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Competition Policy Team  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
WELLINGTON 6011

By email: [competition.policy@mbie.govt.nz](mailto:competition.policy@mbie.govt.nz)

**Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986**

Air New Zealand welcomes the opportunity to submit on the Ministry of Business, Innovation and Employment's (MBIE) targeted review of the Commerce Act 1986. As New Zealand's national carrier, we are committed to ensuring a competitive, efficient, and consumer-focused aviation sector.

Air New Zealand supports periodic reviews of our competition laws to ensure they remain fit for purpose.

Our submission in relation to the current review focuses on the regulation of monopoly airport services and the need for an effective regulatory framework that promotes efficient investment in airport infrastructure and fair pricing, for the benefit of all stakeholders in the broader aviation ecosystem, including the travelling public.

**The Need for Stronger Regulation of Specified Airport Companies**

Air New Zealand, alongside other airlines, is a payer for 'specified airport company' services at Auckland, Wellington, and Christchurch Airports. The current regulatory framework under the Commerce Act, which subjects these airports to Information Disclosure regulation, has proven inadequate in addressing significant market power imbalances and providing best outcomes for consumers. Most relevantly, Auckland International Airport Limited (AIAL) is currently pushing ahead with a \$7-8 billion dollar investment, which its customers – who have no choice but to pay for it – say goes well beyond what is reasonably required.

While the Commerce Commission has a role in reviewing airport pricing, its current regulatory tools lack the necessary enforcement power to correct excessive pricing or inefficient investment decisions. The experience with AIAL in particular has demonstrated the need for enhanced regulation to ensure that airport charges reflect efficient investment and fair returns.

**Concerns with Regulatory Framework**

**a) Limited Constraints on Airport Market Power**

The light-handed information disclosure regime does not provide a sufficient deterrent against the exercise of monopoly power. Auckland Airport, which handles 75% of international passenger traffic and serves as a key domestic hub, has proposed an unprecedented and oversized capital expenditure program of \$7-8 billion through 2032, significantly raising costs for airlines and ultimately consumers, with no material increase in aeronautical capacity. While there is agreement

that some investment is warranted, the current light-handed regime which requires only that certain information is disclosed to the Commerce Commission, means there is no effective mechanism to require modifications to these plans where stakeholders identify more cost-effective and operationally efficient alternatives.

**b) Absence of a Meaningful Regulatory Threat**

Regulation is only effective when there is a credible threat of further intervention. However, there is some ambiguity in the Commerce Act as to whether any move to more stringent regulation, such as negotiate/arbitrate or price-quality control, must apply to all three specified airport companies, or whether it can allow for a targeted approach to a single airport. This lack of explicit flexibility diminishes the deterrent effect of regulation and thus is not in the best interests of New Zealand consumers.

**c) Investment and Pricing Concerns**

Airlines have raised concerns that airport investment decisions do not sufficiently account for affordability, efficiency and necessity. Auckland Airport's capital investment plans include significant non-aeronautical developments, such as retail spaces, which are cross-subsidised by aeronautical charges. This results in cost burdens being unfairly passed onto airlines and, ultimately, consumers.

**d) Impact on the Wider Aviation Ecosystem**

The unchecked expansion of Auckland Airport's asset base, with limited consideration of alternative phasing or more cost-effective options, creates inefficiencies across the entire aviation supply chain.

**Historical Context: Calls for Reform**

Airlines concerns about the effect of this regulatory gap are longstanding. The recent full privatization of AIAL, following Auckland Council's divestment of its remaining shareholding, underscores the need for this gap to be resolved. With no public oversight remaining, AIAL operates as one of the few major airports globally without direct public interest accountability.

**Proposed Amendments to the Commerce Act**

To address these issues, Air New Zealand recommends the following targeted amendments to the Commerce Act:

**1. Enable Airport-Specific Regulatory Intervention**

Amend the definition of "specified airport services" in s 56A(1) to make clear the regime allows for targeted regulatory responses to individual airports.

To this end, we support BARNZ's position that:

(a) the definition of "**specified airport services**" in s 56A(1) be amended as follows:

***specified airport services** means all of the services supplied by specified airport companies (either individually or collectively) in markets directly related to the following activities ...*

This would clarify that there is scope for appropriate and targeted intervention where market power is being exercised in a way that harms competition and consumers. Notably, the original intention

behind s 56 of the Commerce Act was to provide a mechanism for escalating regulatory oversight where needed, with this threat being critical to the efficacy of lower-level regulation (such as the current information disclosure regime). However, since its introduction, no such action has been taken, demonstrating the ineffectiveness of the current settings and the necessity for reform. The need for this reform is further underscored by the parliamentary debate on the 2018 Amendment Bill, where concerns were raised about the adequacy of existing regulatory threats to deter monopolistic pricing behaviour.

## 2. Strengthen the Regulatory Threat

Amend s 56G(1) to explicitly allow for a more graduated regulatory framework, where stronger measures such as negotiate/arbitrate regulation can be imposed on a case-by-case basis if information disclosure is found to be ineffective. The background to the section 56G Commerce Act amendments made clear the critical importance of ensuring this threat is real. The Cabinet Paper noted (emphasis added)<sup>1</sup> :

“The light-handed information disclosure regime is intended to work through providing a **credible threat** of further regulation if the airport’s information disclosure does not meet the Commission’s expectations. If an airport does not comply with the Part 4 purpose, then further regulation could be applied – either negotiate/arbitrate or price-quality regulation which is provided for in Part 4.”

To this end, we support the submission of BARNZ that s 56G(1) be amended as follows:

*(1) In conducting an inquiry into the regulation of specified airport services, the Commission must consider –*

*(a) whether, in addition to information disclosure regulation, 1 of the following types of regulation should be imposed on the services:*

- (i) negotiate/arbitrate regulation;*
- (ii) default/customised price-quality regulation;*
- (iii) individual price-quality regulation; and*

*if so, how that type of regulation should apply to specified airport companies (either individually or collectively).*

## Conclusion

The Commerce Act review presents a timely opportunity to refine New Zealand’s competition policy to better protect airline customers and ensure that infrastructure investment decisions reflect the long-term interests of consumers in the aviation sector. Such a review was expressly contemplated when changes to the information disclosure regime were last introduced, with then-Minister Hon Jacqui Dean proposing that “officials undertake a full review of information disclosure regime for airports by 2027”.<sup>2</sup> Air New Zealand

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<sup>1</sup> Cabinet Paper - Part 4 of the Commerce Act 1986: Strengthening the Regulatory Regime for Major International Airports (mbie.govt.nz), para 10, (emphasis added).

<sup>2</sup> [Cabinet Paper - Part 4 of the Commerce Act 1986: Strengthening the Regulatory Regime for Major International Airports](#).

encourages MBIE to consider these amendments to ensure that the regulatory framework effectively constrains the market power of major airports, delivers fair pricing outcomes, contributes positively to the Government's double export growth goal and enhances competition in the broader transport sector.

We appreciate the opportunity to contribute to this discussion and welcome any further engagement. Please contact Kristy McKay **Privacy of natural persons** if you have any questions relating to this submission.

Ngā mihi nui,

**Privacy of natural persons**

Kiri Hannifin

**Chief Sustainability and Corporate Affairs Officer**  
**Air New Zealand**