Submission in response to MBIE request for feedback on airport economic regulation under Part 4 of the Commerce Act 1986

Executive summary

1 New Zealand's airport regulatory regime is working well. It is principled, predictable, and trusted by consumers, investors, and regulators alike. The Commerce Commission – the expert economic regulator – has found no systemic concerns that warrant change.

2 This submission calls for MBIE to protect the integrity of the current framework, uphold the role of the Commission, and resist targeted or politically driven regulatory changes.

Airports are the one part of the infrastructure system that's working.
Airports are delivering long-term infrastructure investment without taxpayer funding, and the Commerce Commission has found no systemic concerns.

There is no problem definition or evidence for change.
This process was triggered by submissions from airline stakeholders using arguments that have already been discounted by the regulator.

Regulatory flexibility already exists and has recently been enhanced.
In 2018 MBIE introduced targeted amendments to the Commerce Act that created a streamlined inquiry process and enabled changes through Order in Council. These changes were designed to add flexibility while maintaining principled oversight.

Proposals for adding regulated services and targeting individual airports lack a supporting evidence base.
Suggestions to shift to a hybrid till model or apply selective regulation to individual airports have not been supported by analysis or formal findings. These proposals risk undermining an effective system and divert focus from the real challenges in the aviation sector.

Airlines are not subject to equivalent oversight despite greater market power.
Airport pricing is subject to disclosure and independent review. Airline pricing and conduct, including on routes with limited or no competition, are not subject to equivalent transparency. This creates an imbalance in regulatory focus and limits the government's ability to fully assess drivers of consumer outcomes, particularly in regional markets.

We support regulatory integrity, transparency and evidence-based policy.
Any future changes should be grounded in a clearly defined problem, tested through a full policy process, and aligned with the principles of regulatory stewardship. The current framework provides this discipline and should be retained.

Introduction and scope

3 NZ Airports represents airports across New Zealand, including our international gateways, the domestic airports which make up the national air transportation network, and airports focused on general aviation services.

4 Our member airports include Alexandra Airport, Ardmore Airport, Ashburton Airport, Auckland Airport, Chatham Islands Airport, Christchurch Airport, Dunedin Airport, Gisborne Airport, Hamilton Airport, Hawke's Bay Airport, Hokitika Airport, Invercargill Airport, Kapiti Coast Airport, Kaikohe Airport, Katikati Airport, Kerikeri Airport, Marlborough Airport, Masterton Airport, Matamata Airport, Motueka Airport, Nelson Airport, New Plymouth Airport, Oamaru Airport, Pauanui Airfield, Palmerston North Airport, Queenstown Airport, Rangiora Airport, Rotorua Airport, Takaka Airport, Taupo Airport, Tauranga Airport, Te Anau-Manapouri Airport, Te Kowhai Aerodrome, Thames Aerodrome, Timaru Airport, Wairoa Airport, Wanaka Airport, Whanganui Airport, Wellington Airport, West Auckland Airport, Westport Airport, Whakatane Airport, and Whangarei Airport.

5 Airport regulation affects all airports. The standards and processes set for regulated airports have implications for all airports required to set landing charges. Consultations should engage regulated airports, regional airports and their local government owners, operators and investors, as well as the communities affected by the passenger, trade, medical and emergency services they facilitate.

6 This submission has been developed through discussions, workshops and consultation across the airport network. Airports may also provide individual submissions.

7 This submission should be read alongside our submission on the targeted review of the Commerce Act, our letters to Ministers of Commerce and Consumer Affairs on consumer outcomes in the aviation sector, and our submissions into Commerce Commission reviews, all of which provide a consistent and evidence-based record of engagement.

The work of the Commerce Commission must anchor policy

8 The Commerce Commission is the independent expert regulator entrusted with overseeing airport pricing and performance under Part 4 of the Commerce Act. Its comprehensive and transparent reviews, including the recent PSE4 assessment of Auckland Airport, have repeatedly confirmed that the current regime is achieving its objectives. The Commission has done the work to rigorously evaluate stakeholder arguments, test evidence, and reach balanced conclusions.

9 MBIE's policy development should build on this established regulatory foundation rather than revisit settled issues through a parallel process.

