

Mr Andy Burgess  
Head of Energy, Airports, and Dairy Regulation  
Commerce Commission New Zealand  
c/o [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

28 May 2021

**RE: Feedback on fit for purpose regulation**

Dear Mr Burgess,

I am writing in response to the Commerce Commission's *Open Letter - ensuring our energy and airports regulation is fit for purpose*, from 28 April. I note that while the focus of the letter is largely on energy network regulation, comment has also been invited from stakeholders in the airports sector. Airlines for Australia & New Zealand (A4ANZ) welcomes this opportunity to respond. As airlines are arguably the largest stakeholder of airport, we are well-placed to provide feedback on how the regulatory model is performing.

Accordingly, we offer below some comments for your consideration ahead of the review. We note the Commission's intention for its planning to also be informed by previous work in this area; and therefore have referenced – but not repeated in full – earlier submissions made by A4ANZ and our member airlines.

**Current regulatory framework is not fit for purpose**

Inherent in the Commission's stated goal to "*review and adjust our regulations to ensure they remain fit for purpose in the changing context faced by the airport sectors*", is the assumption that the regulations are currently fit for purpose. As the Commission would be aware from previous submissions and public commentary, this view is not shared by A4ANZ or our member airlines.

It is under the existing regulatory regime that the major airports in New Zealand have historically set prices that are designed to target large profits but are not in the long-term interest of consumers. Auckland Airport provides a clear case study of how this practice has continued over time, with promised capital investment projects – many planned and agreed to for more than a decade – yet to commence. In 2018, the Commission's own [review of pricing decisions and expected performance \(July 2017 – June 2022\) at Auckland Airport \(AIAL\)](#), found that AIAL had set prices that were not in the long-term interest of consumers and were targeting excessive profits, affirming the serious concerns raised by airlines and other airport users that they were being overcharged. The Commission identified that AIAL's target return would result in an additional cost to consumers of up to \$53 million.

At that time, A4ANZ shared [independent analysis by Frontier Economics](#), which found that the total value of excess returns to Auckland airport since privatisation was more than \$3.6 billion, and at Wellington airport, \$400 million. The analysis also demonstrated that New Zealand airports were earning far higher margins than comparable airports, with Auckland Airport having one of the highest margins in the world. Even when allowing for different stages in the investment cycle, the EBIT margins at Auckland and Wellington airports were extraordinarily high (63% and 57% respectively) and more than double the international average (28%).

These analyses provide a clear depiction of not only the ability of New Zealand airports to use their monopoly position to earn excessive profits, but the demonstrable proof that they had been doing so in the absence of a regulatory framework that is fit for purpose. This comes at a cost to the New Zealand community, both financially and through lost opportunities for improving the quality and efficiency of airport services.

The light-handed regulatory regime is intended to constrain monopoly pricing through an inherent threat of greater regulation, but, as the Commerce Commission's own report acknowledged, while the airports are encouraged to provide services at the quality that consumers demand, there is nothing to prevent them setting charges as they see fit (see next page). Moreover, even if they fail to progress capital plans, the airports are able to report themselves as having fulfilled information disclosure requirements of the regime. Clearly, the system isn't working.

A4ANZ therefore hopes that the planning for the upcoming review will allow the Commission to consider the parameters that could be used to assess the effectiveness of the current regulatory regime, e.g. pricing, terms and conditions of access for users, quality, and efficiency, ideally in consultation with airport users. If that assessment finds – as expected - that the regulatory framework *is not* fit for purpose, we hope that the Commission then sees fit to exercise its new powers, under the changes to the Commerce Act, to undertake an inquiry and to recommend to Government that airports come under a negotiate-arbitrate regime which balances the bargaining power between the negotiating parties.

In the meantime, however, all the excess costs continue to be passed on to airlines, at a time that they can least afford it, while reeling from the effects of the pandemic. What the aviation sector – and New Zealand's economy – most certainly can't afford, is to leave in place a system that allows airports to recover from the damaging effects of COVID-19 *at the expense of* airlines and passengers.

