

**AIRPORT INFORMATION DISCLOSURE DETERMINATION AMENDMENT
REASONS PAPER**

Amendment to Decision 715 made under s 52Q of the Commerce Act 1986

The Commission: S Begg
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Purpose

1. This paper sets out the reasons for the amendments¹ to the *Commerce Act (Specified Airport Services Information Disclosure) Determination 2010*, Decision No. 715, dated 22 December 2010 (the Airport ID Determination) made on 27 February 2012.

Background

2. The Airport ID Determination is one of several determinations made under Part 4 of the Commerce Act 1986 (the Act).
3. We posted a *Process for amendments and clarifications of Part 4 determinations*, dated 8 March 2011 (the Part 4 amendment process), on our web site. In that Part 4 amendment process, we noted that amendments to determinations should generally be avoided, and where necessary made as infrequently as possible, in order to promote certainty for suppliers and customers, an important feature of Part 4 determinations.² We recognised, however, that due to their complexity, amendments—for example, to correct errors—might be required.³
4. The Commission proposed to schedule amendments to the Part 4 determinations on or about 1 November 2011, and on an annual basis thereafter.⁴ The process also described how interested parties could request amendments.⁵
5. We received a number of requests for changes to the Airport ID Determination from interested parties, including Auckland International Airport Limited (AIAL), Board of Airline Representatives New Zealand Inc (BARNZ), Christchurch International Airport Limited (CIAL), New Zealand Airports Association (NZAA), and Wellington International Airport Limited (WIAL). The changes requested by the parties and our responses are listed on our web site.
6. The Airport ID Determination was made under s 52P of the Act. The requirements for information disclosure determinations are further enumerated in subpart 4 of Part 4 of the Act.⁶ We may amend a s 52P determination under s 52Q of the Act. Section 52Q requires us to consult with interested parties regarding any material amendments; we need not consult where the amendments are non-material.⁷
7. We proposed amendments to the Airport ID Determination in the draft *Commerce Act (Specified Airport Services Information Disclosure) Amendments* consultation paper released on 19 December 2011 (consultation paper). We received submissions on the proposed amendments from Air New Zealand (Air NZ), AIAL, BARNZ, CIAL, NZAA and WIAL. These submissions are posted on our web site.
8. On 25 January 2012 the Commission held a workshop on matters raised in submissions. Minutes to that workshop have been posted on our web site.

¹ *Airport Information Disclosure Determination Omnibus Amendment No. 1* [2012] NZCC 5.

² Part 4 amendment process, para. 4.

³ *Ibid*, para. 5

⁴ *Ibid*, paras. 7–9.

⁵ *Ibid*, paras. 10–15.

⁶ Sections 52A–53F of the Act.

⁷ Section 52P(1).

Amendments

9. We consider the majority of these changes are non-controversial clarifications or drafting corrections. Amending the airport ID Determination to correct these errors and provide more clarity will promote certainty and compliance. The proposed amendments are described in the table at Attachment 1 to this paper and the amended Airport ID Determination being released alongside this paper.
10. We have made three substantive amendments. We provide below an explanation of these amendments.

Director Certification

11. The amended Airport ID Determination clarifies the Directors' certification requirements to make it clear that directors are only certifying that the information complies in all material respects with the Airport ID Determination.
12. AIAL and WIAL had expressed concern with the current wording of the Directors' certification requirement. They submitted that the requirement does not align with the concept of materiality that is provided for under NZ GAAP, which is mandated for certain financial reporting by the Financial Reporting Act.
13. We note that a materiality threshold is applied in audit opinions.⁸ We are concerned only with material, not trivial, breaches. We do not see any concern with requiring that the directors' certification only assert that the attached information complies "in all material respects" with the Airport ID Determination. No submitter disagreed with our view.

