Auckland Airport

Auckland Airport Submission on MBIE's check-in on airport regulation

23 May 2025

Executive Summary

Auckland Airport appreciates it is the role of the MBIE Competition Policy team to provide confidence to Ministers and stakeholders that the information disclosure regime for airports is effective at meeting the intention of Part 4 of the Commerce Act 1986 (the "**Act**"), including ensuring the legislative settings provide for a real threat of further intervention if needed. Periodic reviews of the regime are expected, especially if issues are identified by the Commerce Commission (the "**Commission**") that indicate airports are acting in a way that is inconsistent with the purpose of the Act. This is not the case. Very recent evidence shows the regime is working.

The 2018 MBIE review of airport regulation added significant flexibility to the regime and formalised the Commission's role in assessing its effectiveness. Since then, the regime has proven to be highly effective through the Commission's reviews of Auckland Airport's last two price setting events, the most recent of which was issued just 11 days before this review was launched.

For these reasons, Auckland Airport is very concerned by the 11 April 2025 MBIE email, seeking feedback from only a selected group of stakeholders, which did not refer to or acknowledge any of the many recent reviews of the regulatory regime, and how airports are adhering to and behaving within that regime. It instead appeared to primarily be driven by submissions from airlines (which the Commission has found have no basis), and selected conclusions of a very high-level OECD report.

An objective assessment of the regime should place far greater emphasis on the actual operation of the regulatory regime, including the Commission's pricing and legislative reviews that have already been undertaken by government agencies (including MBIE itself in 2018). These reviews have full airline involvement, including consideration of airline submissions. This is a much more reliable information set relative to airline submissions on an unrelated legislation review or high-level observations made by the OECD.

The Commission's review of Auckland Airport's recent price setting event is the most robust and current evidence that existing settings are working. This detailed review, undertaken over an almost two-year period, found that Auckland Airport is behaving as the regime envisaged, making investments that are in the best interests of consumers.

As outlined throughout this submission, claims from airlines are simply not credible, and rest on their own commercial objectives rather than the aims of Part 4. None of the claims from airlines, submitted to Auckland Airport's recent pricing review, were supported by the Commission in its report. They were unfounded, as are similar claims submitted to MBIE during the targeted review of the Act, which was completely unrelated to airport regulation.

In addition to answering the specific questions MBIE has asked, in this submission Auckland Airport has taken the time to respond to the key claims made by airlines in their Commerce Act submissions. All of these were responded to thoroughly as part of the PSE4 review, but due to airlines continuing to raise them, the Airport must respond.

The OECD, while independent, has published a report that includes high level observations across a number of competition issues. Given the wide range of work it does, it cannot be as familiar with the specifics of the regime here in New Zealand and how it is operating as the Commission is. The most reliable, independent party on these issues is the Commission.

Investor uncertainty created by the check-in

Reviews of regulatory regimes do not come without cost. They create significant uncertainty for the relevant sector and impact the ability of regulated entities to raise capital and make investment decisions. For these reasons, they should only be launched if a clear problem has been identified by an objective assessment of the facts.

Auckland Airport does not believe the requests in the email of 11 April 2025, or 'MBIE's check-in', meets these criteria. This is a concern that has been shared by members of the global investment community. Many international investment funds have communicated to Auckland Airport that this check-in process has increased the risk of investing in New Zealand and as such they are reassessing the risk of investing in both Auckland Airport and New Zealand, and even considering deploying their capital elsewhere. These impacts stretch well beyond the airport sector and undermine the Government's priority to attract foreign investment into the country.

Auckland Airport is concerned about the uncertainty the check-in has created for investors at a time when Auckland Airport is investing significant capital to make New Zealand's gateway airport more resilient, while also delivering essential safety upgrades and adding much-needed capacity which will drive economic growth. All of the capital for this investment has come from private sources.

The check-in has also led to significant uncertainty for regional airports, all of whom are impacted indirectly by the regime. The reason for further questioning this regime, a regime that is New Zealand's best performing infrastructure sector according to consumers, is not evident.

Issues MBIE has asked for feedback on

More information on the oversight of capital investment has been requested and this submission provides a substantive response. There are several requirements on airports to publish and share information about their capital investment plans under the current regime. Construction of the Domestic Jet Terminal is now underway, and this was first included in Auckland Airport's pricing disclosures in 2017. The disclosure requirements airports are subject to are forward looking and provide significant amounts of detail on what these plans entail.

The process to make changes to airport regulation has already been streamlined. This was the intent behind many of the amendments that were made to the Commerce Act in 2018, upon the advice of MBIE. Moves to truncate the process required to change regulation would undermine what is currently a robust policy process, reduce regulatory certainty, and create a real risk of imposing regulatory costs on industry where they are not required. There has been no change in circumstances since the Act was last updated that requires further streamlining or flexibility to be introduced.

This check should result in no further action

It is Auckland Airport's strong submission that this check-in should result in MBIE being satisfied that current settings are working to meet the intention of Part 4 of the Act and that no further action is required.

If MBIE does consider that further consideration of these issues is required, then we would expect a proper policy process would follow which Auckland Airport and other stakeholders would be involved.

Any process should focus on consumer outcomes and as such would also have to cover the broader aviation sector including the airline market, not just regulated airports. Changes to airport regulation alone are not going to benefit consumers in a non-competitive airline market.

The Commerce Commission has recently considered that a competition study is unlikely to identify any opportunities to shift the dial on competition in domestic airlines, given the economic challenges of the market. If there are structural barriers to competition in a market, then Part 4 regulation exists to deliver consumer outcomes in these markets. The logical next step for the Commission and the Government is to launch an inquiry under Part 4, to undertake a considered and robust inquiry process, to consider whether regulation of airline monopoly services is warranted. All of this is possible under existing legislation and just like for airports, a robust process should be followed.

Additional material being shared with MBIE

We are also sharing with MBIE **in confidence** the unredacted version of Auckland Airport cross-submission on the Commission's draft report for the PSE4 Review. We do so because this is where Auckland Airport responded to many of the same claims airlines are now repeating, that the Commission dismissed in its review. Given the airlines' repeated pattern of making claims that are simply false, Auckland Airport requests that if MBIE is to take this process further (we don't think it should) that we are given the opportunity to respond to any airline submissions.

Auckland Airport

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1. The timing and basis for this check-in has undermined not just regulatory certainty, but New Zealand as an investment destination

1.1. The process for this policy check-in

Auckland Airport wishes to constructively engage in the process. To clarify our understanding of it, Auckland Airport met with MBIE on 15 April 2025 and again on 14 May 2025. It was confirmed that:

- this process is purely a check-in and not a detailed review;
- if any decision was made to progress this work, MBIE would expect that Auckland Airport would have the ability to give further feedback and take part, however, that will be a decision for Ministers
- no particular issue or problem with the regime has been identified by MBIE, but some stakeholders (airlines and their representatives) have raised concerns;
- there are no examples to demonstrate that change is required;
- the focus of the check-in is solely on the legislation and whether it is sufficiently flexible to enable regulatory change in the event it was required;
- this check-in does not contemplate the merits of or need for any regulatory change itself; and
- that any process for a change in the regulations to be introduced would be run through the Commission.

1.2. The timing of this check-in does not reflect the recent success of the Information Disclosure regime

Now is a time when the effectiveness of the Information Disclosure regime should be recognised for the flexibility it provides for airports to respond to challenging circumstances and deliver for the long-term benefit of consumers.

Only 11 days after Auckland Airport received a highly favourable report from the Commerce Commission, which concluded that our investment program was meeting the requirements of Part 4, we were disappointed that a decision was made to launch an ad hoc check-in on whether regulatory settings should change. Even if MBIE intended this check-in to be light handed, the timing and unusual nature of the review has sent negative signals to the investment community.

Information Disclosure regulation continues to prove to be effective

MBIE undertook a thorough review of airport regulation in 2017-18, which resulted in changes made to the Commerce Act in 2018. This review covered many of the issues MBIE are asking about today, and the resulting changes applied in 2018 simplified the process to change airport regulation (see section 1.4 for more on the 2018 changes).

Not long after the 2018 changes (and prior to any new price setting events), the aviation industry was devastated by the COVID-19 pandemic. The flexibility provided by the Information Disclosure regime allowed airports and airlines to work together on appropriate responses to unprecedented uncertainty for the sector. The pandemic resulted in over $500 million of revenue losses which have not been recovered by Auckland Airport shareholders during the previous pricing period. Auckland Airport then froze prices for the 2023 financial year (the first year of PSE4), to support airlines through the pandemic recovery period. With the full price reset deferred while the industry recovered, airport returns in the year of the price freeze were well below half of Auckland Airport's weighted average cost of capital ("**WACC**") supporting airlines as they returned to normal operations.

As part of its first price-setting event following the COVID-19 pandemic, Auckland Airport was able to commit to a large-scale investment plan that will result in benefits for generations to come, despite disruptive (and late) opposition by airlines. The recent Commerce Commission report into Auckland Airport has demonstrated that Auckland Airport made the right investment decisions and regulation is working.

It is concerning that airline submissions and the OECD report are being relied upon as the basis for this check-in

MBIE cited the reasons for the check-in were airline submissions on the targeted review of the Act (of which airport regulation was completely unrelated), and the observations included in a report from the OECD.

This is a not a solid basis for instigating this check-in and is not commensurate with the impact it has had on investors' faith in choosing to put capital into New Zealand. Airline views and submissions on airport regulation are not credible and are driven by self-interest, not the intent of Part 4 which is about the long-term interests of New Zealand consumers. As we set out in this submission:

- there is no basis to many of the claims made by airlines in their submissions to the targeted review of the Commerce Act (see section 3);
- the claims made by airlines to the PSE4 Review were disproven and not accepted by the Commission in its review of Auckland Airport's price setting event (see section 2.2); and
- the OECD report includes high-level observations that lack explanation and do not reflect a detailed understanding of the regulatory model as it works here in New Zealand (see section 3.2).

A much more reliable set of information is available to inform this process, this includes:

- the Commerce Commission's Final Report for PSE4 for Auckland Airport – or any of the other recent price setting reviews conducted by the Commission;
- the 2017-18 MBIE review of the Commerce Act and the amendments made to the Act in 2018; and
- the new Civil Aviation Act 2023 and detailed review which preceded the introduction of the revised Act.

MBIE's 2018 review streamlined the legislation – there is no reason to revisit these same issues

As is covered in more detail in section 1.4, this check-in is seeking to answer questions which MBIE have already asked and resolved. The focus of the 2018 Commerce Act review was on precisely these same questions of flexibility. The questions were assessed in detail, the Act was amended, and a roadmap was laid for future review. There has been no new evidence since then to suggest that these changes are no longer appropriate. In fact, all evidence has suggested that the regime is working well.

1.3. Regulatory certainty is essential for the Government's agenda to use private capital to address New Zealand's long term infrastructure deficit

Any assessment of the regulatory regime must look not just at whether it is working as a check on market power, but whether it is serving New Zealanders and the economic growth agenda. At the Infrastructure Summit earlier this year, the Government said it was:

> *determined to attract more private capital, capacity, and capability into our infrastructure system*[1]

The Prime Minister recently noted that foreign investment for infrastructure remains one of his top priorities:

> *We also want to seriously step-change our foreign direct investment into New Zealand, particularly in productivity enhancing infrastructure projects.*[2]

There is no better example of this occurring than in the airport sector, which is enabled by the current regulatory settings.

In 2024, Auckland Airport raised $1.4 billion of equity to fund its infrastructure build, with more than half of this (over $700 million) was from offshore. Since late 2023, Auckland Airport has raised a further $440 million from foreign debt investors. This investor funding is used to finance capital investment while under construction and before the airport can begin recovering the investment from users, which can only occur once it is commissioned for use. Investors expect a fair return on the risk involved in funding the investment during this construction period and provided this capital on the basis of the form of the current regulatory settings.

This is private capital going towards nationally significant assets that benefit New Zealand's wider economy and social wellbeing through travel, trade and tourism. Auckland Airport supports $35 billion in economic value per year. With this investment in infrastructure, the economic contribution is expected to grow to $55 billion.

In the last pricing-period between 2017 and 2022, while Auckland Airport targeted a return of 6.62%, the airport made an aeronautical return of just 3.14%. In the first two years of the current

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[1] Bishop, C. (2025, 15 March), Speech to NZ Infrastructure Investment Summit | Beehive.govt.nz
[2] NZ Herald, (2025, 14 May), Capital Markets: Prime Minister on the hunt for Kiwi expats for Invest New Zealand - NZ Herald

pricing period (2023-2027), the return achieved has been 5.53%, compared to the updated target return of 7.82%.

That is just the reality of operating a business. However, it does illustrate that airports and their investors do not operate without risk. The return Auckland Airport targets is different from actual return. To attract and retain investment, investors consider the risk profile and ability to make a fair return, and this includes the stability of the regulatory regime that applies to the sectors in which they invest.

Investors are concerned and confused by the process

Investors have told us that, with all the opportunities they have to deploy capital globally, the stability of the regulatory environment is one of the key factors in considering their level of participation.