10 It is also essential that all claims in this process are tested against the evidentiary record. For example, recent assertions by airline groups – including claims of cross-subsidisation of non-aeronautical activities and limited capacity gains from Auckland Airport's terminal – were not supported by the Commission in its PSE4 review. These discredited arguments continue to circulate despite failing that independent scrutiny, underscoring the need for a disciplined, evidence-based approach.

Our position: maintain the current framework

11 NZ Airports supports the current regulatory framework under Part 4 of the Commerce Act. The 2018 amendments gave the Commerce Commission stronger escalation tools, and repeated reviews - including PSE4 - have confirmed the system's effectiveness. Reopening these settings without clear justification risks undermining investor confidence and weakening regulatory integrity. Such change would also run counter to the Government's stated commitment to regulatory restraint under the Regulatory Standards Bill. In the past two weeks, Ministers have specifically reiterated their desire to avoid adding further regulation to the aviation system that could increase compliance costs.

12 We recommend maintaining the status quo, resisting legislative changes, and addressing regulatory asymmetry by scrutinising airline conduct.

The context for this review – no problem definition or evidence of failure

13 This check-in process emerged from airline lobbying during the Commerce Act review and a general OECD survey that did not consult infrastructure stakeholders. MBIE has confirmed this is not a formal proposal for reform, and no independent problem definition has been presented. Given the recent PSE4 review and MBIE's own 2018 reforms, there is no compelling rationale for revisiting these issues.

14 The OECD's high-level commentary cannot substitute for the detailed, sector-specific findings of the Commerce Commission. MBIE has confirmed that the OECD did not consult with any airports, making its recommendations ill-suited to inform policy change.

15 New Zealand's airport regulatory regime is widely regarded as stable, effective, and trusted. The Ipsos Global Infrastructure Index rates airports as New Zealand's highest-performing infrastructure sector in the eyes of consumers.[1] This is because airports are generally successful in maintaining and upgrading their infrastructure under current regulatory settings. Crucially, regulatory stability has underpinned quality infrastructure investment without reliance on taxpayer funding. It provides the regulatory predictability that is a baseline expectation for global investors. The Commerce Commission has repeatedly confirmed the effectiveness of the information disclosure regime, most recently in the Auckland Airport PSE4 report, released just 11 days before this review was issued.

16 The Auckland Airport PSE4 report builds on at least 11 other reviews of airport pricing and regulation over the last 12 years:

- The review of Christchurch Airport's price setting event 4, 2024
- The Civil Aviation Act 2023
- The review of Wellington Airport's price setting event 4, 2022
- Commerce Amendment Act 2018
- The review of Auckland Airport's price setting event 3, 2018
- The review of Christchurch Airport's price setting event 3, 2018
- The review of Wellington Airport's price setting event 3, 2015
- The review of Christchurch Airport's price setting event 2, 2015

[1] https://www.ipsos.com/en-nz/2024-global-infrastructure-index-nz-edition

- Effectiveness of the current information disclosure regime for airports, 2014-2018
- The review of Wellington Airport's price setting event 2, 2013
- The review of Auckland Airport's price setting event 2, 2013

17 In particular, during the development of the Commerce Amendment Act 2018, MBIE looked closely at the exact issues raised in the email that started this review. We set out a brief summary of MBIE's findings in that process in the table at **Appendix One.** Given previous comprehensive reviews, the rationale for further consultation is unclear.

18 We urge MBIE to reaffirm the integrity of New Zealand's regulatory architecture and uphold the role of the Commerce Commission as the expert regulator.

Historical context and regulatory stability

19 The regulatory settings for New Zealand's major international airports were developed following years of analysis, stakeholder engagement, and ministerial deliberation. MBIE's own 2014–2018 targeted review of airport regulation concluded that the information disclosure regime was delivering on the purpose of Part 4: promoting outcomes consistent with competitive markets, supporting efficient investment, and limiting the ability to extract excessive profits.

20 Cabinet endorsed three key changes at the time:

- Clarifying that the Commerce Commission can assess the effectiveness of the regime in its summary and analysis reports;
- Introducing a streamlined inquiry process for changing the type of regulation applied to already-regulated airports;
- Allowing changes to the form of regulation to be made via Order in Council, rather than through legislative amendment.

21 Since then, the regime has withstood major external shocks, most notably the COVID-19 pandemic. Airports have continued to progress smoothly through standard reviews. Airports are long-term, capital-intensive businesses that rely on regulatory predictability to attract investment. With no new evidence suggesting the regime is failing, revisiting its core principles would unnecessarily undermine investor confidence and system credibility.

