand impact should give the Commission pause for thought as to the long-term impact of such a high-cost capital plan.

Comments in response to submissions from Local Government New Zealand (LGNZ)

BARNZ welcomes the submission from LGNZ which correctly calls out the impact across New Zealand from rising prices at the Auckland Airport super-monopoly. Prices for PSE4 include the domestic jet terminal, which is to be integrated into the international terminal, as well as for investment into services like wastewater, roading, and tarmac capital planning.

BARNZ hopes LGNZ is aware that PSE4 prices do not yet include prices for the upgrade required to the current domestic (future regional) terminal, which will need to be made serviceable for regional flying moving forward. This terminal will still be a walk (or bus ride) away from the integrated jet/international terminal, and costs of this project are yet to be decided or communicated in detail.

Comments in response to submissions from the International Air Transport Association (IATA)

BARNZ supports IATA's call for open multi-lateral consultation on airport investment plans. It is only at this stage in the process of Commission Review that BARNZ is becoming aware of the range of information that has been submitted to AIAL during price consultation. Clearly this information included alternative options for terminal development, and statements by substantial customers

withdrawing support for current plans. NDAs in place meant that BARNZ was not aware of this information as it was shared.

We note comments from IATA stating that it cannot assess whether consultation has been sufficient from information disclosed – BARNZ suggests that individual customers of AIAL are in a similar position, with only their own bilateral viewpoint. Again, and not to overstate the point, but multilateral consultation should also involve border agencies who must operate in the airport precinct, and SOEs such as Airways New Zealand who are responsible for air traffic control.

Comments in response to submissions from Christchurch International Airport Limited (CIAL) and Airlines for Australia and New Zealand (A4ANZ)

BARNZ supports CIAL's call to be included in airport pricing comparisons. Indeed, CIAL is the only alternative for some air services to New Zealand. It has recently grown its market share of air services to New Zealand, competing with AIAL successfully on both price and quality. If the Commission includes CIAL in such comparator lists, this might encourage AIAL to compare itself with CIAL. Recent offers of office leases to airline members of BARNZ at AIAL's Transport Hub have also been benchmarked on Melbourne and Sydney Airports rather than the more obvious New Zealand based comparator, CIAL.

We also support comments by A4ANZ cautioning comparison of AIAL price with Australian airports, which operate under an even weaker monitoring regime than offered by Information Disclosure. It is likely these prices include a portion of excess profit taking as A4ANZ set out.

Comments in response to submissions from the Anonymous Submitter

Finally, BARNZ would like to thank the Anonymous submitter. While airlines, airports, and other regulated monopolies are keen participants in the Commerce Commission's process, it is the intention of the process that any interested person can participate. The observations made by Anonymous are exactly right – the evidence of excess profit taking is plain to see, and AIAL would do well to realise that the costs it is currently imposing on airlines and their customers are too great.

Final remarks

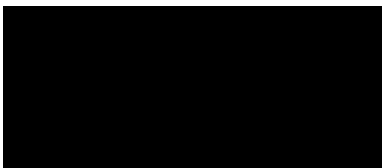
These submissions draw to a close airline, airport and interested persons submissions on the Commerce Commission's Review of AIAL's Price Setting Event 4. It's been a long process, and BARNZ thanks the Commission for its work to date, and to come.

Following AIAL's first formal consultation papers shared with airline customers early in 2022, AIAL imposed prices on its customers on 1 July 2023. The Commission's review commenced with a Scope and Issues Paper in November 2023. Today is 10 October 2024. As AIAL has already stated, it is likely to lower prices following the Final Report of the Commission – if a finding of excess profits is made. Any price reduction will apply for the remainder of the PSE4 period, from 1 July 2025 to 30 June 2027.

From at least July 2026 airlines will enter formal consultation on capital costs and prices for Price Setting Event 5 (PSE5). And so the merry-go-round will continue, with split consultation in secret, exclusion of border agency and Airways views leading to congestion and catchup spend, inefficient capital cost, aeronautical benefits to the commercial business which are not returned, and inevitably imposition of higher prices including excess profits on 1 July 2027. We can expect a Commission Draft Report describing those excess profits during 2028. And around and around we go.

The Information Disclosure regime which purports to regulate AIAL is ineffective. We cannot continue like this. It's time to look at whether there's a better way of doing things, that delivers better outcomes for consumers and ensures timely investment such that the capital catch up of infrastructure investment now necessary cannot occur again. It's time for a section 56 Inquiry.

Ngā mihi nui



Cath O'Brien

Executive Director

Board of Airline Representatives New Zealand