MBIE has told Auckland Airport that it intended for this check-in to be low key. However, its ad hoc nature means that is not how investors see it. Given airlines' aggressive public campaigns and lobbying to seek regulatory change, investors have raised concerns with the process since it was revealed in the media.[3]

It has led to investors questioning the wisdom of investing in New Zealand.

Specifically, their feedback has been that after getting such a favourable report from the Commission for PSE4, they are extremely confused as to what the basis is for the Government to launch yet another review of the regulation of airports. Their view is there is an unstable regulatory environment in New Zealand, and this has them questioning why they would deploy any further capital into New Zealand when they can place it elsewhere across the globe.

During recent engagement with investors, international long-only investment funds made the following comments:

> *"We are shocked that the Government would launch a review of the regulation so soon after the Airport committed to a significant infrastructure spend. It has sparked investor concern about increased sovereign risk. With infrastructure, you can't just pick it up and move it, and we are making investment decisions based on trust"*
>
> *"It is very easy for us to allocate our capital elsewhere with less regulatory risk"*
>
> *"While the MBIE review is underway, we won't be allocating any further capital to New Zealand"*
>
> *"The review raises the cost of capital not just for Auckland Airport, but for all of NZ Inc"*

[3] Business Desk, (2025, 28 April), Why us? Airports up in arms over fresh regulatory review blindside | BusinessDesk

> *"There seems to be constant regulatory creep. This increases the risk of investing in New Zealand"*
>
> *"The increased regulatory risk means the cost of capital has just gone up. That implies that airport charges actually need to be higher"*
>
> *"How can we continue to make long-term investments in New Zealand given the uncertainty over the regulatory regime?"*

As well as these comments from investment funds, investment sell-side analysts have made the following comments:

> *"The perception that the existing regulatory framework is subject to unscheduled review has seriously shaken the investment confidence of larger international infrastructure investors in NZ Inc"*
>
> *"We view "informal" regulatory consultation as normal for airports subject to economic regulation, but [a] lack of transparency can cause investor uncertainty"*
>
> *"Based on [benchmarking analysis of car parking pricing], we believe that a...regulatory review...would likely find limited evidence that AIA has exercised excessive market power"*

An investor has also written to Auckland Airport directly to convey their concerns with this process, and their assessment of investing in New Zealand. Their letter is attached at Appendix A.

Implications for NZ Inc.

Investors do not see this review of airport regulatory settings as an airport-specific issue, but rather it has impacts on the broader infrastructure sector and investing in New Zealand more generally. Their comments demonstrate how important regulatory certainty is to attract private investment in regulated sectors, and that the uncertainty this check-in has created is already having impacts on how investors view New Zealand as a destination to deploy capital. These impacts are completely at odds with the express priorities of the government to attract foreign capital to fund new infrastructure.

1.4. 2018 amendments to the Commerce Act ensured the threat of regulation for airports was credible

As noted by the Commission in its recent PSE4 report "An extensive review of the wider regulatory framework for airports was completed relatively recently."[4] This was the 2018 review of the Commerce Act, which resulted in amendments to the legislative settings that apply to airports under Part 4.

The Regulatory Impact Statement ("**RIS**"), prepared by MBIE, identified two issues at the time:

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[4] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 154

- ***Issue 1:*** *It is not explicit in the Act that the Commission has the power, as part of its regular summary and analysis reports, to undertake analysis and reach conclusions as to whether information disclosure is effectively promoting the Part 4 purpose. In any case, the Commission is not required to do so.*

- ***Issue 2:*** *If information disclosure is found to be ineffective for an airport (for example, an airport is not effectively limited in its ability to extract excessive profits), the process for changing the type regulation is expensive and onerous, creating a barrier that may reduce the threat of further regulation. The two main impediments are:*

  - *The requirement that a full Part 4 inquiry be undertaken, an expensive process that may be unduly onerous for investigating the merits of changing the type of regulation.*

  - *The Act's process for imposing regulation (Order in Council) would not be appropriate for changing the type of regulation that applies to already-regulated services, meaning that the imposition of further regulation would require legislative amendment.*[5]

Of the above issues that were considered by MBIE in 2018, Issue 2 is substantially the same as the question that has been put to stakeholders in this check-in regarding whether the regime is flexible enough to implement change when it is required.

Having considered these issues at the time, it was recommended by MBIE that to address these issues the Commerce Act be amended to:

a. *make it explicit that following a price-setting event, the Commerce Commission (as part of its section 53B summary and analysis reports) can look into whether the part 4 purpose is being met (Option 2);*

b. *create a truncated inquiry process to investigate the need to change the type of regulation for regulated airports (Option 5); and*

c. *allow for the type of regulation to be changed via Order in Council, if this is recommended following the above inquiry (Option 6).*[6]

MBIE noted at the time the following in the RIS on the expected effects of these changes to airport regulation (with Auckland Airport emphasis):

[5] MBIE, (2017, 24 May), *Regulatory impact statement – Amendments to strengthen the regulatory regime for major international airports*, para 27
[6] MBIE, (2017, 24 May), *Regulatory impact statement – Amendments to strengthen the regulatory regime for major international airports*, para 94

> *The changes ensure that the Commerce Commission has the clear ability to undertake analysis of the effectiveness of information disclosure following each price-setting event, if it deems this analysis appropriate for an airport.*
>
> *Removing unnecessary steps in the inquiry process for investigating whether a currently regulated airport should be subject to a change in the type of regulation will reduce the cost and time associated with this particular inquiry, as the Commerce Commission will only have to undertake the analysis that is necessary to determine whether additional or less regulation is required.*
>
> *Clarifying that changes to the type of regulation can be made through an Order in Council process ensures that any recommendations following such an inquiry can in fact be effected in a timely and efficient manner.*
>
> *These proposals do not go as far as airlines indicated they would wish (in that we are not proposing a move to a stronger type of regulation for airports at this time).* ***However, they do help ensure a credible threat of further regulation, if stronger regulation is required in the future.***
>
> *The impact of these proposals on wider stakeholders (such as air travellers and the wider public) is minimal. Airport charges form a small part of airlines' charges to customers, and are not significant compared to other forces (such as competition within the airline industry). Moreover, evidence indicates that the current regulatory regime is working well. The proposed changes are intended to ensure this current effectiveness is maintained.*[7]

These amendments, which MBIE considered ensured there was a credible threat of further regulation (in the event stronger regulation were required) were adopted and are now a feature of the Commerce Act. In summary, the 2018 amendments:

- gave greater flexibility for the Commission to review the effectiveness of the Information Disclosure regime on an ongoing basis; and
- introduced a new process for changes to airport regulation that was considered to be cost and time efficient, thereby ensuring there was a credible threat of further regulation if it were to be required.

Auckland Airport is surprised to find that this check-in revisits the same issue that changes made in 2018 addressed. Since then, the Information Disclosure regime has continued to be effective, so it is not clear why the same questions are being revisited.

As demonstrated later in this submission, the reasons that have been cited – airline submissions and the OECD report – are not a reasonable basis to warrant revisiting these issues.

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[7] MBIE, (2017, 24 May), *Regulatory impact statement – Amendments to strengthen the regulatory regime for major international airports*, paras 96-100

The far more compelling evidence includes the policy process that MBIE undertook in 2017-18, and the findings of the comprehensive Commerce Commission reviews of airport price setting events, which demonstrate information disclosure is effective.

1.5. The Civil Aviation Act 2023 increased capital investment consultation requirements

There have been two major legislative reviews in recent years. In addition to the changes to the Commerce Act in 2018, the new Civil Aviation Act 2023 ("**CAA**") was passed following a policy process that took almost a decade. Both made changes to the legislative settings for airport regulation, but preserved the fundamental aspects of the current regulatory regime because it has proven to be effective.

The CAA is a separate piece of legislation which works together with Part 4 of the Commerce Act to form a cohesive regulatory regime. Section 230 of the CAA gives airports the confidence that we can set enforceable prices after thorough consultation, and then move forward with certainty to invest.

Part 4 of the Commerce Act gives airlines, passengers, and the public confidence that our prices are carefully scrutinised by an independent regulator which checks that they are in the long-term interest of consumers. These two separate pieces of legislation work together, creating the framework that enables airports to invest in much needed long-life infrastructure.

The CAA substantially and materially reduced the capital investment threshold at which airports must consult with substantial customer airlines, increasing the capital consultation obligations on regulated airports. The threshold shifted from 20% of the value of the regulated asset base, to $30 million[8]. In Auckland Airport's case, this had the effect of reducing the legislated consultation threshold from around $400 million, a significant reduction.

The CAA also introduced a new regulatory airport spatial undertaking ("**RASU**") requirement. This requires Auckland Airport to develop a spatial plan, at least every five years, setting out how it plans to provision for the spatial requirements of border agencies operating at the airport. The intention of the RASU is to promote better coordinated long-term investment decision making, which should result in better investment decisions and lower costs. A further requirement to consult with substantial customers and government agencies prior to approving spatial plans generally was also introduced. Auckland Airport is currently consulting on its draft 2025 Master Plan with a wide variety of stakeholders, including airlines, in relation to its future development of land and infrastructure at the airport out to 2047.

In developing the CAA, the issue of whether airports could set charges was also considered, and ultimately retained, despite persistent lobbying from airlines. Overall, the review indicated that the regulatory settings for airports are working well, and policy work from the Ministry of Transport noted the interplay between the CAA and Part 4 of the Commerce Act.

[8] Note that lower thresholds are included in the Act for Airports with less than 3 million annual passenger movements

The CAA came into force last month, just six days before MBIE initiated this check-in. It is currently too early to assess the impact of these changes, so a very odd time to instigate yet another review of how a small group of airports are regulated.

1.6. Commerce Commission considers information disclosure remains effective

The Commerce Commission, the independent regulator, is the most well-informed party to comment on the effectiveness of the regulatory regime.

The Commission have recently completed the PSE4 pricing review. A review which involved a strong divergence in views among stakeholders that engaged in the review – namely airports and airlines. This has given the Commission 'a front row seat' to how Information Disclosure regulation has been tested and worked in practice.

As part of the 2018 Commerce Amendment Bill, MBIE deliberately strengthened the role of the Commission to assess the effectiveness of the regulatory settings when reviewing airports' price setting events.

In its recent review of PSE4, using these powers, it found that the two key features of the regime, price setting and investment planning were fit for purpose (Auckland Airport emphasis):

> *In the past, airports have responded to the conclusions of our PSE reviews by reducing prices when we have concluded they are too high.* ***In that respect, the regime has worked.***[9]
>
> *Taking into account the particular circumstance giving rise to the ultimate disagreement between Auckland Airport and its substantial customers and from the evidence we saw of the consultation process,* ***it is not clear to us that the current consultation requirements on airports in relation to major redevelopments are systemically deficient in delivering efficient levels of investment.***[10]

In the information that has been provided by MBIE, it is not clear how it has considered these views of the Commission – which find that Information Disclosure is working. It appears, based on the information that has been provided that MBIE is placing more weight on the OECD report which is unfamiliar with the regime in any detail, and airline submissions on an unrelated review which are driven by self-interest.

The Commission's perspectives on these issues are the most objective and credible.

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[9] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 153, para 7.9

[10] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 153, para 7.11

2. There is strong evidence that current regulatory settings are working in the interests of consumers

The regulatory framework has been carefully and deliberately designed to ensure that airports are incentivised to make decisions that are aligned to the interests of the New Zealand community. It achieves this by ensuring airports have incentives to innovate and invest, provide services that are efficient and at a quality that customers expect, set prices that deliver a reasonable and fair return on investment, and share the benefits of these outcomes with consumers. In the case of regulated airports, the achievement of these outcomes is all interrelated and each are not mutually exclusive - the interdependencies between these outcomes can be complex.

Accordingly, Auckland Airport makes its decisions with a holistic view and is materially guided by the purpose of Part 4 of the Act, which is to promote the long-term benefit of consumers.

2.1. Consumers say airports are New Zealand's best performing infrastructure

Ipsos Research from 2024[11] shows that 80% of New Zealanders think airports are the best-performing infrastructure in the country. This is not by chance. This is due to the current regulatory regime that enables investment for the long-term interests of consumers, and ensures that the often-shorter-term perspectives of airlines don't hold back or prevent investment that is in the national interest.

2.2. Commerce Commission review of AKL's PSE4 is the best and most current evidence the regime is working in the interests of consumers

The PSE4 review of Auckland Airport's pricing and capital plan was comprehensive. The review found that Auckland Airport has made the right capital investment for consumers, despite extensive airline claims in the review that the investment was not justified. While it found the returns that were targeted for PSE4 were higher than what it considered to be a reasonable range, Auckland Airport immediately responded with discounts to bring returns in-line with the Commission's assessment of what is reasonable. There were no other substantive issues raised in the findings of the review.

These outcomes - reasonable investment and appropriate returns – are strong evidence that the regime is working to meet the purpose of Part 4, to encourage investment and outcomes for the long-term benefit of consumers. It demonstrates that there is a real threat of regulatory change which acts as a constraint on airport market power. In fact, it is difficult to think what more Auckland Airport could have done to meet the intent of Part 4.

