Board of Airline Representatives NZ
6 Leonard Isitt Drive, Auckland Airport
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Competition Policy Team
Building, Resources and Markets
Ministry of Business, Innovation & Employment
Wellington

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Kia ora,

1. Thank you for the opportunity to submit in response to questions about whether New Zealand's regime regulating certain airports is fit for purpose. The Board of Airline Representatives of New Zealand (BARNZ) represents some 25 member airlines who fly to from and within New Zealand. We also represent businesses such as ground handlers, catering companies and waste management businesses who partner with airlines to deliver air connectivity. Nothing contained in this submission is confidential.

2. BARNZ's airline members pay for all airport capital cost, operating cost and target returns, as well as funding almost all New Zealand's broader aviation system costs – from air traffic control to border agency costs. We regularly engage in Price Setting Events with regulated airports, and in the subsequent reviews of those Price Setting Events with New Zealand's Commerce Commission (the Commission). We are incredibly well placed to speak to the outcomes delivered by New Zealand's competition settings for airports, and how these settings should be revised to drive the best possible system outcomes for New Zealand in the future.

Why regulate?

3. At the outset, it is useful to reflect underlying rationale for and goals of airport regulation. For monopoly airports – which for New Zealand is certainly Auckland, Wellington, Christchurch and Queenstown – a regulatory regime is needed to constrain the ability of airports to extract economic rents, or "above normal" returns by taking advantage of local or regional monopoly powers they have in providing airport services.

4. Regulation applied to airports should promote efficiency in the provision of airport services, and an "appropriate" level of investment – neither underinvestment, which can lead to future capacity constraints, nor overinvestment that can lead to excess capacity and excess returns on a higher capital base. Efficiency in turn can be broken down into technical efficiency – producing the desired quantity and quality of airports services at lowest cost; allocative efficiency – ensuring services are allocated to those placing the most value on them; and dynamic efficiency – promoting the growth of technical efficiency over time, including through better processes, technological progress, and appropriate investment.[1]

Airport regulation in New Zealand

5. In New Zealand, our airport competition settings currently apply to three specified airports in the Commerce Act 1986 (the Act)– Auckland International Airport Limited (AIAL), Wellington International Airport Limited (WIAL) and Christchurch International Airport Limited (CIAL). At the time regulation was first imposed, these airports were New Zealand's busiest and enjoyed the most substantial international connectivity. Following a detailed process including certain amendments to the Act in 2008, regulation was imposed for these specified airports in 2010. These airports are regulated by Information Disclosure only – the weakest form of regulation available in the Act.

6. Information Disclosure regulation requires airports to consult with *substantial customers* on proposed capital expenditure and pricing. 'Substantial customers' are those customers or groups of customers represented by groups such as BARNZ who meet revenue thresholds of the airport as defined in the Civil Aviation Act 2023.[2] Once consultation is concluded, regulated airports set prices, and the associated target return set by the regulated airport. Of note, airports are the only regulated monopoly able justify a departure from the regulated return as is otherwise published by the Commission. Once a regulated airport sets prices, airlines are then required to pay those prices as set, usually within a calendar month of prices being struck. There is no contract for service, or agreed service levels – prices are simply payable, supported by legislation in the Civil Aviation Act which allows airports to set charges.[3]

[1] [1]This summary draws in part on a report prepared for Air NZ by InterVISTAS – "Issues regarding Regulation of New Zealand's Gateway Airports." (4 December 2014)
[2] Civil Aviation Act 2023, s 219.
[3] Civil Aviation Act 2023, s 230.

7. After setting prices, regulated airports are then required to disclose those prices and their inputs via the Information Disclosure regime. Once so disclosed, the Commerce Commission commences a review of those prices, which typically takes 18 months. At the conclusion of the review, the Commission publishes their view of the prices as set – with a substantial focus on the target return. In the short history of the current regulatory regime for airports, the Commission's comments have focussed substantially on target return and whether it falls within the Commission's acceptable range.