Addressee of audit report

14. The Airport ID Determination has been amended so that the audit report is required to be addressed to Directors, and that the auditor acknowledges a duty of care to the Commission.
15. The information to which the audit opinion relates is for the purpose of providing interested persons with information to assess whether the purpose of Part 4 of the Commerce Act 1986 is being met. On this basis we determined that the audit opinion should be addressed to the airports.⁹
16. WIAL provided feedback from its auditor (KPMG) that the auditor's report should be addressed to directors, not interested persons, as interested persons are not a party to the audit engagement.
17. Addressing the audit report solely to directors, with no duty of care to the Commission, provides insufficient assurance that the information disclosed will meet the needs of interested persons.
18. No submitter disagreed with our proposal that the audit report is required to be addressed to Directors and that the auditor acknowledges a duty of care to us.

⁸ See section 41 of the Financial reporting Act 1993.

⁹ Commerce Act 1986, section 53A.

Timing of Price Setting Event Disclosure

19. The Airport ID Determination is amended to allow airports 40 working days to disclose information relating to a price setting event (as required by clause 2.5).
20. Information relating to a price setting event is currently required to be disclosed 20 working days following a decision to reset prices. WIAL submitted that there is insufficient time to complete any legal and other independent reviews required for directors' certification within 20 working days. If the requirement is not extended WIAL has indicated that Airports may delay making pricing decisions to ensure that they meet these requirements.
21. In our draft amendment we considered it adequate for airports to have 40 days to make the disclosure. The airports disagreed and in the workshop outlined their processes for obtaining review and directors' certification, including resource availability at the time of disclosure because of other disclosure commitments.¹⁰
22. In their submissions, BARNZ and Air NZ opposed an extension to the time to disclose.¹¹ BARNZ considered that the disclosure should occur simultaneously with a price setting event, as that is the time at which the public and other interested parties (such as analysts and business writers) have the greatest interest in receiving the information. At the workshop, BARNZ suggested that the timing of the price setting disclosure is more critical than the timing of the annual disclosure. If airport resource availability necessitated the deferral of a disclosure, then BARNZ would prefer that the annual disclosure be deferred.
23. At the workshop airports noted that the disclosure includes information that is not part of the consultation. This information cannot be prepared until after prices have been set and that for Directors to sign the required certification they are requiring the information to be verified by third parties.¹² BARNZ disagreed, considering that information that is not the subject of the consultations that led to the pricing event, such as information concerning aircraft and freight, can be prepared in advance.
24. The Commission must balance providing a reasonable timeframe to provide complete information that has been appropriately certified with the timeliness of the information disclosure so that interested and affected parties may review and comment, and the Commission can prepare a timely summary and analysis. We consider that a period of 40 working days for preparation and disclosure of this information will not constitute an undue burden on airports and will ensure interested persons are able to assess the price setting event within a reasonable period. Furthermore, this approach has the advantage of not significantly delaying the public release of airport prices.

¹⁰ Commerce Commission, "Airport ID amendments workshop 25 January 2012—minutes" (conference call minutes 25 January 2012).

¹¹ BARNZ, *Consultation on Airport Information Disclosure Amendments*, 13 January 2012, Air NZ, *Air New Zealand's submission on the Commission's Draft Commerce Act (Specified Airport Services Information Disclosure) Amendment 2010 – Consultation Paper*, dated 19 December 2011, 17 January 2012.

¹² Commerce Commission, "Airport ID amendments workshop 25 January 2012—minutes" (conference call minutes 25 January 2012).

Effective date of the amendment

25. The Act provides that the amendment must come into force on the date specified, which must be on or after the date on which a summary of our final decision is published in the Gazette. These changes are to come into effect on 1 March 2012, which is prior to the next scheduled information disclosure and the next expected disclosure following a price setting event.