[11] Ipsos, (2024, October), *Global Infrastructure Index 2024*, https://www.ipsos.com/sites/default/files/ct/news/documents/2024-10/Ipsos%20Global%20Infrastructure%20Index%202024%20-%20NZ%20Version.pdf

If there was any substance to airline claims that the current regulatory regime was not acting as an appropriate check on market power, the Commission would have come to a set of very different conclusions in its PSE4 review.

Commission pleased with Auckland Airport's response to discount charges

The Commission has recognised that Auckland Airport positively consulted and engaged with stakeholders on its target return for PSE4, and that there were legitimate reasons for Auckland Airport to update its target return to take into account the COVID-19 pandemic, and the risk the pandemic demonstrated that airports face.

However, in its review it took a different approach to incorporate pandemic risk, an approach that was determined after Auckland Airport's PSE4 pricing decision was made. This resulted in a difference in opinion to the technical calculation of what constitutes an appropriate return.

In response to the Commission's final report, Auckland Airport lowered its target return through pricing discounts for airlines. In response, the Commission noted:

> "**We are very pleased that Auckland Airport has acted so promptly to lower its prices in response to our conclusions**" - Commissioner Vhari McWha, 31 March 2025, Radio New Zealand.

Commission found Auckland Airport's planned investment was reasonable

The Commission concluded that Auckland Airport's capital plan was reasonable, had been thoroughly consulted on, benched marked well internationally and crucially was **consistent with the outcome that would be achieved in a competitive market**. Specifically, on capital investment the Commission concluded that:

> *We did not find any issues that are inconsistent with the purpose of Part 4 of the Commerce Act.*[12]

Auckland Airport's recent capital investment and pricing is arguably the biggest test the regulatory regime has had, with New Zealand's biggest airport making a significant capital investment that is in the national interest. These findings of the review confirm that the regime and Auckland Airport's behaviours and decisions taken under this regime are delivering outcomes consistent with the purpose of Part 4 of the Commerce Act, and are delivering benefits to consumers. They also confirm the regime is working as intended (with Auckland Airport emphasis):

> *Taking into account the particular circumstance giving rise to the ultimate disagreement between Auckland Airport and its substantial customers and*

[12] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 5, para X2.2

> *from the evidence we saw of the consultation process,* ***it is not clear to us that the current consultation requirements on airports in relation to major redevelopments are systemically deficient in delivering efficient levels of investment.***[13]

Airline claims to the PSE4 review were not supported by the Commission's findings

MBIE has told us in meetings that submissions from Air New Zealand and the Board of Airline Representatives of New Zealand ("**BARNZ"**) on the targeted review of the Commerce Act (of which airport regulation was outside the scope) were one of the main reasons behind this check-in process that is now underway.

These submissions repeat inaccurate claims made by airlines during the Commission's PSE4 review process about Auckland Airport's capital investment and pricing; claims that were dismissed by the Commission. We would therefore urge MBIE to rely on the independent regulator's conclusions rather than airline submissions.

To demonstrate the false claims that Auckland Airport addressed during the PSE4 review, please see attached Auckland Airport's unredacted cross-submission on the PSE4 draft report at Appendix B. We provide this to MBIE on a strictly confidential basis. **It must not be disclosed to any third party without Auckland Airport's prior written consent**. The publicly available version is available on the Commission's website.[14]

The table below sets out a number of observations and findings by the Commission in comparison to claims made by airlines to the PSE4 review.

Table 1: Summary of Commerce Commission conclusions in its PSE4 report

Public airline claims made in recent years about Auckland Airport's capital investment plans	**Commerce Commission conclusions – final report.** All are direct quotes with emphasis added
Auckland Airport didn't properly consult airlines on its capital investment plans and didn't consider Air New Zealand's alternative terminal design.	• "Auckland Airport followed **appropriate processes and applied rigour in costing the investment plan**." • "Before deciding on its investment plan, **Auckland Airport considered a wide range of options, including the alternative terminal design provided by Air NZ**, and had adequate regard to service quality." • **"The Airport showed that independent reviews on either the whole capital plan, or specific aspects of the plan, was sought on twelve occasions."**

[13] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 153, para 7.11

[14] Auckland Airport, (2024, 10 October), *Cross-submission on Commerce Commission Draft Report for its review of Auckland Airport's 2022-2027 price setting event*, AIAL-Cross-submission-Review-of-Auckland-Airport27s-2022-2027-Price-Setting-Event-Consultation-paper-10-October-2024.pdf

Public airline claims made in recent years about Auckland Airport's capital investment plans	Commerce Commission conclusions – final report. All are direct quotes with emphasis added
There has been a failure in the regulatory regime because airlines disagree with the level of investment being made.	• **"Substantial customers (airlines) do not represent all customers, and may not necessarily have interests that are aligned with end-users (ie, passengers)."** • "There is a range of investment outcomes that are consistent with the outcomes in a competitive market. • **"We are satisfied that Auckland Airport's decision is within this range of reasonable outcomes"** • "We have reviewed the process followed by Auckland Airport to set its capital expenditure plan, including the factors the Airport took into account (such as capacity and quality levels) and the evidence it considered (including the level of independent scrutiny and options considered). **We did not find any issues that are inconsistent with the purpose of Part 4 of the Commerce Act."**
The cost of the terminal build is excessive.	• "Forecast capital expenditure, while significant**, is within a range we consider to be reasonable."** • "Auckland Airport benchmarked the cost estimate for the new domestic terminal against overseas airports on a cost-per-gate basis. **The proposed terminal appears to be broadly in line with projects in developed countries."**
It represents a failure in the regime that Auckland Airport started the build when airlines disagreed with it	• "In the circumstances overall**, it is not unreasonable for the Airport to have decided to proceed with its investment plans."** • **"There appear to be operational and financial reasons for Auckland Airport to proceed with the TIP** (terminal integration program) now." • "The enablement of an efficient contingent runway operation would not only benefit the main runway pavement renewals, but also improve the resilience of the runway operations in general." • **"If the investment is deferred because the cost to build and associated increases in airport charges are considered too high, postponing the same investment into the future is unlikely to address this concern."** • "There are costs to developing additional options, ceasing capital works that are underway at the airport and further delay in finalising a design may have flow on impacts to customer experience and operational requirements at the airport."
Airports can charge whatever they like, and they don't need to listen to the Commission	• "In the past, **airports have responded to the conclusions of our PSE reviews by reducing prices when we have concluded they are too high."** • **"Auckland Airport has stated that it will reduce prices if we conclude in this review that they are set too high.** It has also indicated that it will revisit its approach to depreciation in the next pricing period."

The table above demonstrates that airline claims about failures of the regulatory regime are not credible and must not be used as a reason for considering regulatory change. A fundamental premise of the regulatory framework is that airports, subject to Commission oversight, must have an ability to make decisions in the face of airline opposition driven by short term business incentives. The fact that there is a pattern of airline behaviour driven by self-interest seeking regulatory change should not be unexpected.

2.3. Price setting event reviews have not found a problem to be solved

Aside from the recent PSE4 review of Auckland Airport, there have been a further three price setting events at Auckland Airport, four at Christchurch Airport, and four completed at Wellington, with its fifth price setting event review currently underway.

In its role as regulator, the Commission has reviewed the pricing and investment decisions of regulated airports. These reviews look at the regulatory regime in action as it operates, providing real time and evolving evidence of how airports comply with regime. If there was a problem, these reviews would identify it. Where these reviews have identified concerns, airports have responded to address these concerns. This demonstrates a broader record of evidence that the current regime works as intended.

2.4. The dual till model in place today is effective and delivering the right outcomes

The dual till model has been long established as part of the regime of regulating airports in New Zealand. For aeronautical services, the dual till approach requires that revenues cover the directly attributable costs of providing these services, including an appropriate return on assets that are used solely for these services, as well as a contribution to costs that are common to both aeronautical and non-aeronautical services.

Airports around the world are increasingly choosing to employ a *dual till* model in order to increase the efficiency of their operations and investment decisions, especially during periods of congestion. This approach reduces the risk of unintended long run under-investment and inefficient investment and pricing decisions.

The appropriateness of the dual till model has been looked at in significant detail in New Zealand and Australia and found to be the best way to appropriately regulate airports and to encourage the right level of investment. The dual till model was adopted because it has a number of benefits, specifically the dual till:

- **only regulates monopoly services** – services that are subject to competition are not regulated under the dual till model, only services where airports have the ability to exercise their market power fall under regulatory oversight, with non-aeronautical activities subject to competition – this is consistent with the intent of Part 4 of the Commerce Act;
- **encourages efficient pricing of regulated services** - by focusing regulation only on aeronautical services, the dual till model ensures that charges reflect the true cost of providing those services, without cross-subsidy which can create distortions in markets. This leads to more transparent pricing and can signal more accurately where infrastructure investment is needed;
- **promotes investment in both aeronautical and non-aeronautical infrastructure** - since non-aeronautical revenue is not used to subsidise aeronautical costs, nor is aeronautical revenue used to fund the cost of non-aeronautical investment (as in the single till model), airports are incentivised to invest efficiently in both aeronautical and non-aeronautical assets, based on the drivers of each activity;

- **provides better signals for capacity expansion and investment** - aeronautical charges reflect actual costs without cross-subsidy - which means costs to airlines accurately reflect infrastructure costs, which then improves allocative efficiency in the aviation market; and
- **provides an incentive to keep aeronautical charges low -** growth in traffic and passenger volumes is a key ingredient for the success of non-aeronautical activities, this creates a strong incentive to ensure that aeronautical charges are efficient and set at a level to maximise passenger growth, and its broader economic benefits for the New Zealand economy.

The dual till approach for airport regulation has been considered a number of times and found to be the best approach

The model has also been looked at many times by regulators here and in Australia and found to be the right one. Parliament considered this issue when the Information Disclosure regime was introduced for New Zealand's three largest airports in 2008 – it concluded that dual till provides the right investment incentives for airports and it was appropriate that only monopoly activities were regulated.

At the time, the Transport Committee considered the issue of *which* activities should be subject to regulation, and found that disclosure needed to be restricted to non-contestable activities.[15] Particularly given the intended objective of Information Disclosure being to separate non-contestable activities from contestable ones to ensure there was no cross-subsidisation.

It was again talked about during the Commerce Amendment Bill in 2018 and again Parliament stuck with the Information Disclosure regime which applies only to the regulated till (i.e. dual till remained). The Australian Productivity Commission also supports the dual till approach to airport regulation:

> *The Commission considers that a dual-till approach is the most transparent approach to assessing if an airport operator is exercising its market power — it provides more information about airport revenues and costs than other approaches*[16]

Dual till regulation regulates not only the revenues from providing a service, but also the value of the assets and costs of providing those services.

Commerce Commission already has the ability to look at the till structure

As noted by MBIE in 2018, the Commission has long had powers to consider whether adjustments to the current dual till regulation are warranted:

[15] Transport Committee, (1996, 28 August), *Airport Authorities Amendment Bill (No. 137 - 2)*
[16] Australian Government Productivity Commission, (2019, 21 June), *Economic Regulation of Airports – Productivity Commission Inquiry Report*, p. 77, airports-2019.docx

> *Under s 56M of the Bill (currently s56A(4) of the Act) the Commission is able to initiate an inquiry to scope of specified services if it has concerns. No further changes are necessary.*[17]
>
> *The Commission already has the ability to investigate and recommend an expansion of the regulatory till. We do not consider it appropriate to add this assessment as a specific requirement as part of its summary and analysis reporting.*[18]

Inaction is not an indication of a problem. That the Commission has not exercised this power is evidence that the current dual till model is operating as intended.

[17] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee,* p. 52
[18] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 82

3. Airline claims and a surface level OECD report are not a reliable basis to instigate this process

MBIE has indicated that submissions from airlines and a recent OECD report are the reasons behind this check-in.

This is not a reliable or robust basis on which to base consideration of further change to regulation, relative to the extensive detailed reviews and policy processes that have already been undertaken. Taking action on this basis would undermine investment certainty and damage New Zealand's reputation as a safe and attractive destination for foreign capital.

3.1. Responding to false claims in airline submissions on the Commerce Act Review

Part 4 of the Commerce Act is all about ensuring airports act in the interests of consumers, not airline companies. This was acknowledged by the Commission in its recent PSE4 review, where many of the claims were not upheld by the Commission:

> *Substantial customers do not represent all customers, and may not necessarily have interests that are aligned with end-users (i.e., passengers).*

This indicates that the Commission was very much alive to the motivations of airlines through the review process. The thorough review the Commission undertook was able to work through the noise, and get to the truth. A summary of the claims made by airlines, compared to the conclusions reached by the Commission, was included above in section 2.

We would urge MBIE to approach any airlines claims with the same caution shown by the Commission. MBIE noted in its correspondence that one of the reasons for this check-in is because:

> *As part of the targeted review of the Commerce Act 1986, we have received submissions on how the airport services regime is performing.*

Those submissions, from Air New Zealand, BARNZ and IATA, were entirely focused on airport regulation, despite this being well outside the scope of the targeted review. Just like the PSE4 review, Auckland Airport demonstrates below there is no basis for the claims made by airlines.

