

24 April 2014



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Commerce Commission
Wellington

By email to: regulation.branch@comcom.govt.nz

Dear Ruth,

WIAL submission to commission on s 56G process - 24 April

We appreciate the opportunity to comment on the process undertaken by the Commission to complete its reviews of the effectiveness of the information disclosure regime (*ID Regime*), for Wellington, Auckland and Christchurch airports, required by s 56G of the Commerce Act (s 56G Reviews).

We understand that the Commission is only seeking views on the process aspects of its s 56G Reviews: requesting feedback on what worked well, what could be improved and how improvements could be made. We provide the following views on this basis.

Overall, WIAL found the process to be well-managed, with an appropriate level of engagement by Commission staff within the parameters of the process established by the Commission. The specific airport sector focus was beneficial to the overall utility of the process. However, some important improvements could be made to enhance the contribution that future Commission reviews will make to the ongoing development and effectiveness of the ID Regime.

WIAL considers that the s 56G Reviews are part of the Part 4 ID Regime which is intended to facilitate open dialogue and feedback between the airports, the Commission, and other interested parties. The s 56G Reviews provided the Commission's first feedback on its views of airport performance, and in particular their achievement of the Part 4 objective, and consequently the first opportunity for the airports, the Commission, and other interested parties to engage in further dialogue once the Commission's views were known.

At times during the WIAL s 56G Review the opportunity to make this feedback loop work effectively suffered from tight deadlines and an inability for WIAL to engage with the Commission in a full conversation about expectations and perspectives on various issues. WIAL considers that earlier and more open dialogue would have enhanced the outcomes from the process for all involved.

Process commencement

Because WIAL was 'first cab off the rank' in the s 56 Review process this put WIAL under particular pressure to provide informed submissions to the Commission throughout the WIAL Review. From our perspective, the timing of the WIAL s 56 Review was unexpected; our understanding of the new regime was that some section 53B analyses would have been completed prior to the Commission engaging in the s 56G Review process. WIAL's initial engagement would consequently have benefited from earlier communication by the Commission of its intention to undertake the s 56G Reviews when it did, and the form that the Reviews would take. For example, this might usefully have occurred immediately following the initial information disclosures.

WIAL would advocate for such earlier and more open communication to take place in relation to future Commission processes, and in particular the summary and analysis reports to be prepared under s 53B. For example, we would welcome an initial meeting on the Commission's proposed approach for the s 53B reports which we understand are to be undertaken later this year.

As a general point, WIAL considers that more regular meetings with the Commission throughout the s 56G Review process would have been beneficial in terms of facilitating meaningful engagement by WIAL in respect of the Commission's preliminary views. A good example of where further meetings between WIAL and Commission staff could have enhanced the process is discussion of the Commission's approach in respect of the evaluation of operating costs and investments. WIAL could have assisted the Commission to understand in greater depth the particular issues at Wellington Airport and therefore enable the Commission to have further developed its conclusions in these areas, compared to those expressed in the final report for WIAL.

Conferences

WIAL supports the use of conferences by the Commission as part of its review and consultation processes, and the conferences in the s 56G Reviews were generally well received. WIAL found the conferences to be a useful and more informative way to exchange views and probe matters than sometimes occurred through written exchanges.

However, WIAL was again at a disadvantage by being the first airport to have a conference as part of the s 56G Reviews. The conferences became more constructive as they progressed through the three airports, because the airports became more informed about the Commission's views as each of the Reviews were progressed.

In recognition of WIAL's position as the first conference subject, we suggest that it would have been helpful for the Commission to enter into earlier and more direct dialogue with WIAL prior to the conference itself. This would have allowed WIAL to prepare for the conference in a more focussed and informed way, and for all participants to have made the best use of discussions at the conference.

The conferences themselves could have been further enhanced by enabling the dialogue to be two-way: that is, incorporating a specific ability for participants to question the Commissioners/ Commission staff on some issues and proposed approaches. Overall, WIAL believes two-way



dialogue would strengthen the feedback loop between the airports and the Commission, and ultimately enhance the effectiveness of the ID Regime.

Analytical model

In WIAL's view the Commission's analytical models were well laid out and appropriately explained in briefing sessions.

Process updates

The Commission's process updates were generally timely and informative, but could have been commenced earlier. The more warning that the airports receive of regulatory reviews the better, as this enables more fulsome engagement. Short time frames make proper and useful engagement more difficult to achieve.

Analyst briefings

WIAL supports the Commission's use of analyst briefings to better inform the wider business community about Commission processes, and its views and approach to various issues.

This aspect of the process could be enhanced for other reviews by earlier communication with the airports about the information the Commission intends to release to market prior to a briefing. WIAL's experience in the s 56G Review process was that the Commission released information to market about an hour prior to each analyst briefing which necessitated urgent review, familiarisation and response by WIAL – to the NZX or via press release as appropriate. Earlier forewarning of the content of the information to be released would allow the airports to better respond and/or meet their market disclosure requirements.

This forewarning would itself sensibly occur in confidence (i.e. subject to embargo for a specific time period) so as not to trigger wider pre-briefing disclosure requirements.