ATTACHMENT 1: SUMMARY OF AMENDMENTS

Clause reference	Summary of amendment	Summary of reasons
1.4 Interpretation	The term 'operational expenditure' in the defined term 'Forecast operational expenditure' is no longer in bold (referring to a defined term)	'Forecast operational expenditure' is defined in the ID Determination as the forecast 'operational expenditure', however, 'operational expenditure' is defined as the operating costs after applying Part 2 of the IM Determination. This was a publishing error—the term 'operational expenditure' should not be bold.
1.4 Interpretation; Schedules 4b(v), 23b(ii) Works under construction	Amended definition of 'adjustment resulting from cost allocation' and added definition for 'offsetting revenue'; amended schedule 4b(v) and schedule 23b(ii) to include adjustments 'offsetting revenue' and 'adjustment resulting from cost allocation'	The works under construction roll-forward now reflects the Commission's IM determination.
1.4 Interpretation; Schedules 9a, 10a Allocator types	Added an explanatory note in schedules 9 and 10 regarding the allocator. Related amendments have also been made to the definitions of 'change in asset allocator' and 'change in cost allocator' in clause 1.4.	It was unclear whether the allocator in 9a and 10a is meant to refer to (a) a description of, or (b) the numeric value of, the metric.
1.4 Interpretation; Schedules 4b(iv), 23b(i) Indexed revaluation	Included a definition of 'assets with nil physical asset life'. Related amendments have also been made to the definitions of 'change in asset allocator' and 'change in cost allocator' in clause 1.4. Amended schedule 4b(iv) and schedule 23(i) to include adjustments for 'revalued land', 'assets with nil physical asset life', 'asset disposals' and 'lost asset adjustment'. Provided new and updated definitions for 'lost and found assets adjustment', 'lost asset adjustment', and 'revalued land', and referenced the	The indexed revaluation calculation now properly reflects the IM determination.

Clause reference	Summary of amendment	Summary of reasons
	definition of 'lost asset' found in the IM Determination.	
1.4 Interpretation; Schedule 2b(i) execution cost for an interest rate swap	Amended to reflect intention as expressed in the IM Reasons paper. In particular, to multiply by book value of qualifying debt, and with other minor wording amendments.	The definition should multiply by the book value of qualifying debt (as the formula does in the IM for other services).
1.4 Interpretation; 2.5(c)(vii); 2.5(1)(g); 2.5(1)(h); Schedule 18	<p>New lines have been included in schedule 18 for 'revenue requirement not applicable to price setting event', 'revenue smoothing adjustment', and forecast revenue for services applicable to price setting event, with associated definitions included in clause 1.4.</p> <p>The term 'any other components' in 2.5(c)(vii) has been replaced with the defined term 'other factors'. 'Forecast total revenue requirement' has now been defined, and is now used in the related definitions (including 'other factors').</p> <p>A requirement to disclose information relating to 'revenue requirement not applicable to price setting event' has also been included (in 2.5(1)(h)). Disclosures relating to 'revenue requirement not applicable to the price setting event' now only relate to categories of revenue, not services.</p>	Clarifies the classification of information on schedule 18.

Clause reference	Summary of amendment	Summary of reasons
1.4 Interpretation; Schedule 5(i) Summary	Amended the defined terms 'net operating revenue' and 'operational expenditure'; included definitions for 'market value of asset disposals to related parties'; and revised the definition of 'other related party transactions'. Amended schedule 5 to use these terms and the term 'related party capital expenditure'.	The definitions of terms used in schedule 5(i) did not relate back to the purpose of the disclosure.
1.4 Interpretation; Schedule 10a	Operating costs exclude costs relating to excluded assets. The definition of operating costs in the ID Determination is amended to exclude costs incurred in providing 'excluded services' (new definition added) as defined in the IM Determination.	Operating costs relating to excluded assets were not separately identified in schedule 10a; it was therefore not clear if they were intended to be captured in 'net revenues' for excluded assets in Schedule 4b(viii).
1.4 Interpretation; Schedule 1b(ii) RIV calculation	Included a definition for 'proportion of year available' and revised the term 'proportionate regulatory value' to clarify.	It was unclear whether the term 'proportionate' used in this schedule referred to the proportion of the year that the asset is available.
1.4 Interpretation	<p>Sub clause (b) of the RAB (tax value) definition has been included in error. The Airport IM determination does not allow for RAB (tax values) to be capped by the RAB value as was provided for in the EDBs, as was explained in the Commission's reasons paper.</p> <p>The Commission has removed sub clause (b) of the defined term RAB (tax value)</p>	<p>The ID determination defines RAB (tax value) and provides that "... The RAB (tax value) for the previous disclosure year in the initial disclosure year will not be greater than the RAB value." This creates inconsistencies with clause 4.1(3)(b) of the IM determination which requires depreciation to be calculated by applying the tax rules.</p> <p>The Airport IM determination does not allow for RAB (tax values) to be capped by the RAB value as was provided for in the EDBs, as was explained in the Commission's reasons paper.</p>

