

**SUBMISSION ON THE COMMERCE COMMISSION'S
PROCESS AND ISSUES PAPER (AIRPORT SERVICES - SECTION 56G REPORTS)**

29 JUNE 2012

PART I: INTRODUCTION

1. This is Auckland International Airport Limited's ("**Auckland Airport**") submission to the Commerce Commission ("**Commission**") in response to the Commission's Process and Issues Paper, released 31 May 2012. The paper outlines the proposed process and timing for the statutory review of the information disclosure for specified airport services under section 56G of the Commerce Act 1986 ("**section 56G review**").
2. Auckland Airport is also a party to, and has contributed to the New Zealand Airports Association's ("**NZ Airports**") submission on the Process and Issues Paper ("**NZ Airports submission**"). The NZ Airports submission addresses the issues and concerns on behalf of the three regulated airports, Auckland Airport, Wellington International Airport ("**WIAL**") and Christchurch International Airport ("**CIAL**"). Auckland Airport's submission should be read in conjunction with the NZ Airports submission.
3. Auckland Airport has focussed this submission on the following key issues:
 - (a) The timing of, and process for the review and the report; and
 - (b) The scope of the review and the report, and in particular, the appropriate approach to assessing how effectively information disclosure is promoting section 52A of the Commerce Act ("**the purpose of Part 4**").
4. Auckland Airport's contact regarding the matters raised in this submission is:

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PART II: OVERVIEW

5. Auckland Airport acknowledges that the Commerce Act requires the Commission to undertake the section 56G review "as soon as practicable" after any new price for a specified airport service is set in or after 2012. However, Auckland Airport believes that it is far too early to fully understand the impact of the new information disclosure regime in terms of promoting Part 4 outcomes.
6. The information required to reasonably make such an assessment is simply not available at this time. It will therefore be challenging for the Commission to conduct the review in a fair and robust way. Auckland Airport therefore agrees with the Commission's observation that any conclusions it draws about historical performance "will be limited".¹

¹ Process and Issues Paper, paragraph 11.

7. Accordingly, it is important that the section 56G review is approached with a great deal of caution. The scope and objectives of the review need to be realistic, and above all, must be consistent with the statutory framework.
8. If the review seeks to do too much too soon, then it will inevitably be flawed and open to challenge. It would be very helpful for the Commission to more clearly state what can realistically be achieved under this review, to promote a more constructive and focussed engagement with interested parties.
9. Auckland Airport believes that the scope of the review as currently drafted goes beyond the proper bounds of an appropriately focused section 56 review. We encourage the Commission to reconsider its approach.
10. Our key concerns are as follow:
 - (a) The review comes too early in the life of the regime. The regime has only been in force for 18 months, following a design period of over two years. Meanwhile, the summaries of annual performance, to be prepared by the Commission, are not yet available. If the Commission seeks to judge the effectiveness of the information disclosure regime by assessing current airport performance, the review will be almost meaningless as the Commission will only be able to assess a "snapshot" of airport performances. We refer to the NZ Airports submission for a recommended timetable.
 - (b) The scope of the review does not sufficiently focus on information disclosed in accordance with the information disclosure requirements and what that information tells interested parties about airport performance. For example, it is concerning that the Commission believes it will require a wealth of extraneous information to judge the effectiveness of what is a very onerous information disclosure regime. Intuitively, the regime itself, which Auckland Airport works hard to comply with, should produce all relevant information.
 - (c) The way in which the Commission is proposing to assess the effectiveness of information disclosure by predominantly analysing the behaviour of parties in pricing consultation rounds suggests that the Commission incorrectly assumes that:
 - (i) the "effectiveness" of information disclosure regime depends on whether it has had an immediate impact on pricing decisions; and
 - (ii) it is appropriate to adopt input methodologies that have been established for monitoring purposes for setting aeronautical prices, without considering the full scope of pricing and without considering that in consulting with customers, the preferred outcome may not be consistent with the input methodologies.
 - (d) Auckland Airport therefore believes that whether airports are adopting the Commission's input methodologies for information disclosure for their pricing is the wrong question to ask as it places too much emphasis on the input methodologies and whether they are being used outside the information disclosure regime, rather than focusing on the information disclosure regime itself. Again, this is a product of the Commission going beyond what is required of it, and what is reasonably possible to achieve under this review.

