

29 June 2012

Karen Murray  
Manager, Regulatory Branch  
Commerce Commission  
44 The Terrace  
Wellington 6140

Dear Karen

### **Airport services – section 56g Reports: process and issues**

- 1 Christchurch International Airport Limited (CIAL) welcomes the opportunity to comment on the Commerce Commission's (*Commission*) paper "Airport Services – s 56G Reports: Process and Issues" (31 May 2012) (*Process and Issues Paper*). This letter is CIAL's submission on the Process and Issues Paper.
- 2 CIAL is also a party to, and has contributed to the New Zealand Airports Association's (*NZ Airports*) submission on the Process and Issues Paper. CIAL is supportive of the NZ Airports submission addressing the issues and concerns on behalf of Auckland International Airport, Wellington International Airport and CIAL. CIAL's submission should be read in conjunction with the NZ Airports submission.
- 3 CIAL has always viewed the reporting requirement in s 56G as something of an anomaly in the Commerce Act. In the context of a regulatory regime which has been at least five years in the making,<sup>1</sup> reviewing the effectiveness of information disclosure within a year of the first disclosure is simply too early to be meaningful.
- 4 Regardless, the report must be prepared at some point and CIAL is ready to assist the Commission. Should the Commission choose to continue with its review at this time, it will be important for the Commission to expressly recognise the limitations of what can be achieved with the report:
  - 4.1 it will not be possible to form a sound view of the performance of CIAL on the basis of one annual disclosure, one historical price setting event disclosure, and one price setting event disclosure (to be disclosed later this year). This is especially so given CIAL's unique circumstances where the Canterbury earthquakes have significantly affected demand for air travel and created considerable market uncertainty;
  - 4.2 it is also too early to properly judge whether information disclosure has had any enduring and measurable effect on CIAL's conduct. CIAL is conscientiously fulfilling its regulatory obligations and adjusting to the new environment, but the full impact of information disclosure will take some time to solidify. In particular, the merits review process is generating some

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<sup>1</sup> The Terms of Reference for the review of the regulatory control provisions of the Commerce Act were issued in September 2006.

uncertainty over structural elements of the regime, and it is difficult to react to a regime in flux.

- 5 The scope of the review should therefore be adjusted. While performance and behaviour are relevant, a greater focus is needed on whether the regime is producing the right information to influence behaviour over time and to enable interested persons to assess whether the Part 4 Purpose is being met.
- 6 The rest of our submissions should be viewed in the above context. Below we make specific submissions on:
  - 6.1 the process and timings for the s 56G Reports (which corresponds to Chapter 2 of the Process and Issues Paper);
  - 6.2 the scope and approach of the reports for all airports (which corresponds to Chapter 3); and
  - 6.3 the questions relating to Wellington International Airport Limited (WIAL) (which corresponds to Attachment 1).

## **Process and timings**

- 7 The key process and timing issues for CIAL are:
  - 7.1 The timeframe for submissions on the Process and Issues Paper is too short. In particular, CIAL is still in the middle of a comprehensive pricing reset with the Airlines following a significant investment in our new integrated terminal (\$237 million). Accordingly, CIAL has not been able to give enough consideration to whether the questions which the Commission intends to ask WIAL (and presumably CIAL too) are appropriate. The rush does not seem justified, and we ask that future timings are not so onerous.
  - 7.2 We are firmly of the opinion that it is fairer and more practical to assess all three airports at the same time. We think the natural justice concern involved with WIAL being the "pioneer airport" is enough to shift the timing of what constitutes "as soon as practicable". CIAL is also concerned that the proposed timetable has the potential to further influence the pricing outcome for CIAL, as submissions, cross submissions, a conference and the Commission's draft report are timetabled to occur *prior* to CIAL setting aeronautical pricing. Good process would require all price setting events to be completed first. We have attached at Appendix 1 an indicative timetable for the remainder of the process to reset CIAL's aeronautical prices which should assist the Commission to reconsider its process.
  - 7.3 Relatedly, CIAL agrees that NZ Airports has a legitimate process point in that the Commission needs to publish its summary and analysis of disclosures before it commences the s 56G review. The Commission's current position on this appears to derive from inconsistent interpretations of the "as soon as practicable" formula. Legal points aside, we think there would be considerable practical merit in publishing the summary and analysis. Interested persons in particular may find them a valuable resource for the s 56G review and they will provide useful guidance in assessing whether the regime is producing the right information.