Claim: the existing regulation is inadequate

Airline submissions make a number of claims that the existing regulations are inadequate:

> *Information Disclosure regulation, has proven inadequate in addressing significant market power imbalances and providing best outcomes for consumers.*[19]

[19] Air New Zealand, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 1

> *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.*[20]

In its recent PSE4 report, the Commission disagreed. When considering profitability the Commission noted (Auckland Airport emphasis):

> *In the past, airports have responded to the conclusions of our PSE reviews by reducing prices when we have concluded they are too high.* ***In that respect, the regime has worked.*** *Auckland Airport has stated that it will reduce prices if we conclude in this review that they are set too high. It has also indicated that it will revisit its approach to depreciation in the next pricing period.*[21]

Following the release of the final PSE4 report, Auckland Airport announced that it would discount charges, to bring its target return for the period in-line with the Commission's reasonable range of returns. The Commission said it was pleased that Auckland Airport had acted quickly to bring its returns within its view of a reasonable range.

In all of the extensive reviews that have been undertaken by the Commission of airports under the information disclosure regime, the Commission has not found any evidence that the regime is inadequate. The 2018 Commerce Act review from MBIE also concluded that the regulatory settings are working well.

> *Moreover, evidence indicates that the current regulatory regime is working well. The proposed changes are intended to ensure this current effectiveness is maintained.*[22]

Claim: there is not an effective regulatory threat

Airline submissions claim there is not an effective regulatory threat in the current Act. Air New Zealand submitted:

> ***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*

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[20] BARNZ, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 2
[21] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 12, X36
[22] MBIE, (2017, 24 May), *Regulatory impact statement – Amendments to strengthen the regulatory regime for major international airports*, paras 96-100

> *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.*[23]

BARNZ also submitted on this issue:

> *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.*
>
> *New Zealand's Commerce Act does not fulfil these requirements and so does not generate sufficient threat of further regulation for specified airport companies.* [24]

As explained below, there is no evidence to support these claims.

Discount of PSE4 charges demonstrates the credible threat of regulation in action

Auckland Airport's decision to discount its charges in response to the final PSE4 report from the Commission, to bring the target return for PSE4 in-line with the range the Commission found to be reasonable, is a clear demonstration that the current threat of greater regulation is effective in influencing airport behaviour.

MBIE made amendments in 2018 to ensure there is a credible threat of further regulation

MBIE in 2017-18 also considered that the changes which were then introduced in 2018 would ensure that there remained a credible threat of further regulation:

> *These proposals do not go as far as airlines indicated they would wish (in that we are not proposing a move to a stronger type of regulation for airports at this time). However, they do help ensure a credible threat of further regulation, if stronger regulation is required in the future.*[25]

There is no evidence that the threat of greater regulation is not effective

There are no tangible examples that demonstrate the credible threat has diminished since this time, because the threat, in fact, remains. Behaviour by the regulated airports has been

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[23] Air New Zealand, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 2
[24] BARNZ, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 2-3
[25] MBIE, (2017, 24 May), *Regulatory impact statement – Amendments to strengthen the regulatory regime for major international airports*, para 99

consistent with that expected by the regulator. It is not clear what more airports could do to prove this is the case.

Claim: Auckland Airport's capital investment plans are excessive

There have been claims that Auckland Airport's current investment plans are not justified. The Air New Zealand submission claimed:

> *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.*[26]
>
> *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.*[27]

BARNZ made similar claims:

> *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.*

This ignores the findings of the extensive review of Auckland Airport's capital investment plans undertaken by the Commerce Commission. In its final report the Commission found that:

> *Forecast capital expenditure, while significant, is within a range we consider to be reasonable, based on the information we have. We have reviewed the process followed by Auckland Airport to set its capital expenditure plan, including the factors the Airport took into account (such as capacity and quality levels) and the evidence it considered (including the level of independent scrutiny and options considered). We did not find any issues that are inconsistent with the purpose of Part 4 of the Commerce Act.*[28]

The Commission, not the airlines, are the objective and independent party that have examined Auckland Airport's capital investment plans. MBIE should place great weight on their findings. Airline claims which contradict the findings of the Commission in its PSE4 report should be disregarded. Incumbent airlines have an incentive to stop airport investment that will create new capacity that will threaten their market share, so their views of what is reasonable is not reliable.

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[26] Air New Zealand, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 1
[27] Air New Zealand, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 1
[28] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 5, X2.2

A reasonable investment plan is a further indication that the current regulations are driving the right outcomes, and that the threat of further regulation remains effective.

Claim: Auckland Airport's charges are excessive and causing many varied but unrelated issues

BARNZ made a number of specific claims regarding higher charges at Auckland Airport causing challenges for the aviation industry in New Zealand. These claims are unfounded, as we work through these one-by-one.

Airways tower costs are not caused by Auckland Airport

BARNZ submitted:

> *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.*

Auckland Airport's current capital investment plans do not require Airways to develop a new tower. As noted below, this would not be required until 2038, by which stage the current tower will be end of life. Further, Auckland Airport also advocated for Airways to adopt a digital aerodrome services and will support Airways in implementing a hybrid approach.

> *Airways New Zealand provides air traffic control services to ensure safe and efficient airspace operations and management. Standing at about 36m tall, the existing air traffic control tower (ATCT) is located towards the north-west of the existing domestic terminal. The tower is expected to be demolished by FY38 in preparation for future developments in the area such as the new domestic and regional terminals and piers.*
>
> *Airways is exploring transitioning from a physical control tower into a hybrid-digital environment, which will require the installation of multiple camera masts across the airfield, with associated security and utility requirements. This will solve the potential blind spots in the line of sight from the existing tower. A number of locations have been safeguarded throughout the master planning period.*
>
> *Mast characteristics will be compliant with obstacle limitation surface (OLS) requirements and other regulations.*[29]

Airways have confirmed in the Decision Document dated March 2025 that "*the decision to opt for a physical tower is due to the significant risks associated with a digital solution*". It has therefore nothing to do with the charges that have been set by Auckland Airport as BARNZ implies in its submission. In the same document and in the Industry Consultation Clarification document (February 2025) Airways further clarifies that "*the planned height of Pier A1 has not*

[29] Auckland Airport, (2025), *Draft Master Plan 2025*, page 98

influenced the preference to proceed with a physical conventional replacement tower". There is no logical link between the two issues.

Auckland Airport charges are not impacting on aviation security services

BARNZ submitted:

> *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.*

Auckland Airport is aware that costs are rising in many parts of the aviation sector. While it is important that costs are managed appropriately and affordability for consumers is considered for all service providers, the cost increases from Auckland Airport are not unreasonable.

BARNZ submission implies that airlines would welcome aviation security cost increases if Auckland Airport's charges were lower. Auckland Airport's experience with airlines indicates that this is unlikely to be true. Airlines tend to oppose all cost increases across all parts of the aviation sector.

Auckland Airport charges are not slowing growth

BARNZ submitted:

> *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.*

There is simply no evidence to support this. It would be completely counter to Auckland Airport's interests to set charges at a point that disincentives airlines from using airport.

Auckland Airport's domestic charges have been extremely low for a long time, less than half of Wellington and Christchurch airports since 2011, reflecting the age of the assets. Even as the Airport raises prices out to 2027, they remain lower than Wellington and Christchurch Airports. These low charges have reduced the cost of domestic operations for Air New Zealand and with it benefited its shareholders since 2011 by over $470 million.[30]

Auckland Airport's domestic prices are currently around 4-6% of an average domestic airfare ($11.75). This user pays charge covers the cost of terminal facilities, runway and emergency services to support traveller journeys.

As a comparison, Air New Zealand now charges at least $5 to select a seat on a domestic flight, and between $14 and $30 to check-in a bag.

Against a backdrop of constrained capacity and strong traveller demand, New Zealand's domestic travel market has proven highly lucrative for incumbent airlines. Airlines, which are not economically regulated, have strong commercial incentives to protect dominant and lucrative

[30] Compared to the average prices charged by Wellington and Christchurch Airports

positions on many domestic (particularly regional) routes and a comfortable duopoly on main trunk routes, opposing airport investment that will enable 26% new domestic jet seat capacity to be added.

The investment being undertaken by Auckland Airport is critical for unlocking capacity constraints and supporting growth. Elasticity impacts of Auckland Airport's charges are taken into consideration when setting prices and are not responsible for the current flattening in demand.

The primary driver of the current lack of growth in demand is the concentrated airline market structure and as a result, the impact that Air New Zealand's strategy from to constrain demand by raising prices, not seeking growth and cancelling routes while it works through its well-publicised engine difficulties. Its fleet strategy has reduced investment into capacity to support connectivity to the regions and with it reduced connectivity and constrained economic growth. This contrasts to international markets such as Australia where demand is significantly ahead of New Zealand levels and airlines like Qantas are regularly adding new routes, such as the recently announced Auckland to Perth and Auckland to Adelaide routes.

Well run airlines can be highly profitable in the current global environment while expanding operations. Qantas Group continues to make record profits, with reported earnings before interest and taxes of $1.5 billion AUD for the first half of 2024-25,[31] while Emirates posted record profits before tax of $6.2 billion USD.[32]

Claim: airlines subsidise non-aeronautical investment

Air New Zealand incorrectly claims that non-aeronautical developments are cross-subsidised by aeronautical charges:

> *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.*[33]

This is blatantly wrong and is a claim that was dismissed by the Commission. Costs for non-regulated activities, including a proportion of the shared spaces, are not recovered through aeronautical charges, rather paid for by tenants, in accordance with the dual till regulatory model. These claims were considered by the Commission in the PSE4 review:

> *We observe that Auckland Airport's cost allocation methodology is consistent with Part 2 of the Airports IMs. There has been only minimal change in Auckland Airport's allocation rules from the audited 2022 annual ID disclosures. Auckland Airport has reported in its PSE4 disclosure that these allocation rules have not*

[31] Australian Competition and Consumer Commission, (2025, 20 May), Strong demand and reduced domestic competition have contributed to significant earnings for Qantas Group and Virgin Australia | ACCC

[32] Emirates, (2025, 8 May), Emirates Group achieves record profit in 2024-25

[33] Air New Zealand, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 2

> *changed since 2006.[243] We further note there was general agreement from the Airport's substantial customers during the PSE consultation period.*[34]

Claim: ownership changes justify greater regulation

Both Air New Zealand and BARNZ commented on Auckland Airport's private ownership. As per Air New Zealand's submission:

> *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.* [35]

BARNZ also commented on this issue:

> *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.*[36]

Auckland Airport is not sure what Air New Zealand means by 'direct public interest accountability' however there are many major global airports that are privately owned and operated (London Heathrow for example) just as Auckland Airport is.

Regardless, regulation should not be a response to ownership, but rather to act as a check on market power. Prior to the recent divestment, Auckland Council held a non-controlling share of Auckland Airport, and had no direct representation on the company's board of directors, this was also the situation in 2018 when the regime was last examined.

Where we agree: optimal regulatory settings will benefit New Zealand

BARNZ submitted:

> ***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.*

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[34] Commerce Commission, (2025, 31 March), *Review of Auckland Airport's 2022-2027 Price Setting Event – Final Report*, p. 97, para 3.135
[35] Air New Zealand, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 2
[36] BARNZ, (2025, 7 February), *Submission on the Discussion Document: Promoting Competition in New Zealand – A Targeted Review of the Commerce Act 1986*, p. 4

Auckland Airport agrees for the most part with this statement. The Commission found that Auckland Airport's investments were consistent with what would occur in a competitive market. Auckland Airport's charges remain below other airports and the increases across PSE4 are reasonable and affordable.

Auckland Airport is incentivised to drive volume through our business through the principles of the Information Disclosure regime and the dual till model. The more people who fly through our airport the healthier our business becomes. This creates a strong incentive to ensure aeronautical charges and investment are efficient, so traffic volumes are maximised. Airlines, in contrast, tend to do better when supply is constrained as they can maximise yields by charging higher airfares, which dampens tourism growth and economic activity.

3.2. OECD report includes high level observations that lack explanation and New Zealand context

The OECD report lacks the analysis necessary to justify a check-in. The report includes broad sweeping statements with no supporting analysis or explanation.

As also noted by Airports Council International ("**ACI**"):

> *The OECD report does not provide substantive economic modelling, cost-benefit evaluation, or comparative assessment of hybrid till outcomes in markets with similar characteristics.*[37]

Auckland Airport would therefore expect officials to conduct their own analysis into the merits of the recommendations well before considering the flexibility of the legislative settings to accommodate changes.

Auckland Airport is concerned that MBIE has pointed to the OECD report as a reason for this check-in, particularly given that MBIE informed Auckland Airport that it is unaware of the OECD talking to any relevant industry players, nor MBIE itself. The OECD report lacks any of the analysis MBIE would typically bring to policy work on such matters. In the event that it is considered that further policy work is justified following this check-in (it is not), we would expect to engage in a process that develops an understanding of what might make these settings appropriate in other jurisdictions, or the implications of enabling them in New Zealand.

OCED report is being selectively used

There are also numerous other findings in the OECD report, which are relevant to competition and or the aviation sector but have not been included in this check-in. Why MBIE are only focusing on airport regulation is unclear.