Existing tools provide capital oversight

22 MBIE has asked for feedback on whether additional oversight of airport capital investment is required. The existing regime already provides forward visibility, as the information disclosure framework requires the publication of 10-year capital plans. These tools complement the Commerce Act's backward-looking scrutiny of price-setting and financial performance, together creating a more comprehensive picture of airport investment behaviour.

23 Further forward-looking insight is already in train through the Civil Aviation Act 2023.

a. Section 4C of the Airport Authorities Act 1966 requires that specified airport companies must not approve any aeronautical capex without consulting their substantial customers, if the amount of that capex (and the amount of any related capex) will, or is likely to, within the following five years, exceed 20% of the value of aeronautical assets. When airports become registered as an airport operator under the Civil Aviation Act 2023, the relevant

amount will be prescribed based on the annual number of passenger movements. This is likely to result in a lower threshold of capex requiring consultation with substantial customers before approval.

b. The Civil Aviation Act also introduces a new master planning requirement and enhanced powers for the Minister of Transport and Ministry to oversee long-term airport infrastructure development.

24 Through the combination of airport master plans, statements of intent and direct oversight powers enabling the Ministry of Transport to review and track airport infrastructure priorities, the government has proactive, forward-looking visibility into airport planning cycles - well before capital is invested and infrastructure is priced and built.

25 It is important to note that airports are naturally incentivised to engage with users on capital plans. These obligations are formalised under both the Airport Authorities and Civil Aviation Acts. The Commission's recent review of Auckland Airport's programme confirmed that its oversight role is effective when needed – and that disputes are the exception, not the norm. If the Commission considered that its current oversight of capital investment planning is insufficient, then it has existing powers to tailor information disclosure requirements.

26 This integrated oversight framework makes additional economic regulation of capital investment unnecessary. There is no policy rationale for duplicating or pre-empting planning visibility already secured through primary legislation. Agencies simply need to effectively utilise their existing powers. NZ Airports is already supporting the Ministry of Transport to do this, and will be pleased to assist MBIE and other agencies on how to make the most of the new Civil Aviation Act processes.

Why process integrity matters

27 Officials have posed the question of whether Part 4 of the Commerce Act should be made more flexible. Regulation of critical infrastructure sectors, where investors seek returns over decades, must be principled and predictable. The current regime contains sufficient embedded flexibility, with an inquiry and Order in Council process to be followed to substantiate that a change in regulation has greater benefits than costs. This ensures that any such changes are subject to expert analysis, due process, and democratic oversight. This is not a flaw - it is a safeguard, designed to maintain regulatory integrity and investment certainty. This is important, because the stakes are high. Billions of dollars in investment hinge on the regulatory framework. It is therefore essential that any decision about the appropriate regime is based on a rigorous and robust assessment process.

28 MBIE's 2018 Regulatory Impact Statement for the Commerce Amendment Act noted that the truncated inquiry process and the ability to change regulation via Order in Council were introduced precisely to increase flexibility and credibility of the regime. It is poor practice to relitigate questions already resolved via a formal policy process that was backed by cost-benefit analysis and legislative amendment.

29 Undermining these safeguards – by allowing selective regulation of individual airports without a full inquiry – would fragment the regime, reduce investor confidence, and weaken the peer pressure that currently drives sector-wide performance. Airports require significant, decades-long investment, funded by public-private partnerships and local government shareholders. The prospect of unpredictable or selectively applied regulation will deter private

capital, increase the cost of borrowing, and delay infrastructure development. This directly undermines the government's goals of improving national productivity and resilience.

30 Airlines argued in their previous submissions to MBIE that because stronger regulatory tools have not yet been used, the threat of escalation under Part 4 lacks credibility. This argument completely misunderstands how incentives work. The absence of escalation is evidence that the system is working. The airports have responded to the regime's signals – as demonstrated by Auckland Airport's adjustment of its return to fall within the Commission's range. The Commission itself has noted this positive behaviour. Compliance is not evidence of the regime's weakness; it is proof the regime works. The Commission has never indicated that the regime is ineffective because it does not have sufficient flexibility to consider change. On the contrary, it has consistently advised Ministers and made public statements that the regime is effective – including because airports have responded quickly to its findings when necessary.