Clause reference	Summary of amendment	Summary of reasons
2.4 (3); Schedule 14 Passenger survey sampling requirements	Amended the margin of error requirement specified in clause 2.4(3)(c) so that it applies to the results of the combined quarterly surveys completed during the disclosure year. A note has also been included in schedule 14 to notify readers that the quarterly survey results may not be statistically correct.	It was not clear whether the error requirement specified in clause 2.4(3)(c) were to apply to the total surveys performed in the year or for the individual surveys performed each quarter.
2.5(1)(e), 2.5(1)(f)(i)	In clause 2.5(1)(e), the aims and objectives description has been updated to relate to 'key capital expenditure projects' and not 'any proposed investments'. The Commission has deleted 2.5(1)(f)(1) and clarified with a schedule reference 2.5(1)(f).	There was nothing to distinguish between the description of 'aims and objectives' under clause 2.5(1)(e) with the requirement in clause 2.5(1)(f)(i). Subclause 2.5(1)(e) relates to 10 years, subclause 2.5(1)(f) relates to 5 years. The amendment clarifies that only the aims and objectives of key capital expenditure projects are required to be disclosed.
Clause 2.5	The requirement to disclose information following the date of the decision to fix or later prices is extended to 40 working days.	There is insufficient time to complete the disclosure following a price setting event. It is discussed in more detail in the body of the Commission's reasons paper.
Clause 2.5(2), (3)	The clause is amended to clarify that the time commences on the date of the decision to fix or alter prices.	There was uncertainty with regard to the timing of a price setting event (triggering the clock on disclosure). It was the intention of this disclosure to be on the date of the decision on prices and not the date the decision is notified to customers.
Clause 2.6	Amended the audit requirements so that the audit report can be addressed to directors with a duty of care to the Commission acknowledged in the report.	Auditors provided feedback that the audit report should be addressed to directors and not interested persons.

Clause reference	Summary of amendment	Summary of reasons
Clause 2.10(1)(b)(i)	Amended clause 2.10(1)(b) to align with the IM.	The references in clause 2.10(1)(b) did not fully reflect the IM determination.
2.10(5); Schedules 2, 6 and 10	No amendment is made to the transitional provisions for an exemption from cost breakdown in the initial disclosure.	Clause 2.10(5) included transitional provisions for an exemption from cost breakdown in the initial disclosure, but only for schedule 6. Parties proposed a broader exemption and this was included in the draft amendments. Following consultation, parties were confident they could provide a breakdown during the transition, and therefore the broader exemptions are no longer required.
Schedule 2b(i) Long term credit spread	Add a note in schedule 2b(i) to clarify it is only required to be completed at the end of a disclosure year where the weighted average original tenor of the airport's qualifying debt and non-qualifying debt is greater than five years.	Clarifies when Schedule 2b(i) should be completed.
Schedule 4 RAB value	Added a note in schedule 4 to clarify that the RAB must correspond with the total assets value disclosed in schedule 9 Asset Allocations.	The segmented information requires disclosure of RIV and not RAB at the present time, so cell C51 (which requires the airport to align the Roll Forward RAB with the segmented information) is not valid at the present time.