If the Government is considering only those findings which were also raised in submissions to the Commerce Act review, then at a minimum, it should also be doing a check-in on code-share

[37] Airports Council International, (2025, 22 May), *ACI Asia-Pacific & Middle East commentary on regulatory flexibility and the use of hybrid-till models in the context of New Zealand's Airport Regulation*, para 2.2

agreements alongside the Ministry of Transport. Airports in New Zealand strongly opposed the codeshare agreement on the Tasman between Virgin and Air New Zealand because it consolidated market power and added no new capacity, however it was approved. As noted by NZ Airports in its submission on the Commerce Act review:

> *To date there has been no process from the Ministry of Transport to evaluate the compounding effect of airline codeshares and alliances on New Zealand consumers. Each proposed alliance or codeshare is evaluated solely on its own merits, not as part of a wider competitive landscape. This is of particular importance because the domestic market is directly impacted by international alliance arrangements. In 2024, around 55% of international seat capacity at Auckland Airport was controlled by Air New Zealand or one of their joint venture partners. Air New Zealand has a relationship with all major Australian airlines and every current airline that has shown a historic willingness to enter the New Zealand domestic aviation market. Combined with Air New Zealand's 86% domestic market share, this creates a dominant market position.[38] In light of the condition of the aviation market described above, this is a serious issue. Critically, there is also no requirement for the Ministry to prioritise or specifically evaluate consumer outcomes as part of its analysis*

[38] Air New Zealand also has codeshare arrangements with eight airlines on the SYD-CHC service

4. Consumer outcomes should be at the centre of any check in on regulatory settings

We understand from speaking to other stakeholders that MBIE may be concerned with the impact of airport charges on consumers and tourism. This is concerning because it was not an issue stakeholders were specifically asked to respond to and underscores the poor process this check in has followed. However, Auckland Airport does so below.

Auckland Airport charges make up only a small proportion of airfares, and are not the cause of higher airfares that we have seen in recent years. Auckland Airport's charges remain lower than the other regulated airports in New Zealand for domestic services, and benchmark comparably to the charges at equivalent major international airports in Australia. Yet airline submissions continue to claim Auckland Airport's charges are excessive.

Airlines have a clear incentive to seek further regulatory intervention. Any reduction of regulated returns, or the value of capital investment made by airports, will pass through into lower airline costs and potentially higher profitability for airlines if airport capacity constraints drive up airfares.

More than likely, in the absence of regulations for airlines and with one carrier holding 84% market share and a monopoly on many domestic routes, any reduction in airport charges will not benefit consumers at all and will go straight to airlines' profit margins. Consumers will not benefit, as further regulation of these already competitive charges is not likely to be passed through into lower airfares, especially in markets with no competition.

Even if airlines did pass on any cost reductions into lower airfares, in the context of an overall airfare the benefits to consumers is minimal. For example, in response to the Commission's final report on PSE4, Auckland Airport has discounted its charges for the period, reducing targeted revenue by ~$150m. If it were passed onto consumers, it would only reflect a decrease of ~$1 on the ticket price of a domestic flight.

The cost to consumers can be significant where capacity constraints drive materially higher airfares, and supply and demand takes over. The shortfall in supply means passengers can pay hundreds of dollars more. If airlines have more control over airport investment and can obstruct capacity expansion, then it will benefit the incumbents and its consumers that will ultimately pay.

MBIE knows this. In its 2018 Regulatory Impact Statement on the Commerce Amendment Bill, it said airport charges are a very small part of total airfares so the impact of changes to airport regulation on consumers is small. The RIS said (with Auckland Airport emphasis):

> *The impact of these proposals on wider stakeholders (such as air travellers and the wider public) is minimal.* ***Airport charges form a small part of airlines' charges to customers, and are not significant compared to other forces (such as competition within the airline industry).*** *Moreover, evidence*

indicates that the current regulatory regime is working well. The proposed changes are intended to ensure this current effectiveness is maintained.[39]

Auckland Airport charges represent just 4-6% of the price of a domestic airfare and for many years they have been 40-50% lower than other New Zealand Airports. Even after increasing in the 5 years to 2027, the Commerce Commission found that will remain at or below other New Zealand Airports.

Figure 1: Auckland Airport Regional charges per passenger compared to other airports

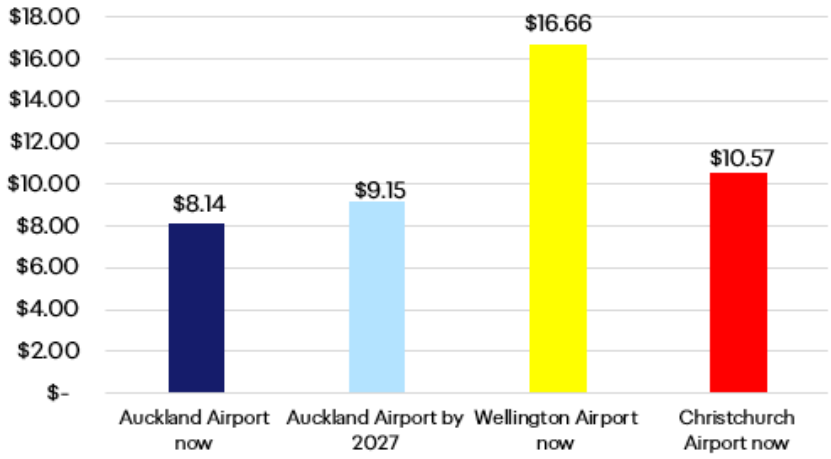
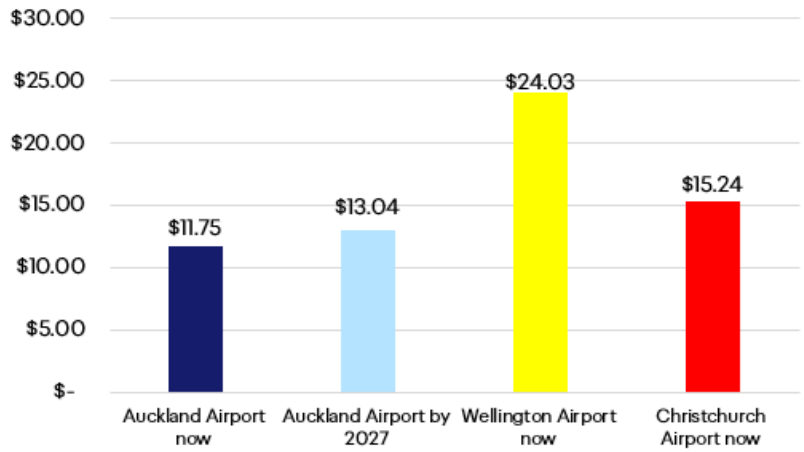


Figure 2: Auckland Airport Domestic Jet charges per passenger compared to other airports



[39] MBIE, (2017, 24 May), *Regulatory impact statement – Amendments to strengthen the regulatory regime for major international airports*, paras 96-100

Since 2019 New Zealand's domestic aviation market has shrunk in terms of passenger volume by 12% yet airline revenue has increased by 16%. Air New Zealand's average one-way airfares have risen by 30% since 2019 and now sit at an average of $184 – an increase of $42. Over that same period, Auckland Airport's domestic jet charges how sit at around $11.75 – an average increase of less than 90 cents per year since 2019.

Airport charges are not the driver of higher airfares, lack of competition in the airline market is a much bigger factor – a dynamic that MBIE noted in 2017 and continues to be seen today.

4.1. Airlines' claims about future charges are not about potential excess airport profits

MBIE may have heard from airlines that it is future airport charges they are concerned about, not current ones. This is almost impossible for airports to respond to and an unfair benchmark for regulatory change. What more can airports do other than to point to our previous behaviour which shows that our actions are consistent with the intent of the regime and that we price with reference to the Commission's input methodologies and lower charges in response to feedback.

In any event, there is a difference between claimed excess profits and prices increasing to cover necessary investment. The Commission is comfortable with Auckland Airport's investment plans and that prices will increase as a result.

Significantly, the Commission reviewed submissions from airlines on future charges as part of its review of Auckland Airport's PSE4, yet still did not consider that regulatory changes are required for PSE5. Regulatory change should be in response to real risks, when the change will provide real benefits to consumers, not hypothetical future scenarios which may not eventuate. The regulations give airports have a strong incentive to ensure that charges are affordable to maximise growth of their businesses and grow passenger numbers and support broader economic growth. Without necessary investment capacity becomes constrained, which can drive higher airfares well above the cost of changes in airport charges.

4.2. More airline control would mean less investment in nationally significant assets

Incumbent airlines and home carriers, have strong commercial incentives to oppose investment in airports. There are two commercial benefits for a home carrier airline, reduced operational costs through lower airport charges, and reduced airport capacity which can constrain new competitors from entering the market, which allows for higher airfares. Both of these dynamics would have the effect to drive higher airline profits. For these reasons, airlines have long sought more control over airport investment. For these same reasons, the current Information Disclosure regime has been designed the way it has.

We know what airlines would do if regulatory change gave airlines greater control over the assets airports build, because they have told us over and over again. They would delay and reduce investment to maintain control as an incumbent airline, rather than acting in the best interest of consumers.

Air New Zealand has over time called for more pauses and more delays to Auckland Airport's building program. We have seen very recent examples with opposition of Auckland Airport's terminal integration programme to construct the new Domestic Jet Terminal. But this is not the only example.

Several years ago, Auckland Airport was able to invest in making our airport capable of serving larger A380 aircraft, in spite of strong opposition from airlines including Air New Zealand claiming the investment was not needed.

Today, we know that A380 aircraft have comprised an important part of the international fleet that connects New Zealand to the world for both tourism and high-value freight, and the economic benefits that brings. Every widebody jet landing at Auckland brings with it, over the course of year, $150m in tourism spend and moves half a billion in high value airfreight. Our investments to make Auckland Airport A380 capable have been an essential enabler of this economic activity and may not have been possible under a different form of regulation.

In a market where one carrier has such dominance, giving airlines more control over what airports build would allow them to keep a lid on capacity growth so they can maintain their market share. This would keep airfares higher for longer and constrain economic growth.

The current regime deals with all these tensions by allowing airports, following consultation, to make investment decisions that are then reviewed by the Commission.

5. Oversight of capex is sufficient and leading to the outcomes intended by the Act

This section addresses the first bullet point in MBIE's check-in email (emphasis added):

> *There are two main areas of the regime where your views are particularly welcome. These are whether the regime:*
>
> - ***provides sufficient oversight during times of major capital investment,*** *and*
> - *is sufficiently flexible to provide a targeted and timely response when changes in regulatory approach are required.*

Auckland Airport considers that current regulatory settings provide sufficient oversight during times of major capital investment. While it is true that the Commission does not have direct oversight at the time major capital investment decisions are made, this is not a weakness in the regime – it is in fact a strength.

Airports are subject to statutory consultation obligations with substantial customer airlines before making major capital investment decisions.[40] As noted in section 231, under the new CAA the threshold for consultation has been lowered to $30 million[41], increasing the level of consultation that is statutorily required. Investment plans are also reviewed by the Commission every five years as part of its review of a price setting event. These investment plans span a ten-year period, so include a forward look at the five-year period post the pricing period being reviewed.

This provides an appropriate balance between ensuring that those who best understand complex, long-term investment requirements can make necessary decisions, subject to the discipline provided by consultation with customers, and the knowledge that their investment plans will be transparently and robustly assessed against the purpose of Part 4.

Unless and until there is evidence that the purpose of Part 4 is not being promoted, there is no case for change to the oversight regime that has been successful to date.

As stated earlier, the best evidence that a change in oversight is not needed is that **the Commission found Auckland Airport's entire investment program to be reasonable**.

5.1. The current regime requires numerous disclosures of planned future capital investment

Regulated airports have a statutory obligation to consult with substantial customers on capital expenditure and make disclosures about their capital plans. Both airlines and the Commission have a clear forward-looking view of capital plans. This view is formed across successive price setting event reviews, with the structure set up to provide substantial customers and the

[40] Civil Aviation Act 2023, (2025), *section 231*
[41] Civil Aviation Act 2023, (2025), *section 231*

Commission line of sight of not just the capital plan for the five-year pricing period, but also for the following five-year period. As an example, the Auckland Airport PSE3 capital plan included the integrated terminal, as supported by Air New Zealand and BARNZ and reviewed by the Commission.

Figure 1: Illustrative example of the layers of consultation[42]

Airports are required to consult with airlines on their long-run master plans

The new CAA requires that, whenever an airport sets a new Master Plan (a.k.a. a spatial plan), it must consult substantial customers and relevant government agencies. Accordingly, Auckland Airport is currently consulting with airlines, government agencies and others on its draft Master Plan out to 2048, released in April this year. Feedback from the consultation process will inform the final Master Plan (expected to be published at the end of 2025).

While there is no time requirement on the frequency of full airport spatial plans, the Ministry of Transport expects that some airports will look to combine the new RASU spatial plan requirements with their full airport spatial planning process. A RASU is required to be updated at least every five years.

