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The Board of Airline Representatives of New Zealand (BARNZ) represents some 25 member airlines who fly to from and within New Zealand. We also represent businesses reliant on air connectivity such as ground handlers, catering companies and waste management businesses who partner with airlines to deliver air connectivity.

BARNZ welcomes this review of the Commerce Act. We understand that this review is designed to ensure that New Zealand's competition settings allow issues in New Zealand markets to be addressed, and ensure that our competition settings are agile, responsive, and fit for purpose. This submission answers question 29 of the consultation document:

Are there any other minor or technical changes you consider could be made to improve the functioning of New Zealand's competition law?

BARNZ members are payers for 'specified airport company' services

BARNZ meets the definition of 'substantial customer' of regulated airports in New Zealand, as currently defined in s.2A of the Airport Authorities Act 1966. This means that BARNZ is consulted with by specified airport companies about capital costs and prices set, at least every five years. Airline members of BARNZ are then required to pay those prices, set to recover the costs of commissioned capital cost, operational costs, and the targeted return as set by the airport in question.

As officials will know, the Commerce Commission has a role both in setting the Input Methodologies which inform specified airport company target returns, and in reviewing specified airport company prices once set. BARNZ participates in these reviews. Under Information Disclosure Regulation, the Commerce Commission is not able to direct specified airport companies to amend pricing or returns, though to date some regulated airports have slightly moderated prices in response to Commerce Commission findings of excess profits.

The Commerce Act provides for regulation of specified airport companies

Specified airport companies are named in the Commerce Act as Auckland, Wellington and Christchurch Airport companies. BARNZ submits that this specified selection should be amended to include Queenstown Airport Company (QAC), given they meet the criteria currently described in the Airports Authorities Act.¹

QAC is part owned by Auckland International Airport Limited, and it is also New Zealand's second busiest international airport post-pandemic. QAC intends to make investment into its aeronautical services in the coming price periods, and at present this investment is not required to be disclosed to the Commerce Commission, nor are prices reviewed by the Commission as they would be under Information Disclosure².

The regulation for specified airport companies is currently Information Disclosure

According to s.56C of the Commerce Act, specified airport services are subject to Information Disclosure Regulation. The Information Disclosure regime requires that specified airport companies make annual disclosures of aeronautical income and expenditures, and price disclosures when they set prices for airlines. These disclosures are made publicly and to the Commerce Commission.

Information Disclosure is the lightest form of regulation available in the Commerce Act, and is at its weakest when applied to regulated airports who may justify a departure from the weighted average cost of capital (target return) as is published by the Commerce Commission for airports. BARNZ has submitted to the Commission and to MBIE officials that Information Disclosure is insufficient to constrain all specified airport companies from seeking excess profits.

Further regulation is possible – but unlikely under current drafting

Regulation works to constrain monopolies by creating a regulatory threat. The regulatory threat must be sufficient to constrain the monopoly power of the regulated business – that is, the regulatory threat must be effective, practical, provide certainty for regulated parties and be efficient in driving monopolies to deliver best long-term outcomes for consumers, as might be achieved in a workably competitive market. Effective regulation must also provide for flexibility to allow the regime to adapt to changes in the market and to address individual situations in a fair and proportionate manner.

¹ *Specified airport company* means an airport company that, in its last accounting period, received revenue that exceeded \$10 million, or such other amount of revenue that the Governor-General may from time to time prescribe for the purposes of this definition by Order in Council (see subsection (2)) Airport Authorities Act 1966 (2)

² BARNZ is not alone in its view that QAC should be considered for inclusion in Information Disclosure Regulation. The OECD, in its independent 2024 Economic Survey of New Zealand, noted that whether oversight should be extended to Queenstown, should be investigated. See section 3.3 2 of the OECD report available at https://www.oecd.org/en/publications/oecd-economic-surveys-new-zealand-2024_603809f2-en/full-report/revamping-competition_cfcdb3a5.html#section-d1e7519-31adce8a19

New Zealand's Commerce Act does not fulfil these requirements and so does not generate sufficient threat of further regulation for specified airport companies. While the Act allows for further regulation of those specified airport companies, s.56G directs consideration of how further regulation should apply to specified airport **companies**, plural. This drafting has led to the interpretation that further regulation must apply to all three (current) specified airport companies, rather than the singular specified airport company as per the definition in s56A.

The problem of further regulation of 'specified airport companies'

Officials have previously considered this issue. The departmental report which accompanied the 2018 Commerce Act amendments considered the issue of whether to expressly allow for further regulation of just one specified airport company.³ This report from officials sets out the issue well, making clear the risks inherent in leaving the legislation unchanged. Emphasis has been added.

*"On the other hand, there are also disadvantages to retaining this approach. The main disadvantage is that the three airport companies would be subject to further regulation **even if only one is acting contrary to the long-term interests of consumers**. This could be considered to be unfair and disproportionate regulation, which unduly punishes the other airports who are acting in the interests of consumers. This approach may even weaken the threat of further regulation as it could be more difficult to justify the benefits and costs of imposing heavier handed regulation on all airports when only one needs it."*⁴

One airport to rule them all?