- (e) The Commission's proposed assessment focuses disproportionately on assessing whether the last objective of the Part 4 purpose, to limit excessive profits, is being promoted. The Commission's assessment should target all four objectives of Part 4, which requires a longer term view.
11. The Commission provides an appropriate description of how information disclosure should work in its Information Disclosure Reasons Paper:²
- Information disclosure provides a means for regulators and other interested persons to assess whether regulated suppliers face incentives to achieve outcomes consistent with outcomes produced in workably competitive markets such that the objectives listed in paragraphs (a) to (d) of s 52A are achieved. **An effective information disclosure regime provides transparency to interested persons on the performance of regulated suppliers, and provides an ongoing source of information so that trends can be identified and monitored over time.**
12. Auckland Airport agrees with this summary, and therefore considers the focus of the review should be on how the information disclosure regime is operating in practice in the short time since its implementation. The Commission should be asking questions along the lines of: are airports disclosing useful information? What do the Commission's summaries of that information show? From the information disclosed, is it possible to identify any early points that will require further monitoring?
13. In short, the focus should be on the mechanics of the new information disclosure regime, and not on whether it has immediately impacted on pricing decisions as though price control applies. The concerns we outlined above can be mitigated by setting an appropriate scope for the review.
14. Auckland Airport believes that the implementation of the new information disclosure regime has been relatively successful to date. Auckland Airport has invested substantial resources in the new disclosure regime as it understands the importance of robust disclosure. It would be a shame if the new regime was adversely impacted by a review that over-reaches in terms of assessing the effectiveness of a regime that has barely commenced.

PART III: TIMING AND PROCESS OF REVIEW

Timing of review and report

15. The Commission commenced its consultation on the establishment of the information disclosure regime in October 2008. The input methodologies and information disclosure requirements were determined more than two years later in December 2010. The Commission considers that it is now required to review the effectiveness of the information disclosure regime, which has been in force for less time than it took to develop, and while the input methodologies that apply to the regime are still subject to challenge in the courts.
16. As the Commission knows, Auckland Airport has always taken the view that the section 56G review comes too early in the process to fully understand the impact of information disclosure in terms of promoting Part 4 outcomes. Auckland Airport therefore believes that it will be challenging for the Commission to conduct the review in a fair and robust way.

² Commission's Information Disclosure Reasons Paper, December 2010, paragraph 2.24.

17. However, Auckland Airport acknowledges that the Commission is required to commence its section 56G review "as soon as practicable" after any new price for a specific airport service is set or altered.
18. The Commission has informed interested parties that it considers it practicable to commence this review now on the basis that WIAL has set its aeronautical prices and the trigger for the review has been met.
19. However, Auckland Airport does not agree that this means that reviewing and reporting on the information disclosure regime is reasonably practicable at the current time, for the following reasons:
 - (a) The Commission should not commence its section 56G review until it meets its obligations under section 53B(2)(b), which requires the Commission to, "as soon as practicable" after any information is publicly disclosed, publish a summary and analysis of this information ("**disclosure summaries**"). The disclosure summaries are a key aspect of the information disclosure regime as their purpose is to promote "greater understanding of the performance of individual regulated suppliers, their relative performance and the changes in performance over time".³ Putting aside the Commission's views on the legal requirement for the timing of the disclosure summaries (as set out in its letter dated 20 June), Auckland Airport's view is that the disclosure summaries are an important part of the regime. Without the publication of the Commission's disclosure summaries, a significant part of the regime is not being fulfilled, and it is therefore neither practicable nor reasonable for the Commission to assess the effectiveness of information disclosure until it has fulfilled its obligations under the regime and before it has published the relevant disclosure summaries;
 - (b) When the Commission comes to review airports' performance to assess whether information disclosure is promoting limb (d) of the Part 4 purpose statement (limiting excessive profits), the information disclosure regime will have only been in effect for 18 months. Airport performance cannot realistically be assessed over such a short period. Further, the existence of a historical price setting disclosure does not overcome the fact that the information disclosure regime is still in its early stages, meaning it will still be challenging to reach any firm conclusions on the effectiveness of the regime.

