

14 June 2012

Dr Mark Berry
Chair
Commerce Commission
P O Box 2351
Wellington

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

Dear Dr Berry

Airport Services – s 56G Reports, Process and Issues Paper 31 May 2012

1. The New Zealand Airports Association ("NZ Airports") acknowledges that the Commission is required to undertake a review of the information disclosure regime under section 56G of the Commerce Act. However, the Association has significant concerns with the proposed process and timetable outlined by the Commerce Commission ("Commission") in its Process and Issues Paper, released on 31 May 2012. Auckland International Airport ("Auckland Airport"), Wellington International Airport ("Wellington Airport") and Christchurch International Airport ("Christchurch Airport") (together "Airports") have advised that they share NZ Airports' concerns.
2. NZ Airports and the Airports intend to make full submissions on the issues arising in the Process and Issues Paper. However, NZ Airports wishes to raise some initial concerns on which it seeks clarification to allow fully informed submissions to be made.
3. The current proposed timetable is, in our view, unnecessarily tight and is unworkable. NZ Airports sees no benefit from rushing what is an important aspect of the new Part 4 information disclosure regime, and because it is new, it is important to spend the time now to ensure the Commission's review and reporting process is robust and will achieve the stated statutory purpose. As you know, the Airports have been working hard to ensure that their disclosures are accurate to contribute to the effectiveness of the information disclosure regime.
4. NZ Airports requests that the responses on the Commission's Process and Issues Paper be separated into two distinct components, with the deadline for submissions from interested parties on process issues being extended to Friday, 20 July 2012 (with submissions on the substantive questions then to be scheduled at a later date).
5. NZ Airports believes an extension is necessary for the following key reasons.

Combining process and substantive issues is inappropriate

6. The Commission's Process and Issues Paper combines issues of process and substance. The Commission seeks feedback on its proposed review and reporting process, but simultaneously requests substantive responses from interested parties on the questions relating to Wellington Airport's disclosure and pricing consultation ("**Wellington Airport questions**").
7. NZ Airports believes that it is not reasonable to seek responses to the Wellington Airport questions until it can be ascertained that those questions are in fact the right questions to be asking. Interested parties ought to be given the opportunity to submit on the proposed process

and scope of the review prior to the Commission requiring substantive responses to be provided, not at the same time. Even if it was considered appropriate for the Commission to adopt a combined approach, it is simply not feasible for the Airports, in particular Wellington Airport, to provide this information within such a short time frame. In this regard, NZ Airports strongly recommends that responses to the Wellington Airport questions (Appendix A of the Process and Issues Paper) follow submissions on the process aspects of the Process and Issues Paper as it may well be that the WIAL questions are required to be changed or reframed as a result of the submissions on process.

8. If the Commission agreed to alter its approach in this way, it would provide greater comfort that the Commission is open to changing the process and scope of the review in response to submissions.
9. It would be helpful to receive clarification on whether the Commission is willing to adopt this approach prior to making submissions on the Commission's proposed process.

Commission's summaries and analyses have not been published

10. NZ Airports is concerned that the Commission is intending to commence its statutory review of Wellington Airport before it has published its summaries and analyses of the information that the Airports have disclosed in accordance with the information disclosure requirements ("**disclosure summaries**").
11. The requirement under section 53B(2) is that the Commission "must" provide disclosure summaries "as soon as practicable" after any information is publicly disclosed. In NZ Airports' view, the legislation therefore envisages at least some disclosure summaries being available prior to the Commission commencing its section 56G review. It was certainly the Airports' expectation that there would be published disclosure summaries of the Airports' disclosures to date available in advance of any review. NZ Airports believes that where it is possible to provide disclosure summaries, these should be published before any review is commenced.
12. Further, NZ Airports does not understand how the Commission can interpret the requirement in section 56G as requiring review and reporting now (only several months after Wellington Airport's price setting event), while the Commission has not published its disclosure summaries for the historical price setting disclosures, which were published in October last year, and the annual disclosures, which have been published in 2012. Wellington Airport's first annual disclosure was published in February 2012 while Auckland Airport and Christchurch Airport published their first annual disclosures in May.
13. As interested parties have not had the opportunity to consider the Commission's disclosure summaries, NZ Airports therefore believes it is premature to require feedback on the substantive issues raised in the Process and Issues Paper, namely the Wellington Airport questions.
14. The Commission is silent on the absence of the disclosure summaries in its Process and Issues Paper. NZ Airports therefore seeks clarification from the Commission of when the disclosure summaries will be published and how these disclosure summaries, and feedback on them from the Airports, will be factored into its section 56G review.
15. Once that clarification is provided, NZ Airports will be able to make a fully informed submission on the Commission's proposed process.

Timetable proposed is unreasonable

16. The Commission has published a very tight timetable. In proposing this timetable, NZ Airports can only conclude that the Commission has incorrectly presumed that the Airports either:
 - have sufficient available resource to respond to the Commission's requirements immediately upon receipt of these;

- can immediately reassign resources from other work to prioritise responses to the Commission; or
 - need not provide comprehensive submissions to the Commission.
17. During the proposed period for this review, all the Airports are engaged in other regulatory or pricing matters, including:
- Price setting disclosure and annual financial reporting (Auckland Airport) followed by 2012 annual information disclosure;
 - Annual information disclosure (Wellington Airport); and
 - Airport Authorities Act pricing consultation, price setting disclosure and annual financial reporting (Christchurch Airport) followed by 2012 annual information disclosure.
18. The imposition of a tight timeframe within which to respond to the Process and Issues Paper without advance warning, in combination with the other regulatory demands detailed above, has provided the airports with insufficient opportunity to plan their resourcing to meet the 22 June deadline.
19. Aside from the clear resourcing constraints, NZ Airports considers that the timing of the review also has the potential to unduly prejudice the review of some Airports over others. While Auckland Airport and Wellington Airport have concluded their pricing consultation, Christchurch Airport is still consulting on its pricing. NZ Airports is therefore concerned that the timing of the Commission's review is problematic given the proposed focus on assessing the pricing consultation process and resulting decisions.

Conclusion

20. Before NZ Airports is able to fully submit on the process matters raised in the Process and Issues Paper, we request the following clarifications:
- Whether the Commission agrees to separate the submissions on the process and scope of the review from the responses on the substantive issues in the review; and
 - Clarification from the Commission when it intends to release its disclosure summaries, and an explanation of how these summaries, including Airport comment on them, will be considered in the section 56G review process.
21. NZ Airports considers that the deadline for submissions should be extended to 20 July 2012 to allow interested parties to consider the implications of the Commission's response to the above clarifications. If the Commission agrees that the process should in fact be split into process and substantive matters, NZ Airports believes that responses to Appendix A of the Process and Issues Paper (which may need to be modified in response to submissions on the process and scope of the review) should follow submissions on the process aspects of the Process and Issues Paper.
22. NZ Airports believes that the proposed extension will help ensure that the Airports provide useful and informative submissions on the proposed scope and process of the section 56G review. NZ Airports are willing to meet with you if you wish to discuss our comments further. If so please contact me on 04 384 3217 or kevin.ward@nzairports.co.nz.

Yours sincerely



Kevin Ward
Chief Executive