Less than six years later, the landscape for regulation of monopoly airports has changed, and we have one airport which has grown to a mega-monopoly. Auckland International Airport Limited (AIAL) receives some 75% of international connections, and hubs almost all domestic air services operating within New Zealand. It has set a hugely expensive long term capital plan in place, ignoring the concerns of its airline customers that increased costs will impact demand, and are unaffordable for some airlines. It has taken advantage of dual till settings that do not regulate commercial returns to build a discount shopping mall in its precinct, which is served by roading networks funded to a 70% aeronautical till allocation.

Unlike Christchurch and Wellington airports, there is no longer any Auckland Council ownership of AIAL – meaning there is no local authority oversight to ensure that this airport delivers for tourism growth, or develops its landholding aligned with council planning. The congestion created by AIAL's outlet mall on the Pukaki Bridge is one example of this lack of

³ [Microsoft Word - 2018- Departmental Report to the Transport and Infrastructure Committee on the Commerce Amendment Bill - \(DRAF \(www.parliament.nz\)\)](#) See in particular paragraphs 91-99 and page 55 of the table.

⁴ [Microsoft Word - 2018- Departmental Report to the Transport and Infrastructure Committee on the Commerce Amendment Bill - \(DRAF \(www.parliament.nz\)\)](#) : paragraph 98

alignment. Replacement or upgrade of this bridge is likely to generate further cost burden for Council and for airlines. Costs of this work have not yet been included in AIAL capital planning or airline prices.

While BARNZ agrees that appropriate investment in AIAL is needed, the outsize capital plan being imposed without constraint is impacting both customer airlines and New Zealand's wider aeronautical system.

AIAL's intent to spend some \$5.9 billion dollars on aeronautical capital costs to 2032 has created a weight of cost in New Zealand's aeronautical system which is causing other components of the system to suffer from reduced investment. In New Zealand, the aviation system is almost entirely funded by airlines – and in turn by travellers. The collective costs arising from the aviation system include CAA and Aviation Security levies, Customs and Biosecurity levies, and Airways costs for air traffic control.

But for AIAL's higher costs, Airways might propose digital aerodrome services – instead it is faced with asking airlines to fund a tower replacement which arises from AIAL's lack of aeronautical planning, and is likely to baulk at imposing further cost increases in a flat demand environment. AIAL's failure to plan their precinct for changing sight lines arising from the integrated terminal building is another example where lack of oversight of the monopoly has directly led to additional and urgent cost burden.

But for AIAL's higher costs, BARNZ member airlines might be better able to support Aviation Security costs to deliver core aviation security functions designed to meet New Zealand's international commitments.

But for AIAL's higher costs, demand for air services to Auckland Airport might not be flat. If airlines avoid growth to Auckland Airport – preferring to expand to other New Zealand ports, or turn to other international ports – we might have more airlines to share the cost burden of the capital plan. As it is, we do not. This means it is likely that Auckland Airport's prices are likely to rise further for those airlines who remain in its next price period which commences in 2027.

Best practice competition settings will encourage tourism growth

When competition settings are well founded, monopolies are driven to operate as they might in a workably competitive market. Under these more competitive settings, it is likely that price increases for airline customers of airports would be moderated over time to what is affordable for airlines and reasonable for investment needs. These settings are those which would deliver tourism growth to New Zealand's largest gateway airport – tourism which New Zealand needs for economic wellbeing.

Proposed amendments to improve outcomes

BARNZ submits that this review of the Commerce Act provides an opportunity to improve the regulatory threat for Auckland Airport. We propose that 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 ...*

Amend s 56G(1) 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*

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

Similar consequential changes may also be required in ss 56H(1) 56J(1)(a) 56K(1) and 56L(1).

Proposed changes would deliver improved outcomes, even absent further regulation

The minor amendments BARNZ proposes would not change existing regulatory settings such as the application of Information Disclosure or price setting. However, these changes would increase the regulatory threat for any specified airport which is taking advantage of its monopoly position to the detriment of the wider system⁵.

With these changes in place, it would be possible to consider whether further regulation should apply to AIAL. Change to the legislation to allow for further regulation is itself a regulatory threat. This alone may encourage AIAL to moderate its behaviour such that it participates in New Zealand's aviation system mindful of its impact on the system and its wider participants. If it does not, further regulation would then be possible.

⁵ BARNZ is not alone in its call for these changes. The OECD, in its Economic Survey of New Zealand, also formally recommended that consideration should be given to treating the three larger airports differently if remedies are needed only for one. See Air Transport recommendations under section 3 of the OECD report available at https://www.oecd.org/en/publications/oecd-economic-surveys-new-zealand-2024_603809f2-en/full-report/revamping-competition_cfcdb3a5.html#section-d1e7519-31adce8a19

BARNZ is very happy to discuss this submission with officials as may be required.

Yours sincerely,

Privacy of natural persons

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