8. Once the Commission has published their view on a regulated airport's price setting event, the regulated airport may, or may not, adjust their target return – and consequently prices for airline customers – to sit within the Commerce Commission's acceptable range. For example, when the Commerce Commission found that AIAL had set prices targeting $150.2-$226.5 million dollars of excess profit[4], AIAL immediately announced they would reduce their target return such that prices would be reduced by 150 million dollars. Of note, this is just beneath the Commission's identified excess profit range.[5] AIAL did not take up the Commission's 'encouragement' to also address their depreciation approaches which would have delivered substantial savings to airport customers – committing instead to address this at the next price setting event.

9. If an airport does not respond sufficiently to the Commission's Final Report, the Commission has no ability to direct that airport to re-set prices on any basis. It should be that the regulated airport feels the threat of further regulation, driving them to follow the Commission's findings.

10. However, as made clear by submissions to the Commerce Act review to date and by the questions MBIE is now asking, the Act as currently drafted does not deliver a credible threat of further regulation.

Enabling the Commerce Act to deliver effective regulatory settings

11. There are two things which are urgently required if New Zealand's regulatory regime for airports is to be effective.
    a. We must amend the Commerce Act to allow further regulation of just one airport; and

[4] Review of AIAL's 2022-2027 Price Setting Event, Final Report, Commerce Commission, 31 March 2025, X2.1.
[5] AIA NZX Announcement 31 March 2025

b. We must ensure that the process which exists in the Commerce Act for considering such further regulation is agile and effective.

We examine each of these issues below.

Allowing further regulation of just one airport

12. Current drafting of the Commerce Act suggests that if further regulation is to be applied, it must be applied to all three regulated airports. These settings allow for one airport to extract monopoly rents while hiding behind the skirts of the other regulated airports, secure in the knowledge that assessments for further regulation must take into account the activities of those other airports. So much the better if those other airports set reasonable capital plans and set pricing using inputs which do not artificially inflate their regulated return. In this scenario, the mega monopoly airport is in fact protected from further regulation by the very settings which should otherwise deliver a regulatory threat.

13. Officials countenanced this very risk when considering amendments to the Commerce Act in 2018. Reports noted:

> *"On the other hand, there are also disadvantages to retaining this approach. The main disadvantage is that the three airport companies would be subject to further regulation even if only one is acting contrary to the long-term interests of consumers. This could be considered to be unfair and disproportionate regulation, which unduly punishes the other airports who are acting in the interests of consumers.* ***This approach may even weaken the threat of further regulation as it could be more difficult to justify the benefits and costs of imposing heavier handed regulation on all airports when only one needs it.***[6]

14. At present, Auckland International Airport is that airport which is extracting monopoly rents without responding sufficiently to the Commission, or its paying customer base. They are imposing an extensive and expensive capital plan on their customers, despite concerns about cost and impact on demand. There are substantial implications for the aviation system and for connectivity to New Zealand if this monopoly is unconstrained, given its dominant position as the national air gateway. Yet the settings in our Commerce Act are not enabled to respond. The ability to further regulate one airport is urgently required.

[6] 2018- Departmental Report to the Transport and Infrastructure Committee on the Commerce Amendment Bill paragraph 98 (emphasis added)

Specific amendments to enable further regulation of one airport

15. BARNZ has previously submitted comment on the specific amendments required to enable the Commerce Act to further regulate just one airport.[7] For completeness, the relevant section of that submission is repeated below:

> We propose that the definition of "specified airport services" in s 56A(1) be amended as follows:
>
> ***specified airport services*** *means all of the services supplied by specified airport companies (either individually or collectively) in markets directly related to the following activities…*
>
> *Amend s 56G(1) as follows:*
>
> *(1) In conducting an inquiry into the regulation of specified airport services, the Commission must consider-*
>
> *(a) whether, in addition to information disclosure regulation, 1 of the following types of regulation should be imposed on the services:*
>
> *(i) negotiate/arbitrate regulation;*
>
> *(ii) default/customised price-quality regulation;*
>
> *(iii) individual price-quality regulation; and*
>
> *(b) if so, how that type of regulation should apply to specified airport companies (either individually or collectively).*

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

The problem with section 56

17. Section 56 of the Commerce Act is the section that sets out how further regulation of specified airports might be considered, to which services that regulation might be applied to, and the process of that further regulation being applied.