Auckland Airport believes that it is not practicable for the Commission to conduct its review and make a report on the effectiveness of information disclosure at promoting the purpose of Part 4 until more annual disclosures and disclosure summaries by the Commission are available to assess forecast returns versus actual returns to identify and monitor trends "over time" (as noted above, the Commission has published no summaries to date).
 - (c) Auckland Airport does not consider it practicable to carry out the section 56G review while the merits review proceedings are being heard. It is only after the merits review proceedings that it can be ascertained with any certainty what the input methodologies are, and therefore how effectively the information disclosure regime is promoting the purpose of Part 4.

³ Section 53(2)(b) of the Commerce Act.

In Auckland Airport's view, it is more appropriate for the Commission to await the outcome of the merits review proceedings before commencing its section 56G review, as any assessment now could be made redundant by any material amendments to the input methodologies. We do not agree that the fact that input methodologies remains in force pending the outcome of the appeal means that it is reasonably practicable to commence the review. It is fairly easy to adjust the information disclosure regime as necessary following the appeal given that it is an ongoing regime to assess performance over time. On the other hand, it may be very difficult to unwind a one-off report to Ministers.

20. In summary, Auckland Airport requests that the Commission refrains from commencing its review until it has published its disclosure summaries of the information already disclosed and the merits review proceedings are concluded.

Separate reports

21. The Commission is proposing to prepare separate reports for each of the three airports.
22. Auckland Airport queries whether the legislation actually requires a separate review and reporting process for each of the three airports. The better view appears to be that section 56G anticipates a single report on all specified airport services.
23. If the Commission retains its focus on pricing consultations (despite submissions to the contrary), Auckland Airport's view is that preparing separate reports is probably the most practical approach, given the airports set prices at different times and some consultations, like Auckland Airport, are confidential. However, if the review was given an appropriate focus, that is, focused on the effectiveness of the information disclosure regime and not overly focussed on the individual price-setting performance of each airport, a single report would be more practical and appropriate.

Proposed process timetable

24. Auckland Airport considers that the timetable for the section 56G review is very tight relative to other Commission consultation processes, particularly given the full regulatory programme airports are currently experiencing and the importance of the review in determining whether the regime that was established 18 months ago is in fact working as intended.
25. Auckland Airport intends to participate in the WIAL review (if it is retained as a separate review), but notes the following key staff absences during the Commission's proposed timetable:
- 2 July – 12 July
 - 20 July – 26 July
 - 16 August – 31 August
 - 4 October – 15 October

26. Auckland Airport appreciates the Commission must balance the needs of many parties in setting out consultation timeframes, including its own, however Auckland Airport would be grateful if conferences, submissions and cross submissions do not coincide with the above dates. Auckland Airport supports the revised timetable proposed in the NZ Airports submission. Auckland Airport intends to participate as an interested party throughout the process.

PART IV: SCOPE OF, AND APPROACH TO, SECTION 56G REVIEW

27. The Commission's view is that in order to report on how effectively the information disclosure regulation under Part 4 is promoting the purpose statement, it is required to make an assessment of:
- (a) airports' performance (historical and projected) since the implementation of the information disclosure regime, to identify whether the objectives in (a) to (d) of the purpose statement are occurring; and
 - (b) the extent to which information regulation has had an impact on the airport's performance and conduct in relation to recent pricing consultations.
28. In order to make these assessments, the Commission is also seeking to acquire information from interested parties beyond what the Information Disclosure Determination requires airports to provide.
29. Whether the information that the Commission is seeking for its review is appropriate largely depends on whether the Commission has correctly understood what it is required to assess for its report to Ministers. In Auckland Airport's view, the Commission has not clearly set out what it believes it needs to assess in order to ascertain how effective information disclosure has been at promoting the Part 4 purpose. The lack of framework analysis means that the review has:
- (a) an insufficient focus on the information disclosure regime itself, the information disclosed in accordance with the information disclosure requirements, and what that information tells interested parties about airport performance;
 - (b) too much focus on airport returns, which are predominantly relevant to assess one limb of the part 4 purpose statement, limiting excessive profits; and
 - (c) too much focus on airport pricing and airport conduct in the recent pricing consultations, which are outside the scope of information disclosure regulation.
30. Auckland Airport believes that if the review framework is appropriately designed, the additional information that the Commission is seeking may not be necessary.
31. We address these concerns in turn below.