Publication of a 10-year capital plan at price setting event every five years

Regulated airports are required under the Information Disclosure regime to publish a 10-year capital plan as part of their price setting disclosures. This allows interested parties, including the Commission to have a clear view of capital plans during the 5-year pricing period and beyond, to provide a forward-look at future planned investment. The 10-year ahead view typically allows interested parties to understand and input on investment plans well ahead of the final commitment to invest.

[42] Note that the capital plan and the Master Plan are typically produced every 5 years, so there will be more iterations than what's shown on the diagram

The capital plan also allows interested parties to form a view on whether or not the investment is required and efficient by requiring the disclosure of the process through which it was determined that the capital expenditure is required, as well as alternatives considered.

As discussed earlier in this section, in the case of Auckland Airport's current terminal development, this investment was included in the 2014 Auckland Airport Master Plan (and was in fact proposed by Air New Zealand) and has been included in the capital plan since PSE3. This means that substantial customers and the Commission have had visibility of the investment plans long before they were committed to and for more than 10-years before they will be commissioned and priced. The Commission did not raise any concerns with the planned investment. As recently as last month, the Commission found the investment to be reasonable, timely and costed appropriately.

Capital project and programme consultation obligations

Under the new CAA airports will be required to consult on more capital expenditure. The threshold for consultation with substantial customers has been reduced from 20% of RAB (~$400m for Auckland Airport)[43] to $30m. The threshold for disclosure remains even lower, with projects over $5m needing to be included in airports' capital plans. This means that key stakeholders, including the regulator, have advanced visibility and the ability to input into material capital projects long before they are finalised.

The policy changes regarding consultation on capital projects and spatial plans came into effect on 5 April this year and should provide MBIE comfort that robust capital planning processes exist which are resulting in efficient capital investment and no further changes to the regulatory settings are required at this time.

Interaction of capital and pricing consultation

As mentioned previously, the CAA is a separate piece of legislation which works together with Part 4 of the Commerce Act to form a cohesive regulatory regime. Section 230 of the CAA gives airports the confidence that we can set enforceable prices after thorough consultation, and then move forward with certainty to invest – again once we have met our obligations to consult with airlines under the Act.

Near the end of consultation on the new Domestic Jet Terminal, we received criticism that we were treating the investment decision as being separate (but related) to the PSE4 pricing decision. The Airport Authorities Act (now in the CAA) required that approach, and it is the right approach.

Major capital investment will span decades, it is not tied to a particular pricing period. The separate consultation requirements ensure that major long-term investment is thoroughly tested with customers on its own merits (e.g. not as part of a broader investment programme aligned with pricing periods). The contention, that investment should not be committed to until prices are, could delay potential projects by years while waiting for a pricing decision every five years. Such a requirement would not be practical, and would stifle, slow down and delay investment.

[43] Though in practice Auckland Airport consulted at a lower internally set threshold of around $75m

These separate capital consultation requirements allow for timely investment decisions, it is therefore surprising that separate major capex consultation is seen by some as a weakness of the regime rather than a strength.

Judicial review an option for airlines to challenge consultation processes

If substantial customers feel that an airport has breached its consultation obligations, they have the option to initiate a judicial review. Judicial review has been used in the past, and these appeals through precedent have established more clarity on the airport consultation obligations.

Despite strong airline objections to the capital investment plans at Auckland, it is evident that airlines chose not to judicially review Auckland Airport's consultation on the Terminal Integration Programme. Further evidence, along with the Commission's findings, that Auckland Airport has consulted appropriately and is investing reasonably and responsibly.

5.2. Regime has been calibrated to appropriately balance control over capital investment decisions

The regime encourages efficient investment

A key function of the Commerce Act is to incentivise regulated entities to innovate and invest as if they were operating in competitive markets.

The appropriate level of investment is likely to look different between airports depending on where they are in their investment cycle. It is very common for airports to invest in a cyclical pattern with large one-off investments, such as new terminals and runways, followed by periods of relatively little investment.

Many airports internationally, which were originally built around the same time as Auckland Airport, are now undergoing periods of significant investment. For example, Melbourne has announce plans to spend ~$5b NZD expanding its international terminal and a further ~$3.3b NZD on a third runway, Brisbane Airport is planning ~$5.5b NZD for a new terminal, refreshed existing terminals and airfield expansion, Perth has announced $3b investment plans for a new terminal and runway, and Sydney is building an entirely new airport to meet growing demand. Auckland Airport's investment plans are in line with peers and a large investment plan does not in itself indicate over-investment, and nor would a small investment plan necessarily indicate under-investment.

The regime has been deliberately designed to allow airports to make the final decision on investment after consultation with airlines. This is because, as noted by the Commission, *"substantial customers do not represent all customers, and may not necessarily have interests that are aligned with end-users (ie, passengers)."* In contrast, airports are required to plan investment over long time horizons and are incentivised to invest in additional capacity and service quality in order to attract airlines and consumers.

Nothing has changed since this was last reviewed nor have any problems been identified. Auckland Airport is currently undertaking the largest investment programme since the inception

of the regulatory regime, which has just been reviewed and found to be reasonable by the Commerce Commission.

Airport investment plans are regularly reviewed

When regulated airports consult and then make decisions on capital expenditure, they know that the Commission will subsequently closely review the consultation, costing, timing, international benchmarking, innovation and service quality etc. Even though the review can be ex post, with final decision already made on some elements of the capital plan, airports need to anticipate how decisions will be viewed by the Commission in order to ensure they are found to be meeting the Part 4 purpose. That means that the regulations have a strong influence on investment choices from a forward-looking perspective and that is evidenced in the very positive Commission findings.

Airport regulation already includes provisions which enable the oversight of major capex, as well as the ability for the Commission to require the disclosure of additional information prior to decisions being made (via the section 52P determination).

As part of the regular pricing review process, the Commission carefully scrutinises whether or not the airport's investment programme is consistent with the purpose of the Act. Auckland Airport's investment being found to be entirely reasonable by the Commission in its recent report it is not a coincidence. It is a direct result of a regulatory regime designed to allow airports to invest in assets that serve the long-term interests of consumers.

The regime poses a credible threat to airports to incentivise efficient investment

Airports are incentivised to design their investment programmes including, cost, timing, level of consultation, to avoid unsatisfactory findings from the Commission's review.

Like with all requirements in the Act, there is a credible threat of further regulation if airports are not investing at an efficient level. If the Commission was concerned about how airports were investing, under the legislation it can consider whether an alternative regulation (such as price control), which has a higher degree of scrutiny over capex programmes, would better incentivise efficient investment.

Under Information Disclosure, if the Commission found the capital expenditure to be inefficient, then it could be excluded from the Commission's assessment of reasonable returns. In other words, the Commission could indicate that by expecting a return on the inefficient investment the airport is targeting excess returns. This would, in effect, create a stranded asset for the airport where it could not seek a return without increasing the risk of further regulation. Regulated entities are highly motivated to avoid stranded assets as it is a material cost to the company and its shareholders.

5.3. Potential changes / enhancements to Information Disclosure regime

If the Commission had concerns about its ability to review large capex programmes before decisions were made, then it has options under the existing Information Disclosure regime to change the timing or frequency of disclosure, which does not require legislative change. Such

changes would be consistent with the current effective Information Disclosure regime, and would be relatively low cost.

Under the Information Disclosure regime, the Commission has the ability to set the disclosure requirements at the level necessary to support its review function. If there was additional forward-looking information that the Commission considered would be useful to carrying out its functions as a regulator then it could request this information from a specific airport, or update the disclosure requirements to require all relevant airports to disclose the additional information before decisions are made.

6. The process to change airport regulation is already streamlined

MBIE has requested feedback on whether the current regulatory regime that applies to airports has sufficient flexibility when changes in regulatory approach are required, as set out below (Auckland Airport emphasis):

> *There are two main areas of the regime where your views are particularly welcome. These are whether the regime:*
>
> - *provides sufficient oversight during times of major capital investment, and*
> - *is **sufficiently flexible to provide a targeted and timely response when changes in regulatory approach are required.***

This section sets out our response to that request.

This question assumes that it has been or would be established that changes in the regulatory approach will be required, leapfrogging what we see as the most critical step in the process - determining whether changes in regulatory approach are required in the first place.

Once a process to establish this has been followed, and it is determined that a change in regulation is warranted, then the steps to make the changes to the regulation are already simple and straight forward. Further flexibility is not necessary.

The requirements set out in the Act that ensure a robust and predictable process is followed to determine if regulation should be changed is essential to the integrity of the regime. These processes make it reliable and provide certainty, recognising that regulation under Part 4 is of great significance to the industry.

In 2018 the process was already streamlined, and it should not be truncated further. It appears to us that MBIE is really asking whether good, reliable regulatory practice should be compromised in the interests of making it easier to change regulation. Any steps to further relax the requirements for a transparent and evidence-based approach by the Commission would be detrimental and undermine the purpose of Part 4, and in doing so create unnecessary sovereign risk for attracting foreign capital to New Zealand.

As reflected by investor comments earlier in the submission, unpredictable and unjustified change to the regime brought about by poor process has changed the risk profile for investing in New Zealand and with that increased the cost of capital for regulated airports to fund future investment.

6.1. Changing the type of regulation is already a streamlined process

The current regime already contemplates changing the type of regulation. Once it has been deemed that a change in regulation is required, this can be achieved through a relatively straight forward process.

The process to change type of regulation - once it is deemed to be required

The process to determine if a change in regulation is warranted is set out under section 56(G) of the Commerce Act. If that process concludes that changes are warranted, the following steps are set out in the legislation:

- the Commission recommends to the Commerce Minister the type of regulations to apply, supported by the necessary detail required to apply that regulation (input methodologies and other details);[44]
- the Commerce Minister:
  - publishes the recommendation by the Commission;[45]
  - considers the Commission's recommendation and consults with the Minister for Transport;[46] and
  - makes a decision to recommend whether additional regulation should be imposed and recommends this change to the Governor-General for application through an order in council.[47]

In the event the Minister seeks to apply changes to regulation that were not recommended by the Commission, the Minister may do so by following these further steps:

- requesting written advice on their alternative proposal from the Commission, and that advice being made publicly available;[48] and
- setting out the reasons for any differences between the Minister's decision and the recommendation of the Commission (the reasons must also be made publicly available).[49]

To summarise, the current legislation requires a recommendation from the Commission specifying the regulations that should be applied, and allows the Minister the authority to implement changes, whether these are recommended by the Commission or not, without legislative change.

This is a very simple, streamlined, timely and flexible process. It is unclear how more flexibility could be introduced without excluding the Commission's role from the process altogether, which would be completely inappropriate as the relevant regulating agency.

Process to determine if change in regulation is required has already been streamlined

Section 56(1)(b) of the Commerce Act allows for the type of regulation that applies to airport services to be changed following an inquiry by the Commerce Commission. Key features of the existing legislation include that such an inquiry:

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[44] Commerce Act 1986 (2025), Commerce Act 1986 No 5 (as at 05 April 2025), Public Act Contents – New Zealand Legislation, *section 56(H)(1-2)*
[45] Ibid, *section 56H(3)*
[46] Ibid, *section 56(I)(2a)*
[47] Ibid, *section 56(J)*
[48] Ibid, *section 56I(3,4)*
[49] Ibid, *section 56J(3)*

- can be instigated by the Commerce Minister, or the Commission can instigate such an inquiry itself;[50]
- must consider what different type of regulation should be imposed on airport services, and how that regulation should apply; [51] and
- must determine the input methodologies that would apply under the different form of regulation, and assess the benefits against the costs of applying that different form of regulation.[52]

All of these steps are essential to determine if a change in regulation is warranted. These steps already reflect a truncated inquiry process, relative to the standard process for determining if regulation should be implemented under Part 4. In the absence of these steps, an accurate assessment of the impacts of the potential regulatory change being considered would not be possible – it would risk misapplication of regulation and the material costs that can result.

