



15 December 2014

By email: majorairports@mbie.govt.nz
Major Airports Review
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

Dear Sirs

EFFECTIVENESS OF INFORMATION DISCLOSURE REGULATION FOR MAJOR INTERNATIONAL AIRPORTS

Apologies for making a late submission on this matter. After looking through a number of the submissions you have received we felt there was a particular point which was important and not highlighted elsewhere and hence warranted a submission, even if late. We hope you agree.

By way of introduction; Infratil is New Zealand's largest private investor in the airport sector and has nearly two decades of involvement with airports in New Zealand, Australia, the UK and Europe. At present Infratil's main financial interest in the sector is its 66% stake in Wellington Airport, to which it appoints the majority of the board. Infratil's co-investor in Wellington Airport is the Wellington City Council.

We will not comment on the majority of issues relevant to your deliberations on the topic at issue, but there is one specific matter to which we wish to draw your attention.

As you will be aware, the disclosures have been highly contentious as to their purpose and their content. Are they "de facto price control"? Should the Commission have a largely unfettered right (subject to the obscure Materially Better test) to define how assets are valued, how revaluations are to be calculated, and what returns are acceptable?

Over the last six years it feels as if every detail of these and other matters has been debated to the tenth decimal place. Millions of dollars have been spent, at times with no thought at all to Keynes' advice that "It is better to be roughly right than precisely wrong".

An odd aspect of the Disclosures is that they are not an end in themselves. There are intended to assist someone with an interest in the topic to appraise the financial and operational performance of the three airports, and the Commission

to provide advice to the Minister of Commerce, presumably about whether an airport warrants some form of greater control.

However, thus far it is probably not being unfair to suggest that no one has bothered to go through the Disclosures of the three airports in any serious way. Assiduous reading of broker reports on Auckland Airport and Infratil has thrown up no reference to them. Even the Commission only dipped into the Disclosures when it prepared its S56g reports on the Airports' 2012/3 redetermination of aeronautical prices.

It is apparent that the key role of the Disclosures is to inform communications between the Commission and the Minister and by inference the Ministry of Business, Innovation and Employment (as adviser to the Minister). As such, we believe the Ministry should clarify how it will go about exercising its role in this discussion.

There are a number of aspects to our request, but the key reason why the Ministry should be more proactive relates to the chain of events in which the Disclosures play a part. In total this could be described as the Commission defining what the airports must disclose (via the Input Methodologies) and subsequently reviewing the resulting Disclosures and providing advice to the Minister, with the Minister presumably then seeking the views of the Ministry, and so on.

Any airport which incurs the displeasure of the Commission faces either an interminable period of uncertainty or changing tack to comply with the Commission's judgement. In effect this means the Commission can determine prices and investments, unless the airport can endure a lengthy period of uncertainty and criticism.

When the Commission concluded that Wellington Airport's 2012 price redetermination was likely to result in over-earning from FY2015, and reported accordingly, the Airport had the narrow choice of several years of uncertainty or adjusting to deliver compliance with the Commission's views. However, there was little real capacity to wait and see, because no one had any idea of how the Ministry/Minister would respond and the uncertainty and the risk of rigid heavy handed price and investment control effectively forced an early decision to comply.

While this situation arose due to differences of opinion (between Commission and Airport) about Wellington's 2012 price redetermination, it will be the Disclosure information which will inform this process in future.

We believe that the Ministry should now be proactive and clarify its position to whatever extent is compatible with the Commission's independent responsibilities. Assuming for a moment that Wellington had stuck to its guns after the Commission's 2013 S56g report, this would have resulted in the Ministry undertaking a review of the advice and providing clarity as to its thinking. All we are seeking is that the Ministry go ahead and provide that clarity now.

For example, the Commission refuses to undertake comparative analysis. It does not look at Wellington Airport's charges or costs and compare them against Christchurch's, Auckland's, or any comparable airport in Australia. The

Commission has adopted a "one size fits all" approach to the airports and an analytical framework which does not accommodate or recognise innovation and risk; notwithstanding the obvious distinctions between the three airports and the way their business focus is shifting away from being simple infrastructure providers to having to invest in market development and other areas which involve commercial risk.

In addition to the factors noted above (where we believe there would be general advantage from the Ministry providing an expression of its views), only the Ministry is in a position to objectively assess issues like the proportionality of controls and the overall cost-benefit of controls. In 2001/2 the Commission's advice to price control Auckland Airport was rejected by the Minister (on the advice of the Ministry) precisely for these reasons. It would be generally conducive to greater understanding on the part of all parties were the Ministry to again define its position on these matters.

Recently major reports on commercial regulation have been tabled in Australia and New Zealand. There are common themes about the need for regulation to accommodate innovation and to be innovative as well as adaptable, flexible, collaborative, cost efficient and proportionate. By adopting a more proactive stance with regards to Disclosures, we believe the Ministry could assist with these outcomes and would certainly improve transparency and reduce risk.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tim Brown', written over a horizontal line.

Tim Brown