The review should focus on information disclosure and the information disclosed

32. In Auckland Airport's view, the proposed scope of the review does not sufficiently constrain its focus to the information disclosure regime itself, or the information disclosed in accordance with the information disclosure requirements and what that information tells interested parties about airport performance.

33. Given the regime is relatively new and is still in its implementation phase, Auckland Airport considers the Commission's should approach its review as follows:

- (a) The Part 4 purpose statement is promoted by the disclosure of robust information to provide transparency in airport performance. So, the first key inquiry should be whether the purpose of information disclosure is being met, namely whether the airports are disclosing sufficient information to allow interested parties to make their own assessments of whether the purpose of Part 4 is being met. This allows the Commission to understand whether the "mechanics" of the information disclosure regulation are working, or whether anything needs to change or be improved to ensure the information disclosure purpose is being met. If the purpose of information disclosure is not being met, it is not reasonable to expect that information disclosure is promoting the purpose of Part 4. Conversely, if the purpose of information disclosure is being met, then under the statutory framework, the presumption must be that the information disclosure regime will effectively promote the Part 4 purpose statement.

The following questions would be appropriate as part of this inquiry:

- (i) What has the quality of the disclosure been like to date?
 - (ii) Are airports disclosing useful information?
 - (iii) Are the disclosures enabling interested parties to make an assessment against the Part 4 purpose statement?
 - (iv) What do the Commission's summaries of that information show?
 - (v) From the information disclosed, is it possible to identify any early points that will require further clarification for airports to improve the quality of the disclosure?
 - (vi) From the information disclosed, is it possible to identify any early points that will require further monitoring?
- (b) The second question that the Commission should then focus on is what the "disclosed information" tells it about how the outcomes in (a) to (d) of section 52A are being promoted/achieved. The statute is clear that the Commission is required to review information "disclosed" by the suppliers under the information disclosure regime, so this should be the Commission's first port of call. The Commission should not need to seek further information unless and until it becomes clear from its review that the information disclosure requirements do not provide all the information necessary to assess whether information disclosure is promoting the Part 4 purpose statement. The fact that the Commission is starting with the presumption that information disclosure is insufficient is very disappointing considering the two years that the Commission spent to establish the regime and the millions of dollars the industry has invested in the process, new systems and new procedures for information disclosure.

34. As the Commission has acknowledged, conclusions based on the disclosed information will be limited, given the short time the regime has been in place. However, this is not a reason for the Commission to request more information. Section 56G does not require the Commission to reach any certain conclusions. It may be that, for example, the only conclusions the Commission can make is that there is essential information not currently disclosed under the Information Disclosure Determination that should be, or that there is immaterial information that does not need to be disclosed and the information currently disclosed is appropriate.

The review focuses too heavily on airport pricing and conduct in pricing consultations

35. Auckland Airport understands that the Commission will have some interest in airports' performance and how the airports' pricing consultations have been conducted, to the extent that this information helps it understand how effectively information disclosure is promoting the Part 4 purpose statement.
36. However, Auckland Airport is concerned that the Commission, as evidenced by the following statement in the Process and Issues Paper, is placing too much weight on pricing matters:⁴

Our primary source of information for this review should be the information disclosed under Part 4 ID regulation **and in particular, information in relation to the setting of new prices. [Emphasis added]**

37. Auckland Airport has two related concerns in this respect:
- (a) The Commission's focus on airports' pricing and performance suggests that the Commission holds an inappropriate expectation that information disclosure will have an immediate and direct impact on pricing. This is the very type of de facto price control that airports sought to avoid during the consultation on information disclosure; and
 - (b) Specifically, the review places too much emphasis on the input methodologies and whether they are being used outside the information disclosure regime (and not enough emphasis on information disclosed, as discussed above).

For example, the Commission intends to look at "whether the ID has had an impact on the airports' conduct in relation to the recent pricing round"⁵ and "look at any variations by each airport" from the Commission's input methodologies, and the reasons why the airport has departed from them.⁶ This is inappropriate. Airports are not required to apply input methodologies to its pricing, so the fact that airports do not adopt the Commission's input methodologies for information disclosure for pricing cannot measure whether the information disclosure regime is effective or not. Arguably, this is outside the Commission's powers. The Commission has the power to establish the information disclosure regime, but it is very unlikely that Parliament intended section 56G to broaden its powers to allow review of the pricing process. That is why the Commission is directed by section 56G to review the "information disclosed".