18. In recent years, as it has become clear that existing regulation is failing to constrain AIAL, airlines (and perhaps regulators and policy makers) looked to section 56 of the Commerce Act for help. It was assumed that this section would be able to act as the threat of further regulation, and that this section allowed for a reasonably efficient

[7] BARNZ Submission to the Commerce Act Review, 7 February 2025.

process of establishing the need for further regulation (or not), applying that further regulation to specified services via an Order in Council. Amendments to the Commerce Act in 2018 relevant to that Order in Council were designed to give comfort that should further regulation be called for; it could be swiftly considered and enacted.

19. When we seek to apply legislation, it is sometimes only in that moment that any inadequacy is evident. The challenge in applying section 56 is found in s 56G, extract below, emphasis added.

56G Commission inquiry

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

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

(i) negotiate/arbitrate regulation:

(b) (ii) default/customised price-quality regulation:

(c) (iii) individual price-quality regulation; and

(2) (b) if so, how that type of regulation should apply to specified airport companies.

(3) As part of the inquiry, the Commission must—

(a) determine or amend (and then apply) input methodologies for the supply of the services, in accordance with subpart 3; and

(b) when considering whether a type of regulation might be imposed, assess the benefits of imposing different types of regulation in meeting the purpose of this Part against the costs of imposing those types of regulation.

(4) The input methodologies must be determined or amended as soon as practicable after the inquiry is triggered.

(5) During an inquiry, the Commission may have regard to any other matters it considers necessary or desirable for the purpose of the inquiry.

(6) An inquiry under this section must follow the process set out in section 52I.

20. Setting aside the need to draft this section to make clear further regulation of just one airport is possible, the requirement for the Commission to *"determine or amend (and then apply) input methodologies for the supply of the services"* at the commencement of a s 56 inquiry makes such an inquiry close to unworkable at the outset.

21. The Commerce Act already requires the Commerce Commission to review Input Methodologies at least every seven years.[8] The process of reviewing the Input Methodologies is a process which runs for an average of two years. It is not unreasonable to expect that any determination or amendment of the Input Methodologies as might apply to a s 56 Inquiry would take considerable time, would certainly require submissions from interested persons, and would likely to be subject to appeal. Indeed, in a s 56 scenario the regulated airport would be incentivised to appeal if only to delay and disincentivise further regulation.

22. Under current drafting, Price Setting Events for regulated airports and any subsequent s56 Inquiry delivers a lengthy, unwieldy and conflicting scenario.

		Regulated Airport	Commerce Commission
Year 1		The regulated airport must consult with substantial customers on capex and prices to inform its Price Setting Event.	
Year 2		The regulated airport must set prices in a Price Setting Event and makes an Information Disclosure of those prices.[9]	The Commerce Commission reviews that Price Setting Event, consults with interested persons and with the regulated airport....
Year 3		The regulated airport recovers prices and continues any capital programme	....before issuing a Draft and then Final Report on that Price Setting Event. The Commission may then recommend to Ministers that a s 56 process is indicated. Decisions may be taken to proceed.
Year 4		The regulated airport recovers prices and continues any capital programme	Input Methodologies for a s 56 Inquiry are consulted on.
Year 5		The regulated airport recovers prices and	Input Methodologies for a s 56 Inquiry are determined and may be appealed.