Clause reference	Summary of amendment	Summary of reasons
Schedules 4b(viii), 23b(iii) Assets held for future use	<p>A note has been included to highlight this requirement in schedules 4 & 23:</p> <ul style="list-style-type: none"> • ‘Holding Costs, Net Revenues, and Tracking Revaluations entries in the ‘Assets held for future use—additions’ line relate to the value incurred during the disclosure year’ and • ‘Each category value shown in the ‘Assets held for future use’ line (Base Value, Holding Costs, Net Revenues, and Tracking Revaluations) is carried forward into the following year’s disclosure as ‘Assets held for future use—previous year’. 	The end of year balance for each column is required to be rolled forward to the next year. For each of the four individual input columns of the table, it was unclear whether the value calculated in the last row should be carried forward to the first row from one disclosure year to the next.
Schedule 7 Segmented information	Inserted a row “Allowance for long term credit spread” in schedule 7.	The RIV components in segmented information table did not include an Allowance for long term credit spread entry. This meant that the formula for airport business Regulatory profit/tax differed from that in Schedule 2.
Schedule 7 Segmented information	The row sequence was changed to provide consistency with schedule 4.	The RIV components in segmented information table were listed in inconsistent order.
Schedule 7 Segmented information	The schedule 7 note has been changed from “* Corresponds to the Regulatory Profit Statement” to “* Corresponds to values reported in the Regulatory Profit Statement and the Report on Return on Investment” and referencing updated accordingly.	The explanatory note did not accurately reflect the requirement.
Schedules 9a, 10a Public information	The heading ‘Public Information’ is removed.	This was an extraneous heading.

Clause reference	Summary of amendment	Summary of reasons
Schedule 4b(iv) Indexed revaluation	The term 'year' was replaced with 'disclosure year' in: <ul style="list-style-type: none"> • D83 (to 'RAB value—previous disclosure year'); and • D121 (to 'Assets held for future use—previous disclosure year'). 	The term 'year' has been used in some instances where it should be 'disclosure year'.
Schedule 4b(viii) Assets held for future use	A clarifying note was inserted as follows: “* Corresponds to values in RAB roll forward calculation.”	Parties requested an explanatory note to make it clear that the asset class category total should correspond to the RAB roll forward values.
Schedule 4b(v) Works under construction	The allocated capital expenditure cell is now linked to an input cell.	This was a publishing error.
Schedule 4 RAB value	The indexed revaluations are now linked to input cells.	This was a publishing error - change from an input cell to a calculated cell.
Schedule 4b(iv) Indexed revaluation	Cells J83 and N83 are now linked to correct input cells.	This was a publishing error.
Schedule 6a Actual to forecast expenditure	We have: <ul style="list-style-type: none"> • Changed the input cells to calculation cells, with calculations based on the disclosures in 6b; • Added row 66 to identify the index number (1–5) of the pricing period forecast year that corresponds to the current disclosure year. 	These cells have been linked to the appropriate references in Schedule 18 for ease of use.

Clause reference	Summary of amendment	Summary of reasons
Schedule 9 Transitional year disclosure	<p>Three versions of schedule 9 have been inserted for the transition year:</p> <ul style="list-style-type: none"> • in respect of the initial RAB value (effectively for the year ended 2009) under clause 2.10(1)(b)(i) • in respect of the RAB value for the year ended in 2010 under clause 2.10(1)(b)(ii) • in addition, a disclosure is required for the 2011 disclosure year under clause 2.3(1)(a)(ix). <p>To assist in preparing the transitional disclosures, we have proposed adding two sheets to the template workbook: 'S9.Asset Allocation (2010)', 'S9.Asset Allocation (2009)'.</p>	It was unclear whether multiple versions of schedule 9 should be completed in the transitional year.
Schedules 9, 10 Allocators	The number of asset allocator rows and cost allocator rows has been increased from 22 to 70.	Parties requested additional asset allocator rows. The final amendments include 70 rows and if this is not sufficient, Airports will have the ability to either create more rows in the templates or provide additional disclosures as supporting information.
Schedules 9b(i), 10b(i) Changes in asset allocators	In addition, space has been added for a further four changes. There is room to expand the table back into the previous page if necessary. (The definitions of 'change in asset allocator' and 'change in cost allocator' have been amended to clarify the requirement – this is noted previously on this table.)	These schedules contain space for three changes in cost allocators. While in some years there may well be no changes, in other years there may be many. Parties have requested an additional sheet where necessary.