#### **Airline recovery from the devastating impact of COVID-19 will require lower costs, not excess charges**

The COVID-19 pandemic has, and continues to be, devastating to the aviation sector. At the lowest point, domestic air travel in New Zealand was operating at as little as 3% of 2019 volumes. International travel remains extremely constrained, with inbound passenger numbers still down 76% from pre-COVID times, and fewer than half the number of airlines now serving the New Zealand market.

Without the Government's support for essential passenger and cargo connections, the picture would have been even worse. More than one year on, domestic aviation is now playing a strong part in New Zealand's recovery from COVID. During peak periods, leisure travel has reached higher levels than in 2019, while business travel demand is taking longer to bounce back. As a result of this constrained and uncertain operating environment, all airlines have reduced their costs, including through significant job losses.

This focus will need to continue in the years ahead, with [the Director General of the International Air Transport Association cautioning recently](#) that increased travel costs will mean a slower economic recovery from COVID-19. *"Containing and reducing costs will be top of mind for airlines. Governments and partners must have the same mentality. And that must be reflected in items big and small. There can be no tolerance for monopoly infrastructure suppliers gouging their customers to recoup losses through higher charges."*

With airport charges forming a significant part of the cost base for airlines, all of the issues highlighted above will be exacerbated post-COVID, if no change is made towards a more effective regulatory framework. A4ANZ and airlines have advocated for years for monopoly airports to be subject to a negotiate arbitrate regime; to remove the imbalance of power, improve negotiations, and deliver fairer outcomes for airlines and to consumers. This is an avenue that is available under the Commerce Act but has as yet been unused. Arguably, there has never been a more important time to give effect to such a provision, as airlines face a long, slow and uncertain recovery from COVID-19.

It is important to note, however, that the changes to the Commerce Act are not the only thing required to give effect to a regime which constrains specified airports from targeting excessive profits. Given the impacts of COVID-19, we are particularly concerned that the major airports and their representatives have been lobbying for the retention of S4A in the Aviation Act, which allows them to “price as they see fit”, despite the draft Civil Aviation Bill proposing its removal.

Even if the Commerce Commission were to conclude that an airport is targeting excessive profits, the above clause protects it from being forced to lower prices or return excess profits. As A4ANZ has argued in submissions on the Civil Aviation Bill, to continue with a legislative provision which allows airports to seek – and receive – unreasonable charges from airlines and other airport users, ultimately disadvantages consumers, and we are pleased to see the draft Bill removes this clause. The Bill is a positive step towards ensuring that the New Zealand public benefit from a thriving and sustainable aviation sector. Together with the recent changes to the Commerce Act, we hope that, once passed, it will begin to facilitate fairer negotiations at New Zealand’s major airports, for the good of New Zealand travellers, and indeed the broader economy.

### **Decarbonisation**

The Commission also asked about the decarbonisation of aviation in the context of this review, and A4ANZ is pleased to advise that – even in the face of the massive losses sustained during the COVID-19 pandemic - our member airlines remain committed to measures to decarbonise the industry. A4ANZ is currently exploring the pathway to achieving net-zero emissions across the Trans-Tasman aviation industry by 2050, and, together with our member airlines, is ready and committed to work with Government and stakeholders across the industry to develop and implement supportive policy and investment frameworks; particularly for the development and uptake of Sustainable Aviation Fuels (SAF).

While SAF and other technology are still in the early stages of development and use in New Zealand (at present NZ does not currently have a SAF facility), it is important that the aviation sector works collaboratively to ensure that any supporting infrastructure is efficient and fit-for-purpose. This underscores the need for a regulatory framework that encourages and incentivises better, more effective consultation between airports and their customers on the setting of pricing and service levels.

The feedback offered above is intended to be constructive and to assist in informing the Commission’s planning of the upcoming review. We are very happy to discuss further with you, any aspect of this feedback, and look forward to participating in the formal consultation processes.

Yours sincerely,



---

**Dr Alison Roberts, Chief Executive Officer**

**Airlines for Australia & New Zealand**

Level 8, 333 Collins Street, Melbourne Vic 3000

E: [aroberts@a4anz.com](mailto:aroberts@a4anz.com)