## **Scope and approach**

- 8 CIAL agrees with the Commission's decisions not to compare the efficacy of information disclosure against other forms of regulation, and not to recommend alternative forms of regulation. To do so would be outside of the scope of s 56G which limits the report to considering how effectively information disclosure is promoting the Part 4 Purpose.
- 9 However, the focus of the review on airport performance and behaviour needs to be tempered by acknowledging that firm conclusions cannot be drawn from the short time that information disclosure has applied to airports. Historical performance simply cannot be measured on the basis of one annual disclosure, particularly when considering that price resets are for multi year periods with such prices being considered in terms of the revenue required for the total period. Measuring projected performance will be equally limited because not enough disclosures have been made to identify any trends.
- 10 CIAL is also operating in uniquely uncertain times, and our experience suggests that future performance will be difficult to assess. CIAL's annual disclosure for the year ended 30 June 2011 is a specific example where CIAL's performance, both financial and operational, was significantly impacted by the Canterbury earthquakes. This will be an aberration in terms of "normal" business performance and will not provide a good measure to assess trends and underlying performance trends.
- 11 CIAL is certainly adjusting to the new regulatory environment, and information disclosure is providing a discipline on our conduct. That said, we are reacting to a regime which is in flux (with merits reviews ongoing) and has only been in place for 19 months. The final say on how information disclosure is influencing CIAL's conduct will come in the future, not now.
- 12 The simple message here is that it will take time for the information disclosure regime to fully express itself. That time has not passed.
- 13 What can be achieved however is a fine tuning of the regime so that it is primed to promote the Part 4 Purpose. This fine tuning can be achieved if the scope of the s 56G review is adjusted to give a greater focus on whether the information produced by the regime is the right information. Is there sufficient and appropriate information for interested parties to assess whether the Part 4 Purpose is being met?
- 14 The change in scope would require the focus of the general questions in the Process and Issues Paper and the specific questions applying to WIAL to change. There is time to do this if the Commission extends its process. Below we make some suggestions for the questions in Attachment 1.

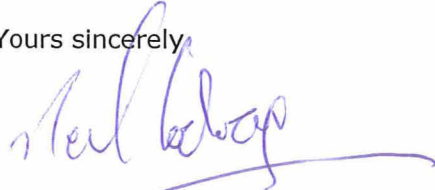
## **Questions relating to WIAL**

- 15 Generally speaking, the questions in Attachment 1 should be changed:
  - 15.1 to reflect the adjusted scope of review that we recommend above; and
  - 15.2 to apply to all airports, as we recommend that the Commission assess all three airports at the same time.

- 16 Given the limits of assessing performance and behaviour, it is doubtful whether some of the more detailed questions will produce helpful responses. For example, it will be difficult to assess whether there have been enduring changes in quality since information disclosure was introduced. And given the likely debate about what is an appropriate level to reflect normal performance, asking what an appropriate level to reflect superior performance may be ambitious. The extent of these questions should therefore be pegged back.
- 17 Our suggestions for the type of questions that should be asked are as follows, and are categorised according to the limbs of the Part 4 Purpose. They are more general and have a greater focus on whether information disclosure is producing the right incentives such that the regime succeeds over the longer term.
- 18 For limb (a), incentives to innovate and invest:
  - 18.1 Has information disclosure influenced the incentives the airport faces to innovate and invest?
  - 18.2 Are there any indications that the airport is investing appropriately to meet the needs of airlines and travellers?
- 19 For limb (b), incentives to improve efficiency and provide services at a quality that reflects consumer demands:
  - 19.1 Has information disclosure influenced the incentives the airport faces to improve efficiency? To provide services at a quality that reflects consumer demands?
  - 19.2 Are there any indications that the airport is taking measures to improve efficiency?
  - 19.3 Is the quality of services at the airport appropriate?
- 20 For limb (c), sharing efficiency gains:
  - 20.1 How should the Commission assess efficiency gains?
  - 20.2 Does the information disclosure regime influence the incentives the airport faces to share efficiency gains?
- 21 For limb (d), limiting the ability to extract excessive profits:
  - 21.1 How should profitability be assessed?
  - 21.2 What is an appropriate range of returns to reflect normal performance?
  - 21.3 How can we distinguish between supernormal profits that are explicable only by the exercise of market power from those which reflect superior performance?
- 22 Further, consistent with our concerns about a snap shot assessment, CIAL is concerned that the questions do not touch on what is an appropriate period of time over which to assess both the performance of an airport and the extent to which information disclosure regulation is influencing airport behaviour. Performance and

behaviour vary from year to year. What is important is the trend. The shorter timeframe over which these matters are assessed, the less likely the trend will be accurately identified.

Yours sincerely,



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## Appendix 1: Indicative timetable for CIAL price reset

Target Date	Key Step
6 July 2012	CIAL issues a revised Pricing Proposal, after considering and evaluating airlines' responses to the initial Pricing Proposal
19 July 2012	Provision for discussion of any unresolved issues or clarification of CIAL response
10 August 2012	Airline's response to points of clarification due (if required).
13 September 2012	Advise final pricing decision to Airlines
9 November 2012	Release of Information Disclosure report to Commerce Commission on Price Reset
1 December 2012	New Prices implemented