31 A regime that drives compliance without costly intervention is not a weak regime - it is an effective one. To consider new mechanisms to more easily escalate regulation without clear grounds would send the opposite signal: that complying with the regime's expectations offers no protection. That would fundamentally undermine the purpose of the regime and damage trust in the regulatory process, not just for airports but for all other regulated entities.

Regulating airports together works and should be retained

32 Airlines have long sought bespoke regulatory treatment for Auckland Airport. These calls are not grounded in evidence of excessive pricing or consumer harm – both rejected by the Commerce Commission – but reflect a commercial objective to extract more favourable terms from the country's main international gateway, which airlines continue to choose as their New Zealand hub.

33 New Zealand's regulatory system treats Auckland, Christchurch, and Wellington together under the Part 4 regime – a design that was deliberate and has proven beneficial. While the airports differ in scale, consistent regulatory treatment ensures aligned expectations, comparable scrutiny, and shared discipline. From our vantage point of working with the three airports, this structure fosters transparency, continuous improvement, and responsiveness to Commission guidance.

34 MBIE's 2018 assessment found that regulating the airports together creates cost efficiencies, enhances comparability, and generates a powerful peer pressure effect, noting instances where airports changed course in response to sector-wide expectations.

35 Based on our observations, fragmenting the treatment of the three major airports would come at a cost. Once regulatory consistency is lost, so too is the quiet discipline of sector-wide comparison – and with it, one of the most effective, low-cost checks on airport performance. It would weaken the coherence of the regulatory framework and reduce the effective discipline that currently arises from sector-wide comparison. Airports contemplating major infrastructure upgrades would face the threat that success – or greater scale – might result in being singled out for heavier-handed treatment. From our position at the system level, we believe that threat would lead to more conservative planning and underinvestment.

36 We understand MBIE is contemplating whether the scale of Auckland Airport's recent investment should be a key factor. Auckland Airport notes that its terminal redevelopment has been in its capital plan since its third price setting event, and was reviewed without issue by the

Commission across multiple regulatory cycles. Using scale of investment, rather than regulatory compliance, as a trigger for regulatory escalation would undermine the behavioural incentives Part 4 was designed to create.

Maintaining a principled and evidence-based threshold for regulation

37 The current framework includes a pathway for adding new airports or services to regulation – through a Commerce Commission inquiry and an Order in Council. This was reinforced by the addition of section 56N to the Commerce Act to clarify that subpart 2 of Part 4, which sets out the process to impose regulation on particular goods or services, is not limited by subpart 11, Airport services. Parliament has made clear that regulation should apply only where substantial market power exists, and the benefits outweigh the costs. Economic regulation is among the most intrusive forms of oversight, and must not be triggered by lobbying or perceptions of scale alone. The mechanism is both targeted and efficient, especially when compared to other sectors.

38 Some stakeholders have suggested extending Part 4 regulation to Queenstown Airport, and this has been referenced by MBIE. However, no formal complaints about Queenstown Airport have been made to the Commerce Commission, nor has any review found pricing or investment behaviour that justifies intervention. Importantly, Queenstown Airport is already subject to significant transparency requirements through the Airport Authorities Act, public ownership obligations, and existing consultation requirements with major users. These mechanisms provide ample opportunity for concerns to be raised and addressed through existing channels.

39 NZ Airports supports maintaining the current threshold for regulation, which ensures that intervention is grounded in evidence. The existing process requires a full assessment of costs and benefits before regulation is applied - a crucial safeguard given the significant direct costs involved, including Commerce Commission levies, airport resourcing to participate in complex reviews, and the broader risk of deterring investment.

40 Because of the significant consequences of economic regulation – and the complete absence of formal complaints – Queenstown Airport, like any airport, deserves the full inquiry process before any intervention is considered.

Dual till supports investment and public benefit

41 The suggestion that New Zealand should investigate potential alternatives to the dual till regulatory model is extremely concerning. The OECD commentary referenced by MBIE provides no meaningful analysis, context, or justification for investigating changes to the scope of regulated services or other alternatives. MBIE has done no analysis itself for airports to comment on. Precisely what a hybrid till would entail remains unclear, but it would inevitably be a structural change with significant distributional and destabilising consequences.