Areas of interest on s 56G consultation

- Availability

WIAL's experience during the s 56G Reviews was that Commission staff were available, professional and helpful provided that the engagement with them was consistent with the approach required by the Commission. That is, WIAL had the opportunity to provide information or comment on issues that it considered beneficial however dialogue was not undertaken on any preliminary views reached by the Commission.

- Clarity of documents

In general, WIAL found the reasoning provided by the Commission in its reports well laid out and clear. We found the discussion in the s 56G Review reports most useful where specific examples were used to support findings or elaborate points.



We appreciate that, as a result of the Commission starting its Reviews after information disclosure had only been operating for a short period of time, it was therefore difficult for the Commission to draw specific conclusions in some areas. For WIAL, the main examples were in relation to whether information disclosure was effectively promoting improvements in operating efficiency, efficient investment, and the sharing of efficiency gains with customers. WIAL suggests the Commission could provide guidance in relation to the types of behaviour or empirical evidence it would look for to enable conclusions to be formed in any future reviews.

- *Enough opportunities to be heard?*

Participants were given a number of opportunities to make submissions during the s 56G Reviews. The extent of opportunities to engage with the Commission was not a concern for WIAL. Rather, as we have commented above, WIAL would have liked greater opportunity to engage in two way dialogue with the Commission' on its preliminary views. This would have enabled more fully informed views to be established by the Commission.

- *Length of time*

WIAL considers that the timeframes for consultation on the draft s 56G Review report for WIAL, including the periods for submissions and cross-submissions, were very tight. The issues under review were fundamental to WIAL's business and commanded full engagement within WIAL before a considered response could be made. WIAL found it very difficult to engage in discussion with its advisers, prepare draft responses or submissions, and provide its directors with enough time to consider and provide any feedback on those responses within the timeframes allowed by the Commission.

By way of contrast, WIAL has been given over a month to provide this comment on the process the Commission adopted for the s 56G Reviews, which is longer than we had during the Review process itself to provide submissions on the approximately 150 page draft report which covered an expansive range of topics.

Other areas of observation

The Commission has made a number of other observations in its consultation paper to which WIAL responds as follows:

Commission observation: *Profitability analysis needs to be significantly tailored to different airports' approaches.*

WIAL response: This is appropriate as different pricing strategies and signals may be needed at each airport due to differences in:

- the composition of the market at each airport,
- the competitive landscape at the airports, particularly in terms of the extent of competition between airlines,



- site characteristics, scale and location among others, that influence efficiency and utility for passengers; and
- the stage of each airport's investment life cycle.

The information disclosure regime is designed to inform people about airport performance, not to prescribe standard airport pricing approaches and commercial strategies, and it is important that the regulatory process does not curtail the airports' commercial drive to facilitate increases in passenger numbers and competition between airlines.

Commission observation: *Refinements to information disclosure requirements could make disclosures more transparent and assist future summary and analysis.*

WIAL response: WIAL is fully supportive of increased transparency but is not in a position to comment more than this at present as we have had no feedback from the Commission on its disclosures to date.

Commission observation: *There may be a limit to the effectiveness of information disclosure where airports take a pricing approach not explicitly contemplated by the regime.*

WIAL response: WIAL disagrees strongly with this observation by the Commission. The input methodologies do not include pricing methodologies for airports to be used as part of the information disclosure regime. This was a deliberate decision by Parliament, and in this context it is evident that the regime contemplates full pricing flexibility for the airports. The regime requires that airports disclose and explain their pricing approaches only, not to take any particular pricing approach contemplated by the regime (of which there are none).

This observation by the Commission would appear to highlight a key difficulty with the Commission's current approach if this is applied to evaluation of the airports performance over the longer term. While the ID Regime requirements are homogenous between airports, the airports do not offer a homogenous product. The Commission's monitoring of the ID Regime must ensure that it recognises each airport's approach to pricing and other airport specific characteristics, and is not simply a review of airport published information, and a profitability analysis, within a one size fits all or standardised framework. It is possible that airports could in fact be discouraged from appropriate commercial behaviours that will benefit consumers if a standard regulatory context were required.

This key aspect in fact further demonstrates the importance of ongoing dialogue between airports and the Commission to ensure that the relevant differences at each airport are fully understood by the Commission.

Commission observation: *Summary and analysis after future pricing reviews should include more in-depth analysis of an airport's performance in relation to targeted profitability.*

WIAL response: WIAL's only observation at this stage is that the Commission needs to ensure it does not simply review discrete pricing periods. Its focus must be on airport performance over the



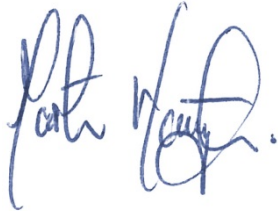
long term, consistent with the wording of the Part 4 objective. WIAL cannot offer more comment until it has further information on the Commission's intended approach to preparation of the summary and analysis reports.

Possible amendments to the IMs

The Commission has asked for suggestions as to possible amendments to input methodologies. In WIAL's view, any review now of the input methodologies is premature. The information disclosure regime remains in its early days and needs time to bed in for airports before any review is undertaken. The airports need to see (and respond to) the Commission's summary and analysis reports over a period of time before any meaningful review or amendment should occur.

We are happy to discuss any of the comments we have provided above with the Commission.

Yours sincerely,



Martin Harrington
Chief Financial Officer