[8] Commerce Act 1986, s.52Y (1).
[9] Airports must set prices at least every five years. Civil Aviation Act 2023, s 230.

		continues any capital programme	
Year 6		The regulated airport must consult with substantial customers on capex and prices to inform its next Price Setting Event.	Assuming Input Methodologies are settled, the s 56 Inquiry commences, and must allow as per s 56J an opportunity for interested person to give their views. Submissions and cross submissions are expected.
Year 7		The regulated airport must set prices in a Price Setting Event and makes an Information Disclosure of those prices.	The s 56 Inquiry concludes – this is the earliest possible timeframe. Note that it is highly likely the regulated airport will have been required to re-set prices in this time period.

23. A scenario like this – even where it varies slightly in approach or sequencing – is likely to deliver substantial difficulty for all stakeholders. It is so challenging, it is unlikely to commence.

24. Section 56 of the Commerce Act should be enabled to deliver a swift Inquiry. In the context of a s 56 Inquiry, there is no need to re-determine Input Methodologies. The Input Methodologies as set every seven years are appropriate to use for an Inquiry purpose – they already make careful consideration of relevant inputs, and all parties including regulated airports are able to submit to those processes. BARNZ recommends that s 56G is revised to remove the requirement for a redetermined or amended Input Methodology.

25. Amending the Commerce Act to allow further regulation of just one airport, and to allow for an agile and efficient inquiry into further regulation of that one airport where indicated would deliver a regime which is sufficiently flexible to provide a targeted and timely response when changes in regulatory approach are required.

Oversight of large capex

26. MBIE has asked whether the regulatory regime for airports provides sufficient oversight during times of major capital investment. The shortest and most direct submission BARNZ can make in answer to this question is 'no'.

27. The slightly longer answer can be found in the submissions of BARNZ and its member airlines to the consultation processes for AIALs Price Setting Event 4 (PSE4).

28. The non-disclosure agreements substantial customers are required by AIAL to enter into mean that most of this consultation is single stream – that is, comments made by BARNZ to AIAL regarding PSE4 are only seen by BARNZ and AIAL. In the same way, comments made by Air NZ or Qantas Group to AIAL are only seen by that airline and AIAL. There is no ability to collaborate on solutions or come to mutual agreement on capital plans. Following the Commerce Commission's request to lift non-disclosure agreements for the purposes of its Review of PSE4, BARNZ could see for the first time what other substantial customers had suggested and discussed. This visibility was only available at the insistence of the Commission, and almost a year after prices had been set and charged.

29. If an interested person had been able to read submissions of all substantial customers to AIAL's PSE4, they would have read that there was serious concern raised about the impact of prices on demand for air services early in capital consultations. They would have seen concerns about the cost of the terminal and tarmac proposals given the very little additional capacity delivered. They would have read about concerns regarding allocation of costs for services shared with AIAL's commercial till – where roads served both the airport and the retail offerings. An interested person might have been just as surprised as airlines were when – in the middle of all this 'consultation' - AIAL announced commitments to billions of dollars in capital cost running through PSE4 and to the conclusion of PSE5. That interested person might have reached the reasonable conclusion that consultation with AIAL on these plans was, essentially, pointless.

30. AIAL is spending $6.6 billion dollars of aeronautical capital costs, which will be levied as charges from airline customers to 2032[10]. While airlines agree that investment is needed, there is substantial disagreement over the scale of AIAL's capital plan, and whether what it delivers is appropriate. The Information Disclosure regime does not allow for any external oversight of a regulated airport's capital plans, whether in times of significant capital expenditure or otherwise.

[10] PSE4 Information Disclosures, Schedule 18, Total Capital Expenditure.

Verification processes are needed for substantial capex

31. BARNZ submits that there should be an independent external verification process where a regulated airport proposes substantial capital plans. The bar triggering verification might be expressed as a dollar value or as a percentage of historic capex over the previous 5-year period. There are models for verification in Individual Price Path (IPP) regulation as applies to Transpower. Verification might be delivered as part of further regulation in an entire IPP – or Information Disclosure regulation might be amended to add the verification requirement.