Clause reference	Summary of amendment	Summary of reasons
Schedule 12 Comment	We have moved the note from schedule 12 row 72 to schedule 11 row 80.	The explanatory note for the comment seems to relate to schedule 11 rather than schedule 12.
Schedule 13 Baggage (outbound) & Baggage reclaim	The text in the note cells has been changed to: 'Please describe in the capacity utilisation indicators commentary box how notional capacity and bags processed have been assessed'.	The number of bags processed in the passenger busy hour is determined at present using a notional calculation. The asterisk on the Schedule appears to apply to both capacity and bags processed, but the wording is less clear. The disclosed number of bags processed should be the total processed by the Airport and other parties. Any estimate should be reasonably derived, and noted in the commentary box.
Schedule 13 Terminal categories	A clarifying note was added to the column heading "Common Area".	There was no explanation of 'Common Area'.
Schedule 16d	<p>We have:</p> <ul style="list-style-type: none"> • Increased the number of airline disclosure cells from 10 local + 10 international to 30 local + 30 international. • Moved the note, previously located alongside the entry cells, up into a new row 149. 	There is not enough space for all the international airlines operating at Auckland Airport to be listed. The Commission will take guidance from regulated suppliers on the number of rows required. If this is not sufficient, Airports will have ability to either create more rows in the templates or provide additional disclosures as supporting information.
Schedule 18b(iii) Forecast capital expenditure	The number of entry rows has been increased to 25.	There were too few entry rows for 'capital expenditure by key capital expenditure project'. Airports will have ability to either create more rows in the templates or provide additional disclosures as supporting information.

Clause reference	Summary of amendment	Summary of reasons
Schedule 18b (iii)	The note and date heading to schedule 18 have been amended to make it clear that airports disclose the roll-forward of the asset base from the most recent disclosures to the asset base used for the price setting event where they do not coincide.	The note to Schedule 18b(iii) states that year 0 disclosure applies only if the pricing period starting year and the year of the most recent disclosure do not coincide. This is not applicable for the clause 2.10(3) disclosure. The pricing period starting year was FY08. The year of the most recent disclosure would be FY11. This has been clarified by the amendment.
Schedule 18b(iv)	The label in row 155 was changed to reflect the defined term 'Forecast operational expenditure'.	The label in totals row incorrectly listed 'Total operational expenditure' instead of 'Forecast operational expenditure'.
Schedules 18, 19	The year headings in both schedules 18 & 19 have been re-labelled as 'Pricing Period Starting Year', 'Pricing Period Starting Year +1', etc.	The date formula in schedule 19 was incorrectly linked to the year of most recent disclosure. Year 1 in schedule 19 is different to the date used for year 1 in Schedule 18. This may create some confusion for the reader. This now reflects the terminology used in schedule 6b.
Schedule 21	The director certification detailed in schedule 21 has been amended to align to clause 2.7(2).	There was a mismatch between the information required to be certified under clause 2.7(2) and the information that is certified under Schedule 21.
Schedule 23b(ii) Works under construction	An opening balance cell N89 for allocation of Works under Construction is now added.	The reason for requiring allocation of Works under Construction is to allow interested persons to reconcile their assessment of capital expenditure with the roll-forward of the RAB (from ID Reasons Paper, para 3.143). Cell N90 is not adding in a share of the opening Works Under Construction balance nor is it shaded as a calculation cell. Opening

Clause reference	Summary of amendment	Summary of reasons
		allocated balances do not flow into cells L85 and 86.
Schedule 23b(iv) Land	The number of land categories has been increased from 7 to 15.	Parties have requested additional categories for the breakdown of land.
Schedules 21, 22 and 23	The director's certifications are amended to include the concept of materiality.	The concept of materiality was not included in the director's certification.
Schedule 23a Initial RAB value	The label 'Initial RAB value—year ended 2009' was removed and replaced with the defined term 'Initial RAB value'. The references in 2.10(b) have been amended accordingly.	Tautology.
Various	Various typographical errors corrected.	