⁴ Process and Issues Paper, paragraph 22.

⁵ Process and Issues Paper, paragraph 25.

⁶ Process and Issues Paper, paragraph 28.

38. Auckland Airport requests the Commission clarify its intentions in reviewing pricing and performance material to avoid the review morphing into a post-consultation “arbitration” of the details of each airport's pricing consultation. The Commission also states that the conference will “test the views” and ensure that the Commission understands “any difference of opinion”.⁷ Auckland Airport considers that this conference should not become a forum for all parties to air their differences of opinion on matters relating to price setting. Auckland Airport suggests that the Commission provide clear guidelines on its conference objectives and how it intends to manage the conference proceedings.
39. Simply put, the Commission is now encroaching into the very de facto price control that it denied would occur as a result of setting input methodologies for information disclosure purposes.⁸
40. That being said, Auckland Airport's own experience is that the input methodologies and information disclosure have provided a useful reference point for pricing discussions with its substantial customers. Auckland Airport has also taken greater care to embed the objectives of Part 4 within its company values and has been conscious of demonstrating commitment to these principles in the most recent pricing consultation. Auckland Airport has continued to set prices in accordance with AAA, which remains the statutory framework that governs pricing. To comply with its obligations under the AAA, Auckland Airport is required to make pricing decisions once it has consulted with substantial customers with an open-mind - this means that Auckland Airport has considered it necessary to consider all views (including substantial customers, expert opinions and the Commission's approach for information disclosure) before reaching a decision on price. Ultimately, the overall price package is what counts - not the individual building blocks that may ultimately not be a direct input into pricing.

Reasonableness of additional information requests

41. The Commission believes information other than the disclosures may assist its review by providing insights into an airport's performance in terms of the purpose of Part 4 and/or an airport's conduct, in particular in relation to the price setting event. It may thereby provide insights into how effectively information disclosure regulation is promoting purpose of Part 4.
42. Auckland Airport believes that the disclosed information should be sufficient to allow the Commission to carry out the section 56G review.⁹ Information about Auckland Airport's investment plans in the medium term, whether Auckland Airport is pricing efficiently and sharing the benefits of any efficiencies with consumers, is all information that will be available in Auckland Airport's price setting disclosure.
43. Auckland Airport is concerned that the Commission has appeared to assume defects with the information disclosure regime before the review of the regime has even commenced by indicating that it may need to request information beyond the disclosure requirements. As noted above, Auckland Airport suggests the Commission should not make such assumptions.

⁷ Process and Issues Paper, paragraph 15.

⁸ In its Information Disclosure Reasons Paper, 22 December 2010, at paragraph 2.30, the Commission stated that it was “incorrect” for submitters to argue that the Commission was setting de facto price control of airport services and acknowledged that “airports are able to set prices as they see fit”.

⁹ This is subject to Auckland Airport's comments above that the existence of the historical price setting disclosure does not make the review any more “practicable” at this time, given the early stages of the information disclosure regime.

44. That said, Auckland Airport can appreciate why the Commission is seeking to understand how information disclosure influences airport behaviour. Auckland Airport is therefore willing to voluntarily provide information requested by the Commission where the Commission can demonstrate that the additional information is necessary to assess how effectively the information disclosure regime is promoting the Part 4 purpose statement since its establishment in December 2010.
45. Auckland Airport also requests that the Commission appropriately balances its assessment of the information available. For example, the following information should be evenly considered by the Commission when carrying out its assessment:
- (a) Disclosures relating to actual performance versus forecast performance;
 - (b) Disclosures relating to pricing (price setting event);
 - (c) Other information relating to conduct and behaviour during the recent pricing consultations; and
 - (d) Other information regarding Auckland Airport's day to day business practice and implementation of the information disclosure regime.
46. For example, Auckland Airport's long held view is that a series of annual disclosures will be required for any conclusive views to be drawn. Nevertheless, Auckland Airport considers it appropriate that the first annual disclosure is considered only as preliminary evidence of whether the objectives in (a) to (d) are occurring, as this is "information disclosed" that the Commission is specifically required by section 56G to have regard to.
47. Auckland Airport notes that the Commission intends to assess the changes in each airport's conduct and systems to comply with the information disclosure regulation. Auckland Airport has made a significant effort to implement internal information disclosure systems to monitor the outcomes promoted by the Part 4 purpose statement, and to encourage behaviour consistent with Part 4, and therefore asks that this be given comparable weight to the other information in the Commission's review. In Auckland Airport's experience, the implementation of information disclosure has provided clear focus on the purpose of Part 4, particularly in planning and decision processes.
48. Auckland Airport summarises its view on what information is relevant to the section 56G review as follows:

Information received from parties during the review process	Auckland Airport considers this reasonable, so long as non-commercially sensitive information is made available to interested parties and the source of the information is provided together with a clear rationale for how it relates to the Commission's assessment of the effectiveness of information disclosure under section 56G(1)(c). In this respect, it is important for the Commission to clarify the scope of the review.
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Information requested under the NZCC information gathering powers	Auckland Airport believes that the disclosed information should be sufficient to allow the Commission to carry out the section 56G review. However, Auckland Airport is willing to voluntarily provide information, on a case by case basis, where the Commission can demonstrate why the additional information is necessary to assess how effectively the ID regime is promoting the Part 4 purpose statement, and how the information will be used in forming any conclusions.
Pricing information, including: <ul style="list-style-type: none"> • Consultation material from pricing consultation; and • The airports' pricing decision and announcements 	<p>Auckland Airport believes all the relevant information about airport pricing should be available in the price setting disclosures. However, Auckland Airport agrees that the consultation record (including the pricing decision and announcements) will, in some cases, provide additional insight on how information disclosure regulation was considered in the context of pricing. Auckland Airport is willing to voluntarily provide information where the Commission demonstrates why the consultation information will help the Commission understand how effectively the new information disclosure regulation promotes the Part 4 purpose statement, and explains how conduct will be measured.</p> <p>While Auckland Airport believes "disclosed information" should be sufficient for the purpose of the review, Auckland Airport considers that the existence of historical price setting disclosures does not make it any easier to reach any conclusive views on the effectiveness of the regime, given the regime is still in its infancy.</p>
Other company information, eg annual reports	This is reasonable so long as the Commission focuses on the relevant airport's annual report, not other airports' company reports. This information could be used to the extent that it demonstrates promotion or otherwise of the Part 4 purpose statement since December 2010.
Benchmarking data (domestic and international)	Care needs to be taken with any benchmarking analysis to ensure a robust process has been undertaken by experts as often airports have significantly different structures, which limit comparability. The one indicator that Auckland Airport has found useful is total turnaround charge analysis as an indicator of how its pricing compares to the industry.
Reports (national and international) on evaluation of the effectiveness of regulation	It is not clear from the Commission's paper how these are relevant.
Academic literature	It is not clear from the Commission's paper how these are relevant.
Industry reports	This depends on whether the reports provide evidence of how the information disclosure regime is promoting Part 4 outcomes (or otherwise).

Matters outside the scope of the review

49. The Commission has indicated that the reviews will not consider how effectively the information disclosure regime is promoting the purpose of Part 4 relative to other types of regulation provided for under Part 4, or relative to no regulation. Nor does it intend to recommend what, if any, alternative type of regulation should apply.
50. Auckland Airport supports the Commission's approach on the basis that:
 - (a) section 56G does not require the Commission to make any recommendations or comparisons in its report to Ministers;
 - (b) there is a separate statutory process under section 52H of Part 4 whereby the Commission has powers to recommend regulation. It would be inappropriate for the Commission to use this power outside this statutory process; and
 - (c) it is too early to undertake such analysis or reach such conclusions, given the lack of information necessary to fully understand the impact of information disclosure on promoting Part 4 outcomes.

PART V: SPECIFIC QUESTIONS RELATED TO WIAL

51. The Commission has invited interested persons to respond to the specific questions on WIAL's disclosures and consultation process.
52. While Auckland Airport is an interested person, Auckland Airport does not propose to provide substantive responses to the WIAL questions. However, Auckland Airport does have some feedback on the nature of the questions posed by the Commission.