32. Verification is an important addition for regulation of monopoly airports. While it might be too late to apply this oversight to AIAL's PSE4, it is not too late to apply it to the AIAL Master Plan including PSE5 currently open for consultation. AIAL's Master Plan sets out capital plan intention to at least 2047 – and it is entirely uncosted. Airlines are being asked to support a plan for which costs will only be set ahead of each five-year PSE. Despite the lack of cost information in the AIAL Master Plan, cost certainly exists. There is a weight of cost commitment over time which is unknown, and without reasonable end. It is not too late to consider verification of AIAL's future plans – and it is urgently required.

Regulatory tills

33. MBIE has asked for views on hybrid till alternatives, as have been suggested by comments from the OECD on New Zealand's regulatory settings.

The dual till

34. New Zealand's regulated airports currently operate under a dual till model. This means that while the aeronautical income of a regulated airport is regulated earnings, and subject to the Information Disclosure process, any other income generated by retail offerings, property leases, car parking and similar commercial activity is not regulated – and can earn a return above that of the airport's regulated aeronautical business.

35. None of the earnings from the regulated airport's commercial business arm are required to be invested in their aeronautical business. Where capex or opex of the two businesses are shared – as they might be in roading developments or storm water developments – the aeronautical business can set an allocation mechanism for those shared costs. As far as BARNZ observes, allocation mechanisms of shared cost applies the weight of cost to the aeronautical business almost without exception.

36. While the commercial business does not contribute to the aeronautical business, the dual till model allows for unfair distribution of excess returns to airport shareholders. In this model which creates an artificial wall between commercial and aeronautical investment and return, there is no financial recognition that retail value on the airport landholding predominantly exists as a consequence of aviation activity. This approach leads to perverse investment choices – like AIAL's prioritisation of a discount shopping mall, which has required substantial roading investment with heavy aeronautical cost allocation.

37. Without verification of capital plans, or other regulatory control as might exist in a Default Price Path (DPP) or an Individual Price Path (IPP) there are no guardrails in the regulatory regime to stop a regulated airport's commercial till cannibalising the aeronautical assets. Nowhere is this clearer than on the AIAL airport landholding, where commercial property has taken priority, and where core aeronautical functions such as protection of the Airways Control Tower have been disregarded. AIAL's commercial till has been advantaged with clear disbenefit to cost and quality of aeronautical assets.

The hybrid till

38. Following an OECD suggestion in its 2024 Economic Survey of New Zealand, MBIE seeks view on whether the "hybrid till" model of airport regulation should be explored in NZ as a modification to the current dual till model. Unlike the single till approach, where an airport's aeronautical and non-aeronautical activities are (largely) bundled together for regulatory oversight, under the hybrid till these two areas of activity essentially remain separate from a regulatory standpoint but an explicit transfer occurs from the non-aero side of the airport's business to the aero side.

39. There are international best practice examples of the hybrid till delivering successful outcomes. In the case of Singapore, for example, the regulator sets out a revenue yield cap per passenger from aero activities based on OPEX for aero services, depreciation, the cost of capital on the RAB, and an explicit downward adjustment of H% of non-aero profits (with H to be determined by the regulator).[11]

40. The Airports Council International (ACI) notes that in 2016 10% of airports in Europe applied a hybrid till, compared with 52% using a single till and 37% a dual till.[12] The picture differs somewhat when it comes to airport traffic however: hybrid till operators handled 29% of European traffic, while single till airports handled 26% and

[11] See Civil Aviation Authority of Singapore Act 2009 (Price Control of Aeronautical Charges.)
[12] ACI (2018) *Behind the Regulatory Till Debate.*

dual till 39%. This implies that hybrid tills are used disproportionately among some of the larger airport operators. It is certainly true that airport regulation via the dual till, as is still the case in New Zealand, is in the global minority.