Consideration in 2018 Commerce Act amendments

The streamlined approach is a result of amendments that were made in 2018 as part of the Commerce Act Review. As noted during this review by MBIE:

> *The Bill creates a new 'truncated inquiry' process for applying stronger regulation to airports (sections 56F to 56L in the Bill), by replicating the key steps in the full Part 4 inquiry process but taking out some unnecessary steps.*
>
> *The main differences to the Part 4 inquiry process are that:*
>
> *a. There is no need to reconsider whether there is little or no competition, as this has already been considered as part of Parliament's original decision to regulate the specified airport services at the three airports.*
>
> *b. There is no need to reconsider the scope for the exercise of substantial market power in relation to the goods or services, as this factor has already been considered in regulating these three airports.*
>
> *c. There is no need to consider whether the benefits of regulating the goods of services in meeting the purpose of Part 4 materially exceed the costs of regulation. A higher threshold is justified when regulating completely new goods or services where Parliament has given no prior consideration to the merits of imposing economic regulation. It is disproportionate where the question is*

[50] Commerce Act 1986 (2025), Commerce Act 1986 No 5 (as at 05 April 2025), Public Act Contents – New Zealand Legislation, *section 56F*
[51] Ibid, *section 56G(1)*
[52] Ibid, *section 56G(2)*

> *targeted at the need for stronger regulation in addition to information disclosure.*[53]

During these changes, MBIE noted the following on the truncated inquiry process that was introduced, noting that the way the legislation was drafted was flexible to ensure that:

> *It is unnecessary to be overly prescriptive in legislation about all the factors that the Commission should consider as part of a truncated inquiry. This would be contrary to the policy objectives to improve the effectiveness of the regime. It is open to (and expected of) the Commission to consider all relevant matters as part of their assessment of costs and benefits.*[54]

These amendments reduced the bar for which a change of regulation is required to meet, relative to where regulation is being applied to new goods or services. As noted by MBIE:

> *We consider it is unnecessary to require that the "benefits of regulating the goods or services materially exceed the costs" in the truncated inquiry. The nature of the truncated inquiry is different – it is asking whether additional regulation should be applied to those airport companies, not whether any regulation should be applied. A higher threshold is justified in the latter case for regulating completely new goods or services, where there has been no prior consideration by Parliament about the merits of imposing economic regulation.*[55]

MBIE also noted that it was critical that the costs and benefits of applying additional regulation were assessed:

> *We consider that the cost-benefit assessment is broad enough to cover all the relevant factors required to make a recommendation about further regulation. It also covers some of the issues raised by the submitters are already captured in section 56G(1), as we expect the Commission would follow a logical process by considering whether an additional type of regulation should be imposed before deciding on the type that should apply.*[56]

The changes made in 2018 have already streamlined these processes and provide sufficient flexibility should changes in regulatory approach be required. No further flexibility is necessary. If changes were introduced to further 'lower the bar', and remove the steps required before

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[53] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 14, para 53
[54] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 53, item 29
[55] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 19, para 78
[56] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 86

determining if further regulation is warranted, they would undermine the purpose of Part 4, risk the misapplication of regulation, and create further uncertainty in the New Zealand market.

6.2. Regulating additional airport services is already a streamlined process

The current process to change the airport services that are regulated – once it is deemed to be required - is sufficient

There are specific provisions in the Commerce Act that allow for the regulation of additional services as 'specified airport services'.

Section 56M allows for additional services to be regulated as airport services upon recommendation from the Commission. Once the Commission has found that that additional services should be regulated and made a recommendation to this effect, the following step is involved:

- the Minister recommends to the Governor-General to make an Order in Council to specify the recommended services to be 'specified airport services' and the Order in Council is made.[57]

This is again a streamlined, straight forward process to change the regulations, once the need for a change has been demonstrated, in the form of a recommendation from the Commission. No legislative change is required.

Process to determine if other airport services should be regulated is already streamlined

There are specific provisions in the Act that allow for the regulation of additional services as 'specified airport services' under section 56(M). These provisions avoid the need for an inquiry, as is typically required when the Commission is considering if new goods and services are to be regulated under Part 4 or when the form of regulation for airport might be changed.[58]

The Commission is not required to hold an inquiry, but must be satisfied that the benefits of regulating will exceed the costs and that the services are subject to a substantial degree of market power – these are fundamental concepts that underpin the purpose of Part 4 of the Commerce Act.

Arguably, there is already too much flexibility in the Commission's ability to recommend that new airport services are regulated. Our view is that currently unregulated airport services should be subject to the same tests and processes that apply to any other (non-airport) service that is being considered for regulation under Part 4 for the first time.

There is certainly no scope to introduce greater flexibility into the test without removing the need for a cost benefit analysis altogether. Any further flexibility would necessarily diminish the role of

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[57] Commerce Act 1986 (2025), Commerce Act 1986 No 5 (as at 05 April 2025), Public Act Contents – New Zealand Legislation, *section 56M (1)*

[58] Commerce Act 1986 (2025), Commerce Act 1986 No 5 (as at 05 April 2025), Public Act Contents – New Zealand Legislation, *section 52E*

the Commission, and risk the application of regulation to services that sit outside the scope of Part 4. This would apply undue cost to consumers and create unwarranted inefficiency.

Consideration in 2018 Commerce Act amendments

The process to add regulated services for airports was carefully considered and implemented in 2018. The short-form process that avoids an inquiry was already in the Act prior to these changes, but it was consciously retained. MBIE noted this at the time:

> *The Bill retains a short-form process currently in the Act for adding new airport services to the regulatory regime, but merely moves the section to fit more neatly with the other amendments to the regime.*[59]

MBIE noted at the time that this process was already streamlined, relative to other sectors. It observed that the legislation be more explicit as to the steps it expected the Commission to follow before it made a recommendation to regulate additional airport services:

> *However, we acknowledge the concerns of airport submitters and consider that this shortform process is not consistent with any of the other inquiry processes in the regime. It is desirable that the Commission assesses the costs and benefits of imposing regulation on new airport services as part of this process – we would expect this to be examined as part of the process but it could benefit from being explicitly included in the statutory provision. Additionally, the provision could also be made clearer about the matters (i.e. assessment of market power) that the Commission must consider before making a recommendation to the Minister.*[60]
>
> *In practice, the Commission would carry out a thorough process (the provision already requires consultation and consideration of market power) before recommending any regulation of new airport services, and the Minister would then consider this and make his/her own recommendation.*
>
> *However, we acknowledge the concerns of airport stakeholders. It would be inconsistent with the truncated inquiry process for additional regulation if the Commission is not required to at least consider the costs and benefits of regulating new airport services.*[61]

Aligned to this advice, the Act included an explicit requirement that the Commission undertake a cost-benefit analysis – in-line with its expectations of the Commission.

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[59] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee,* p. 19, para 84
[60] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 20, para 89
[61] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 54, item 30

> *We recommend keeping the short-form process but in addition, the Commission must assess the benefits and costs of regulating other airport services supplied by the regulated airport companies. The provision could also be made clearer that the Minister must be satisfied that the Commission has considered whether the services are supplied in a market where one or more specified airport companies have a substantial degree of market power.* [62]

A hybrid till would require the scope of regulated services to be expanded

The dual till was first established under the Airport Authorities Act 1996 ("**AAA**"), on the basis that only monopoly aeronautical activities should be subject to consultation obligations. The dual till under the AAA was readily imported into Part 4 of the Commerce Act, which has the fundamental premise that only monopoly services can be regulated.

MBIE requested views on whether hybrid till alternatives to the dual till should be considered, based on the observations made by the OECD. We note that the OECD raised investigation of hybrid till as a potential alternative to the Commission investigating the scope of activities covered by the regulated till (i.e. it recommended investigation into the feasibility of a hybrid till ***or*** the scope of regulated services).

There is nothing to stop the Commission investigating the scope of regulated services under Part 4. Section 56M allows the Commission to recommend that a new service be regulated if it is satisfied that there is a substantial degree of market power and the benefits of regulating will exceed the costs – i.e. it is a monopoly service. It is not required to hold an inquiry. As noted above, there is an argument that this provides too much flexibility to add new services to Part 4, but Auckland Airport accepts it was confirmed as the appropriate test and process under the Commerce Amendment Act 2018.

The fact that the Commission has not considered using this process is strong evidence that there are no concerns regarding the boundary between regulated and non-regulated services - i.e. non-regulated services are not monopoly services.

If the scope of regulated services is expanded in the future, then the Commission would need to consider how those services are regulated. This would also require the Commission to determine new input methodologies for the additional services that are to be regulated. This regulation must consider not only the revenues of these services, but the costs involved and the value of the assets that are required to provide these services. Auckland Airport notes that many calls from airlines for expansion of regulation focus only on the revenue and ignore the cost. Further expansion of regulation into additional services could be complex, and would add to both the cost and complexity of airport regulation, and with it costs to airport users, but it is possible under the current settings. These costs and complexities are avoided under the dual till approach, with the current scope of regulation that is currently in place.

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[62] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, para 90 p. 20-21

Regulation of non-monopoly services is not consistent with Part 4 of the Commerce Act

It is not clear why the OECD report considered that the hybrid till concept was worth investigating. There is little information about how and where it is used in other jurisdictions and the benefits to consumers. Regardless, to the extent it requires cross-subsidisation between regulated and non-regulated activities, it is not a feasible concept under Part 4.

It would effectively require expanding the scope of airport services that are regulated, beyond monopoly aeronautical services, to other services provided by airports that are contestable. It would cut across the fundamental requirement and policy of Part 4 that only monopoly services are subject to regulation.

There should be no further consideration of potential legislative change to implement a hybrid till model that would undermine the foundation of regulation under Part 4. This would create an uncertain precedent for all entities regulated under Part 4 – not just airports. In particular, electricity lines businesses frequently undertake activities not regulated under Part 4, and the Government has recently announced proposed changes that would remove restrictions on their ability to invest in electricity generation.

We understand that the perceived ability of electricity distributors to leverage from their regulated business to create an uneven playing field in competitive energy markets is a contentious matter in that sector, so we would expect electricity participants to advocate that, if hybrid till concepts are under consideration for airports, then they must also be considered for all Part 4 entities that undertake a combination of regulated and non-regulated activities. Their aim would be to establish rules that deter electricity businesses from investing in generation, contrary to Government policy.

The better approach is to leave the Commission to consider the scope of regulated services for airports (the second option under the OECD recommendation), if and when circumstances arise to justify such consideration.

6.3. The current process to regulate additional airports remains appropriate

Like for any good or service, airport companies other than the three regulated airports can be regulated under Part 4. This is applied through an Order in Council, following an inquiry undertaken by the Commerce Commission.

Consideration in 2018 Commerce Act amendments

How new airports are treated and can be brought into the regime was considered as part of the 2018 Commerce Amendment Bill. MBIE considered this issue, and found that the existing processes, with the high bar of a full inquiry was appropriate. A key reason for maintaining this high bar was to substantiate whether the airport in question did have market power that could be exercised, a key requirement of regulation under Part 4. MBIE noted at the time:

> *We consider that the full Part 4 inquiry and Order in Council process is appropriate and should be followed, rather than any truncated process as there*

> *is no presumption that other airport companies are able to exercise substantial market power.*[63]
>
> *For the avoidance of doubt, we recommend clarifying that any other airport company may be regulated under Part 4 following a Part 4 inquiry and Order in Council processes.*[64]

This assessment continues to hold today. For regulation to be applied under Part 4, market power of the entity to be regulated must be established, as it has been for the three airports that are currently regulated.

The Act currently includes the appropriate process for considering whether airports should be added, and no new evidence has arisen which would suggest a change is warranted.

6.4. There are significant benefits to regulating the airports together

The current approach to apply the same regulation to all regulated airports has many benefits. It is more efficient, lower cost, and avoids unintended consequences through differential regulation across the sector. A key feature of the regime – the threat of changes in regulation – remains intact under this model which is in place today. MBIE considered changes in 2018, but found that regulating the airports as a group was the best approach. Nothing has changed since 2018 to justify revisiting this position.

Benefits of regulating the airports together

There are a number of benefits that arise from regulating the airports together, including:

- **efficiency from the application of a single set of regulations** – a single regulatory framework applying to all airports is simpler (i.e. less complex) and has materially lower costs for the regulator to administer;
- **avoiding unintended consequences on other regulated airports –** more stringent regulation applied to one airport can set precedents that are then expected to be followed by other airports, even if the regulations are not intended to apply to those airports – this can introduce unintended costs on other parties in the sector;
- **the threat of increased regulation is shared across the regulated airports –** under the current settings the conduct of one airport that opted to exercise its market power, could result in greater regulation for all of the regulated airports. As has been evidenced in the past, this enhances the regulatory threat through the 'peer pressure' effect of the airports abiding by the regulations that apply to them as a collective; and

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[63] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 22, para 103
[64] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 22, para 104

- **enhanced comparability –** applying the same regulatory settings to all airports allows for comparison of regulatory disclosures and charges. This allows interested parties including, airport customers, investors, consumers and the regulator to draw clearer insights into the relative risks and behaviours of the airports.

Switching to a model that regulates airports differently would lose many of these benefits, and introduce higher costs of regulating the sector for no benefit.

Consideration in 2018 Commerce Act amendments

The Commerce Act amendments in 2018 carefully considered whether airports should be regulated jointly or individually, and ultimately concluded that the three airports should be regulated together.