Comment on overarching questions

53. Auckland Airport responds to the Commission's following overarching questions:
 - (a) *Has information disclosure had any impact on WIAL's performance and in understanding WIAL performance, and why?*

Auckland Airport reiterates its view that it is too early to assess whether information disclosure has had an impact on WIAL's performance because annual disclosures, over a longer period of time, are required to make such an assessment. However, Auckland Airport accepts that some preliminary analysis now may provide early indicators of whether information disclosure is having a positive effect in terms of achieving the objectives in the Part 4 purpose statement.
 - (b) *Has information disclosure had any impact on the effectiveness and scope of consultation as part of WIAL's second price setting event (PSE), and why?*

Auckland Airport acknowledges that the Commission is seeking to understand how behaviour has been influenced since the commencement of the new information disclosure regime, and therefore is looking for evidence of current behaviour (even if it is not possible or practicable to come to a conclusion on at this point in time).

However, Auckland Airport believes that whether airports are adopting the Commission's input methodologies for information disclosure for their pricing is the wrong question to ask as it places too much emphasis on the input methodologies and whether they are being used outside the information disclosure regime, rather than the information disclosure regime itself. Furthermore, the report to Ministers must report on the effectiveness of the information disclosure regime on promoting the purpose of Part 4, *not* the effectiveness of the information disclosure regime on pricing consultation, as the question suggests.

The Commission appears to again be placing too much emphasis on information relating to pricing and pricing consultations, which is primarily relevant to only one outcome (limb (d)) of the Part 4 purpose statement.

In any event, Auckland Airport's view of WIAL's pricing consultation was that the consultation process appeared to have been open-minded and thorough and WIAL appeared to carefully consider the Commission's input methodologies used for information disclosure along with substantial customers' feedback and expert advice. Although WIAL has not chosen to adopt the Commission's input methodologies for pricing in all cases, it is not required to do so. Where WIAL has not adopted the input methodologies, it appears to have been transparent about the reasons for its decision.

(c) *What aspects of performance and behaviour should we focus our efforts on for this review for WIAL?*

Auckland Airport considers the performance and behavior measures currently proposed by the Commission, namely the recent and expected returns based on, and the conduct of airports during the recent price setting round are too narrow to adequately assess impact of information disclosure on promoting all four limbs of the Part 4 purpose statement. The Commission's focus on performance suggests the Commission is primarily interested in limb (d), limiting excessive profits.

Auckland Airport's view is that the Commission should focus on reviewing performance and behavior that adequately assesses how effectively all four outcomes listed in the Part 4 purpose statement are being promoted by information disclosure, not just how effective the regime is at limiting excessive profits.

Auckland Airport also considers that if any limb of the Part 4 purpose statement is to be given priority, it is limb (a), incentives to innovate and invest. In *WIAL v Commerce Commission*, Clifford J agrees that promoting incentives to innovate and invest is a priority objective under Part 4, noting that "the Government chose to add, and give prominence to, a new outcome, namely that regulated firms were to have incentives to innovate and invest".¹⁰

¹⁰ *Wellington International Airport Limited v Commerce Commission*, HC WN CIV-2011- 485-1031, 21 December 2011,,paragraph 88(b).

Specific questions relating to WIAL

54. Auckland Airport is not in a position to respond to the WIAL questions in any great detail. However, Auckland Airport makes the following observations:
- (a) The topics of these questions are listed in a different order than the outcomes listed in (a) to (d) of the Part 4 purpose statement. The Commission has put the question "is WIAL earning excessive profits" first, however following the statutory purpose statement, this would be the fourth and last inquiry.
 - (b) The questions are posed differently to what the Part 4 purpose statement requires. For example, the Commission's questions on incentives to innovate and invest focus on whether WIAL is investing efficiently or innovating appropriately, rather than whether WIAL "has the incentives to invest or innovate" as a result of Part 4 regulation. These are two different inquiries. Auckland Airport believes it is likely to be too early for there to be conclusive evidence that WIAL is investing or innovating appropriate as a result of the new information disclosure regime. Instead the inquiry should be whether there are any aspects of the information disclosure regime that mean that airports do not have incentives to innovate and invest.
 - (c) The Commission asks what airports provide a useful benchmark for assessing the performance of WIAL. Auckland Airport considers that comparative exercise will be difficult given the many different variables experienced by airports, such as demand factors (scale and passenger mix) and asset/cost profiles.