41. Airports already enjoy above normal returns, or economic rents, from their provision of a range of non-aeronautical services such as parking and retail activities at the airport. As a large part of these returns stem from the flow of airline passengers through the airport landholding as they move to and from aircraft. Some of these excess returns should be associated with the airport's provision of aeronautical services.

42. It is easy to see how a hybrid till would align incentives and provide benefits to consumers. Regulated airports operating under a hybrid till structure would contribute to the development of aeronautical assets from their commercial earnings. This would be particularly useful in the case of substantial capital plans. It would even be possible to amend Information Disclosure regime such that an airport proposing to spend over a specified collar of aeronautical capex against historic trend was required to make (for example) 30% investment into that aeronautical capex from their commercial earnings. This should incentivise the regulated airport to right size substantial developments and consider affordability over time – in a way that has been entirely absent in plans proposed by AIAL over PSE4 and PSE5.

43. A hybrid till setting for New Zealand avoids regulatory over-reach. Apart from the need to determine the extent of revenue sharing, as the Singapore model requires, regulation would not extend beyond currently regulated aeronautical services.

Regulation of other airports: The question of Queenstown Airport Company

44. MBIE raises the question of whether regulatory oversight should be extended to other airports. More specifically, the OECD suggests that regulation of Queenstown Airport be considered.

45. Queenstown Airport Company (QAC) is an obvious candidate for regulation. It is an increasingly important destination for international as well as domestic flights, with substantial passenger growth and investment expected in the years ahead. It is now the 4th busiest airport in NZ: passenger numbers were 2.6 million in 2024, comprising 1.7 million domestic and 0.9 million international passengers. For international services, it is New Zealand's third busiest airport, displacing WIAL.

46. Given its geographic isolation, QAC faces less competition from other airports - as well as from other modes of transport - than most other airports in NZ. There may be less scope for airlines to reduce services to QAC if they view airport charges as excessive, considering the unique attractions of Queenstown that make it such a popular destination.

47. As a result, the sorts of competitive pressures and other market forces that might act as a constraining influence on airport charges may be relatively weak in the case of QAC. In a similar manner to its shareholder AIAL, QAC may be able to take advantage of its monopolistic position by raising charges above those that would prevail in the "workably competitive market" that the Commission tries to emulate under regulation.

48. QAC has grown substantially since regulation was imposed on AIAL WIAL and CIAL. Both domestic and international services have grown substantially over time. It has clearly and publicly set a growth path for both air services and capital costs.

49. Looking at various public statements from QAC it appears to have substantial investment plans.[13] QAC describes the decade from 2024 on as *"...the biggest decade of infrastructure delivery the airport has ever undertaken"*[14]. However, in the absence of Information Disclosure regulation, it is not clear what the total cost of those investment plans might be, or their impact on airline charges as may impact cost and demand for air services to Queenstown, a core tourism destination in New Zealand. Given QAC is limited in its ability to grow air services given current Queenstown City Council noise boundary restrictions, it is difficult to see a path for air services growth funding a capital plan of any substance.

[13] For example: https://www.queenstownairport.co.nz/zqn-stories/queenstown-airport-has-a-master-plan-but-what-next

[14] Ibidem: Jo Learmonth, Head of Infrastructure Delivery, QAC.

50. Given QAC appears to be at the beginning of an investment plan for aeronautical capex, the time to apply Information Disclosure regulation as a minimum is now. In another five years, that capex may be committed to, and prices for airlines operating to New Zealand's key tourism drawcard may increase without oversight. Aside from a public Master Plan consultation[15], QAC has not recently consulted with BARNZ on its prices, preferring to consult directly with its substantial customers. BARNZ members will have a range of views on best approaches here.

51. BARNZ submits that the Commerce Act is amended to include QAC as a specified airport company under s 56A.

Regards,

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Board of Airlines of New Zealand

[15] BARNZ Submission to QAC Master Plan, 23 June 2023.