At the time, MBIE noted the following benefits of applying the same regulations across the three regulated airports:

> *There are several advantages of continuing to regulate the three airports as a single unit. In particular, there is a peer pressure effect from the other airports to encourage the airport that is not meeting the long-term interests of consumers to comply. For example, following pressure from other airports, Wellington Airport revised its prices in 2013, which provides evidence that regulating airports as a unit has been an effective approach. There are also regulatory cost efficiencies to keeping the airports regulated as a single unit, as one set of rules for any further regulation needs to be developed for the whole airport sector. This means the costs of regulating either one or multiple airports will not be significantly different.*[65]

When considering if regulation across the airports should be split, MBIE also noted that there would be downsides from making a change:

> *The disadvantages of this approach are that it would make the regulatory regime more complex, and it would be more difficult to determine how to allocate the costs of developing the rules for further regulation (as a single set of rules needs to be developed for the whole airport sector). Furthermore, it may lead to smaller airports getting away with higher prices as the impact on consumers may not be great enough to justify regulation on an individual basis.*[66]

MBIE did also acknowledge that there could be some benefits to regulating the airports individually. But on balance, considered that the three regulated airports should continue to be regulated together:

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[65] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 21-22, para 97

[66] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 21, para 96

> *The airports should continue to be treated as a single unit, as originally intended in the Act. The benefits of this approach include the peer pressure effect and regulatory cost efficiencies.*[67]
>
> *On balance, we do not see a clear case to make this change to the Bill. There are merits in amending the Bill to allow for individual treatment of airports, as well as merits in retaining the status quo. The past evidence has demonstrated that the status quo is effective, whereas the potential benefits of allowing airports to be regulated individually are untested.*[68]
>
> *There are various advantages and disadvantages to allowing airports to be regulated individually, as well as keeping the airports regulated as a sector, but on balance we do not recommend making this change.*[69]

Threat of regulation is not diminished by regulating the airports together

Air New Zealand submitted to the targeted review of the Commerce Act that the requirement to regulate all airports in the same way diminished the threat of greater regulation:

> ***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.*

BARNZ also submitted on this point:

> *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.*

MBIE considered this issue in 2018, and noted that regulating the airports together could possibly weaken the threat of further regulation:

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[67] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee,* p. 55, item 31
[68] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee,* p. 22, para 99
[69] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 85, item 97

> *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.*[70]

However, in the case of Auckland Airport specifically, the regulatory threat is not materially diminished by regulating the airports together. Auckland Airport's greater size and scale relative to the other regulated airports means that the threat of regulation is the same if the airports are regulated together or not. Any decision to change regulation (or not), is unlikely to be swayed if airports are regulated as a group or individually. The inclusion of the other airports would be unlikely to materially sway the outcome of any cost-benefit analysis given Auckland Airport's size. As noted by MBIE in 2018, individual regulation could in fact reduce the regulatory threat for smaller regulated airports.[71]

On balance, in 2018 MBIE did not consider this issue was significant enough to warrant a change to regulate the airports individually:

> *On balance, we do not see a clear case to make this change to the Bill. There are merits in amending the Bill to allow for individual treatment of airports, as well as merits in retaining the status quo. The past evidence has demonstrated that the status quo is effective, whereas the potential benefits of allowing airports to be regulated individually are untested.*[72]

This reasoning continues to hold true today, the status quo remains effective with Information Disclosure achieving outcomes consistent with the Part 4 purpose while the alternative remains untested. Airline claims that collective regulation of airports diminishes the regulatory threat do not have any evidence to support them, and they ignore all of the benefits of a sector-wide approach.

6.5. Why the current legislation is fit for purpose

Having a high evidentiary bar to support a recommendation to introduce regulation is good public policy, consistent with the government's Regulatory Standards Bill.

Many of the obligations of the Commerce Commission under the Commerce Act are in place to ensure that changes to regulation are warranted.

These processes are deliberate and entirely appropriate, as the costs of applying regulation where it is not required or necessary can be significant and come at a great cost to the community. This is recognised in the intent of the Regulatory Standards Bill:

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[70] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 22, para 98
[71] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 21, para 96
[72] MBIE (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 22, para 99

> *Sometimes when a government seeks to regulate, key questions remain unanswered - including whether there's a real problem to solve, whether the benefits of regulating outweigh the cost, and where costs and benefits fall. This can be coupled with a lack of transparency about whether new regulation meets accepted standards and, where it does not meet those standards, why it has still been proceeded with.*
>
> *[...]*
>
> *The Regulatory Standards Bill would aim to reduce the amount of unnecessary and poor regulation by increasing transparency and making it clearer where legislation does not meet standards, bringing the same discipline to regulatory management that New Zealand has for fiscal management.*[73]

Before recommending a change in regulation, the Commission is required to consult with interested parties (sometimes through an inquiry), determine the alternative regulations that would apply (the input methodologies), and undertake a cost benefit analysis before making a recommendation on changes to regulation.

These are all essential steps that need to be taken in order to make a robust and accurate assessment of whether a change in regulations is warranted. These steps are also consistent with those set out in the Regulatory Standards Bill for good law-making processes:

> *Good law-making – good law-making should include:*
>
> - *consulting, to the extent practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation*
> - *carefully evaluating the issue concerned, the effectiveness of any relevant existing legislation and common law; whether the public interest requires that the issue be addressed; any options (including non-legislative options) that are reasonably available for addressing the issue; and who is likely to benefit, and who is likely to suffer a detriment, from the legislation*
> - *establishing that legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons*

[73] Minister for Regulation, (2025, May), *Information Release – Policy Approvals for Progressing a Regulatory Standards Bill,* Information-Release-Policy-Approvals-for-Progressing-a-Regulatory-Standards-Bill-May-2025_v4.pdf

- *establishing that legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.*[74]

We would be greatly concerned that further flexibility would undermine these principles of good law making, and increase the risk of investing in long-term infrastructure assets in New Zealand, deterring foreign capital.

Requirement for a cost-benefit analysis is fundamental to good regulatory practice

The Commerce Act under Part 4 specifically requires that the **benefits**[75] **must materially exceed the costs** of applying regulation.[76] This requirement applies to all regulated sectors broadly, it is not a specific requirement for airports, and this standard has been weakened for changes to the type of regulation that is applied to airports.

The findings of this cost benefit analysis must be a key consideration that informs any recommendation from the Commission to make a change to regulation. Not undertaking a cost benefit analysis would risk significant costs, as the economic costs of applying regulation where it is not required can be significant.

This is consistent with the findings during the 2018 review of the Commerce Amendment Bill. In response to airline submissions that negotiate/arbitrate regulation was needed, MBIE noted that an assessment of the costs and benefits should be undertaken:

> ***Disagree***
>
> *We do not think negotiate/arbitrate should be imposed without an assessment of the costs and benefits. We consider the Commission is best placed to carry out such an assessment.*[77]

There has been no change in circumstances since 2018 that warrants a change from this position.

Determination of input methodologies necessary before a change in regulations can be made

For a change in regulations to be assessed, the detail of how those regulations would apply must first be determined – by developing the input methodologies. Without this detail, there would be nothing to compare when developing a recommendation or undertaking a cost benefit analysis.

Development of input methodologies where a new form of regulation is to be implemented is an unavoidable step if a change in regulation is to occur. It must be done to create the regulation that would apply.

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[74] Minister for Regulation, (2025, May), *Information Release – Policy Approvals for Progressing a Regulatory Standards Bill,* Information-Release-Policy-Approvals-for-Progressing-a-Regulatory-Standards-Bill-May-2025_v4.pdf

[75] Of regulating the goods or services in meeting the purpose of Part 4

[76] Commerce Act 1986 (2025), Commerce Act 1986 No 5 (as at 05 April 2025), Public Act Contents – New Zealand Legislation, *section 52G(1,c)*

[77] MBIE, (2018, 16 August), *Commerce Amendment Bill - Report to the Transport and Infrastructure Committee*, p. 51

Accordingly, undertaking this step prior to making a decision to change regulations - as the current legislation requires - is entirely essential. This will ensure that the decision to change regulation (including the required cost benefit analysis) is fully informed by the new input methodologies that would apply.

The alternative of a recommendation and subsequent decision to change regulations prior to the development of the input methodologies would not reduce or streamline the work that is required to change regulation.

The input methodologies must be developed in any case for regulations to be changed. A decision to make a change before these are developed would only result in a less informed decision, that would increase the risk of misapplying regulation (and the associated costs) for no added benefit. Accordingly, the current requirements under the legislation are appropriate.

Regulation is industry funded – financial constraints are not a barrier to processes required

The Commission's function to regulate airports is industry funded, through levies that are paid by the airports. These levies fluctuate year to year based on the activity that the Commission expects to undertake in regulating the airports sector.

In recent years, levies have been refunded as the costs of regulating the sector have been lower than what was forecast for the beginning of the year. If additional resource in the Commission is required to meet the steps required under the Act to consider changes to airport regulation, financial constraints are not a barrier as these costs can simply be passed onto the industry.

Nothing has changed since 2018 that warrants a re-examination of the legislation

The 2018 amendments to the regulatory regime for airports, with the changes led by MBIE, carefully considered any issues around flexibility of the regime. Since these changes were made the system has been tested through a pandemic and a large infrastructure investment programme, and the Information Disclosure regime has performed as intended. Furthermore, through these times airports have been found to be acting as Part 4 intends.

This leaves no reason why the views or conclusions that were reached by MBIE in 2018 should be any different today. Specifically:

- **there has been no cause to change the type of regulation** – since 2018 Commerce Commission reviews of airport price setting events have found that airports are acting as intended and consistent with the Part 4 purpose;
- **no evidence supports an increase in the types of airport services that should be regulated** - only monopoly airport services are currently regulated. Non-aeronautical services at airports have been considered in the past and were not regulated because they were found to be contestable - this has not changed since the last review;
- **additional airports should only be regulated if they meet the criteria under Part 4 –** establishing market power is a key pillar for regulating a service, the current high bar set to make the necessary assessments is warranted and good public policy; and
- **regulating the airports together is working –** there are no tangible examples of where a targeted response is required to regulate one of New Zealand's regulated airports differently

to the others. All of the extensive reviews of the regulated airports by the Commission have not found an exercise of market power, there has not been any evidence of an instance or example where different regulation should be applied to one of the airports.

Responding to Auckland Airport's increased investment with changes to regulation is not only bad policy, but will deter investment

In a meeting with Auckland Airport, MBIE officials indicated that the size and scale of Auckland Airport's investment may be evidence it should be regulated differently. Airlines may have claimed that the size and scale of Auckland Airport's current capital program is a new development since 2018 and that justifies looking at the regime again.

This is not correct.

The need for a significant investment program at Auckland was well known in 2018, in fact in Air NZ's submission to the Commerce Amendment Bill it called for Auckland Airport to get on and progress the new domestic terminal we are now building.

There is no evidence to suggest the level of capex being invested now at Auckland is not accommodated by the regime. In fact, the Commission's conclusions that our capital investment is significant but reasonable concludes the opposite. Determining how to apply regulation should be based on the market conditions, structure, incentives and behaviour of the regulated entity to act in a way that is consistent with the purpose of the regulation, not the size of the organisation or how much it is investing. It is for these reasons why the same regulation is applied to the three regulated airports. Setting regulations based on size of investment alone is bad policy.

Airport investment is typically lumpy as airport infrastructure cannot be always delivered incrementally (i.e. you can't build a quarter of a runway). We are now entering an era where much of the infrastructure that was built at the dawn of the jet age is now at end of life, so we are seeing airports across the globe invest billions of dollars in new infrastructure to replace these aging assets, alongside new facilities to cater for future growth. This dynamic will drive investment, but it does not mean that the regulation of that investment in New Zealand needs to change.

If increased investment is used as the basis to apply additional regulation, then the regulatory threat - which is currently a deliberate element of the existing regime - would begin to undermine the purpose of Part 4 by deterring investment. While it is Auckland investing a lot now, in a few years it will be another airport that needs to significantly invest to meet future capacity and resilience.

If airports fear that the pure scale of their investment will be the benchmark for them being regulated differently – rather than whether the investment is justified – then it can be expected that airports will not make the investment that they consider is needed. This risks the intent of Part 4, to incentivise investment that serves the long-term interests of consumers, not being met. Playing this forward, if airports do not invest as they need to for fear for further regulation, airport capacity will be constrained which can cause airfares and the cost of freight to rise – not a good outcome for consumers.

Introduction of regulation of water services is not a good comparator for airports

Economic regulation of water services involves regulating a new sector that is undergoing significant reform. There are a number of key differences between the water sector and the airports sector that mean the flexibility that has been applied in the water sector is not appropriate for airports.

In particular, the regime will allow regulation to be changed without the Commission first holding an inquiry. This flexibility may assist the Commission to apply the appropriate economic regulation tool for the water sector in a context where:

- councils are making decisions on how to provide water services in real time which will result in the lumpy and staggered establishment of new entities;
- regulation may be required to quickly address significant underinvestment and under-pricing in some areas;
- there is benefit in allowing additional flexibility for regulation of water services because the water service entities are at different stages of maturity in their regulatory compliance, and regulation will be rolled out across the regulated entities over time; and
- there are challenges for economic regulation to promote efficiency where water services entities must remain in public ownership with a prohibition on profits and paying dividends to shareholders.

Those considerations do not apply in the context of airports where:

- airports are a mature, efficiently performing sector subject to well-established regulatory requirements;
- recent reviews from the Commission have determined that airports are investing at appropriate levels; and
- operational efficiency is driven in the airport sector by many factors, including efficiency incentives provided by shareholder oversight.

Airports have also proven to be responsive to the threat of greater regulation, e.g. though discounting charges in response to findings from the Commission. This indicates that the current flexibility in the regime is appropriate. In this context, it would be inappropriate to import settings from the water sector regulation under Part 4 into the airport sector.

7. Attachments

Appendix A - Investor letter

Appendix B – Auckland Airport cross-submission to Commerce Commission review of Auckland Airport's PSE4 - Confidential