



WELLINGTON INTERNATIONAL AIRPORT LIMITED

INITIAL SUBMISSION TO THE COMMERCE COMMISSION

SECTION 56G PROCESS AND ISSUES PAPER

29 JUNE 2012

INTRODUCTION

1. This document is Wellington International Airport Limited's ("**WIAL**") initial submission on timing and scope matters in relation to the Commerce Commission's Airport Services – s56G Reports, Process and Issues Paper ("**Process and Issues Paper**").
2. WIAL is subject to the Information Disclosure Regime under Part 4 of the Commerce Act (the "**ID Regime**"). WIAL believes that information disclosure is the appropriate form of regulation, albeit that WIAL has a number of reservations in respect of certain input methodologies to be applied in the ID Regime, which have been expressed in previous submissions.
3. WIAL has devoted considerable resources to establishing systems and processes that enable WIAL to provide the information disclosures required by the ID Regime and is an important stakeholder in the ID Regime.
4. However, WIAL believes that insufficient time has been allocated to the preparation of submissions for what is an important review. It wishes to ensure that it provides comprehensive and fully considered responses to the Commerce Commission (the "**Commission**"). WIAL confirms the following matters:
 - Considerable work is required to prepare responses to the questions.
 - A lack of available resources to complete this work within the short period required by the Commission, particularly given the lack of advance notice of commencement of the review.
 - The requirement of WIAL's Board of Directors to have sufficient opportunity to fully consider the responses before they are provided to the Commission.
5. For these reasons, WIAL has made this initial submission while the substantive submission on the questions relating to WIAL is prepared. We intend to file our substantive submission on or around 6 July 2012.

WIAL CONTACT DETAILS

6. WIAL will be pleased to provide any further information required in support of this submission. Our contact person is:

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ENDORSEMENT OF NZ AIRPORTS SUBMISSION

7. WIAL fully supports and endorses the New Zealand Airports' Association's ("**NZ Airports**") submission in relation to the Process and Issues Paper. Our submission should be read in conjunction with (and is complementary to) the NZ Airports submission.

REVIEW TIMING

8. WIAL appreciates that section 56G of the Commerce Act 1986 ("**Act**") requires the Commission to undertake a review of the effectiveness of the ID Regime (the "**Review**") as *soon as practicable* after an airport sets any new price in or after 2012. However, WIAL believes that the Review has been scheduled ahead of the "practicable" timing given that the important summaries and analysis of the performance of the airports in accordance with Section 53B(2) of the Act have not yet been prepared, and airports have not had time to appropriately consider that analysis.
9. Information disclosure encourages outcomes consistent with the Part 4 purpose statement by encouraging self-initiated behaviour change by airports (if necessary). The Section 53B(2) reports are an important component of that process:

The requirement to publish a summary and analysis confers an ongoing, active role on the Commission in respect of the information disclosure regime after the information disclosure requirements have been set. The Commission considers that its summary and analysis obligations will contribute to ensuring that sufficient information is made available to interested persons.¹

10. If the Commission identifies areas of concern in its summaries, then airports may wish to take action to address those concerns.
11. The approach to the Review set out in paragraph 25 of the Process and Issues Paper appears reasonable. The proposed approach focuses on the airport's conduct to comply with the requirements of the ID Regime. However, in the absence of any Section 53B(2) reports, airports have received no guidance from the Commission on their performance. Accordingly, there has been no opportunity to engage in self-initiated behaviour change (if required), in response to the reports. However, we recognise that the Commission has been given a seemingly impossible task in being required to undertake a review "as soon as practicable" by the Act, especially, as the Commission acknowledges, performance can only be assessed over time.
12. The proposed timing of the Review appears to be inconsistent with the Commission's own view of the effectiveness of the ID Regime:

"...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.**"²

"The Commission has had regard to the following considerations in formulating the Information Disclosure Requirements:

- ...

¹ Commerce Commission, "Information Disclosure Reasons Paper", 22 December, Section 2.46.

² Commerce Commission, "Information Disclosure Reasons Paper", 22 December, Section 2.24.

- ensuring consistency of data, both between Airports and **over time**, to promote comparability of performance and therefore more **meaningful assessment**”³

Section 53B(2)(b) provides that the Commission:

...must, as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated suppliers, their relative performance, and **the changes in performance over time**.⁴

[emphasis added]

13. The Commission's interpretation of "as soon as practicable" as being prior to any Section 53B(2) report, however, further exacerbates the already sub-optimal process proposed in the Act which does not allow for an optimally timed review. It is unfortunate that the proposed timing of the Review does not allow the consideration of the effectiveness of the monitoring of trends over time, which is an important aspect of the ID Regime.
14. WIAL believes that a Section 53B(2) report would provide valuable evidence for the Review and go some way to improving the information available for the Review. Altering the timeline to accommodate the publication of a Section 53B(2) report would be a constructive way to improve the Review. The timeline proposed by NZ Airports in its submission on the Process and Issues Paper would allow such a report to be incorporated.
15. Should the Commission continue with its Review under its current timeline, any report to Ministers would need to expressly acknowledge the absence of any Section 53B(2) report, and the lack of opportunity for airports to engage in self-initiated behaviour change (if required), in response to the reports.

CONSIDERING EFFECTIVENESS IN THE CONTEXT OF THE REVIEW TIMING

16. The key components of the ID Regime are:
 - To ensure that *sufficient information* is made available to interested persons; and,
 - To allow those interested persons to assess whether the purpose of Part 4 of the Act is being met.

That is, there are two components in the test for effectiveness of the ID Regime. Firstly a test as to whether *sufficient information* has been made available to interested persons; and Secondly, an *assessment* of that information to determine whether the purpose of Part 4 of the Act is being met.

17. While WIAL has identified what it believes are the appropriate tests for effectiveness, it would be helpful for the Commission to set out a full analysis of the key tests to be assessed by the Review prior to conducting the review.
18. As noted in paragraph 11, an effective assessment of the disclosed information needs to be undertaken over time. The need to undertake the assessment of the disclosed information

³ Commerce Commission, "Information Disclosure Reasons Paper", 22 December, Section 2.37.

⁴ Commerce Commission, "Information Disclosure Reasons Paper", 22 December, Section 2.45.

over a sufficiently long period of time (in particular that which relates to rates of return) is further supported by work recently undertaken by the Australian Productivity Commission:⁵

“While a business' WACC may remain relatively stable, its rate of return should vary across time. It is economically efficient for a business to charge lower prices when it has excess capacity, to attract demand for its infrastructure. In these periods, the rate of return will be lower. As capacity tightens or congestion rises, prices rise to temper demand, and to encourage new investment. As prices rise, so too does the rate of return. As new investment expands capacity again, the rate of return falls, and so on.

While rates of return may vary over time, a business must earn its WACC on average to make investment attractive. But if a regulator acts to curtail high rates of return, while ignoring periods of low returns, then the business will not earn the returns needed to attract investment funds. This movement by a regulator only against high returns is known as "asymmetric truncation".

19. To date, WIAL has completed and published the following information disclosures under the ID Regime:

- Price setting disclosure for the pricing period from 1 July 2007 to 31 March 2012 published on 31 October 2011.
- Annual information disclosure for the year ended 31 March 2011 published on 28 February 2012.
- Price setting disclosure for the pricing period from 1 April 2012 to 31 March 2017 published on 30 April 2012.

The first of these disclosures relates to the pricing period prior to the commencement of the new regime.

20. In the absence of a reasonable time-series of information, it would not be possible for the Commission to conduct a definitive review of the effectiveness of disclosed information to determine whether the purpose of Part 4 of the Act is being met.
21. Accordingly, the Commission's primary concern should be whether or not airports are disclosing *sufficient information* to allow interested parties to assess whether the purpose of Part 4 of the Act is being met. That is, the first test under paragraph 16.
22. In addition, should the Commission continue with the Review, and in the absence of any Section 53B(2) reports, WIAL would be interested in any initial comments and feedback the Commission has in respect of the sufficiency of the information it discloses, or any summary and analysis the Commission might wish to undertake in respect of meeting the purpose statement of Part 4 of the Act.

CONCLUDING COMMENTS

23. The timing for this Review presents a challenge for the Commission as the Review comes too early to draw any robust conclusions. WIAL recognises that the Commission has been given a seemingly impossible task in being required to undertake a review “as soon as practicable” by the Act, especially, as the Commission acknowledges, performance can only be assessed over time. Given that the ID Regime has only just commenced, there is

⁵ See page 127 of the PC Report.

insufficient evidence for the Commission to use in its assessment of whether the ID Regime is providing incentives for Airports to meet the purpose of Part 4.

24. However, these challenges can be met by recognising that the Review is a progress report with an appropriately targeted timeframe and scope that includes:
 - The publication of a Section 53B(2) report to include in the review;
 - Recognition of the limitations of the review of historic performance, given the absence of a reasonable time-series of disclosure information; and
 - A focus on whether or not airports are disclosing *sufficient information* to allow interested parties to assess whether the purpose of Part 4 of the Act is being met;
25. In closing, WIAL is supportive of information disclosure regulation and is committed to working with the Commission to ensure that the ID Regime achieves its intended purpose. To this end, WIAL wish to make a valuable and constructive contribution to the Review and our substantive submission on the questions relating to WIAL will be provided on or around 6 July 2012.