42 There is no place for the regulation of contestable services under Part 4, which only regulates monopoly services. For airports, aeronautical activities are clearly monopoly services; however, airports' non-aeronautical activities are undertaken in competitive markets (e.g. retail, property leasing or commercial food supply), which is why they were excluded from regulation under Part 4. The Commission already has the power to recommend that non-aeronautical activities are included, provided it can be shown that market power exists and that benefits outweigh costs.

43 In that context, the appropriate response to the OECD recommendation is that the Commission already has sufficient power to investigate changes to the scope of regulated services. Investigation of hybrid till concepts should not be pursued because it implies partial or ad-hoc regulation of non-aeronautical businesses delivered in competitive markets, which is inherently inconsistent with Part 4 as it stands and would require a fundamental shift in understanding of the purpose and application of Part 4. If a consistent approach were followed, MBIE would also need to investigate whether hybrid concepts should be allowed for matters such as electricity distributors' investment in generation.

44 New Zealand's dual till model supports the proper allocation of risks and rewards between aeronautical and non-aeronautical activities and encourages the efficient use of airport capacity. Departing from a dual till approach would undermine infrastructure investment in several ways.

- It would weaken airports' ability to raise debt and equity to fund terminal and runway infrastructure. Because airports cannot include revenue for an asset in pricing calculations until it is complete and operational, they rely on their full balance sheet, including non-aeronautical revenue streams, to secure capital. If this ability is compromised, aeronautical charges would need to increase or be restructured to compensate.
- It would fundamentally alter investor perceptions of the airport sector in New Zealand. NZ Airports has received external advice that hybrid till would increase perceived regulatory risk, thereby raising the cost and reducing the availability of both debt and equity. This risk is magnified in the New Zealand system, where airport development is not supported by public capital and is instead reliant on diversified commercial returns across both tills.
- It would distort pricing signals by breaking the link between aeronautical charges and infrastructure cost recovery. This would undermine transparent pricing and investment signals, and shift the balance of commercial incentives away from efficiency. The Australian Productivity Commission found that a hybrid or single till approach "is likely to discourage development by the airport of both aeronautical and non-aeronautical services, generating large efficiency losses in the long run".[2]
- It would increase regulatory complexity and compliance burdens for both airports and regulators.
- It would erode the financial autonomy of all airports that rely on diversified revenues to manage external shocks, increasing the likelihood of requiring government support during crises, as we see in many other countries.
- It would exacerbate the widespread commercial imbalance between airlines and airports in the domestic market while doing nothing to address the structural fleet and supply chain issues inhibiting aviation growth.

45 In a system with no regulation of airline pricing, any potential reduction in airport charges (which would only be speculative, and may actually rise in some cases) would simply increase the profit margins of two of Australasia's most profitable corporates with earnings of $190 million

[2] Productivity Commission (Australia), 2002 – Price Regulation of Airport Services

to $1.5 billion – with no guarantee of lower airfares for passengers. It would risk underinvestment in airport infrastructure capacity and efficiency, which would drive airfares higher.

46 In New Zealand, dual till has underpinned significant investment in commercial, industrial and social infrastructure - all delivered without taxpayer funding. It is important to highlight that – unlike other countries – New Zealand does not have compensating mechanisms such as direct government funding for airports, public capital injections, or regulated airline pricing. Non-aeronautical revenue is increasingly important for funding airports' climate and emergency management resilience and for enabling airport self-sufficiency, particularly in the absence of public capital support and in an airline monopoly situation.

47 If the concern driving this review is supporting airline profitability or the health of the aviation sector, it should be addressed directly - through targeted competition policy or regulatory scrutiny of airlines. It is not appropriate or consistent with Part 4 of the Commerce Act to repurpose airport regulation as a tool to support airline profitability.

Asymmetry in regulation: airline market power and consumer outcomes

Airlines, not airports, are driving deteriorating outcomes

48 While this consultation focuses on airports, the most significant consumer harms in New Zealand's aviation system – including high fares, reduced connectivity, and declining reliability – stem from airline market power. New Zealand's leading consumer advocacy group has publicly and consistently raised concerns about airline practices. In contrast, most criticisms of airports originate from airlines themselves – and assessments by the Commerce Commission confirm that the current airport regulatory framework is broadly effective and working as intended.

49 The Commission has also observed that a market study into airlines would be unlikely to promote greater competition due to persistent structural and economic constraints. This makes it all the more difficult to justify why the regulatory spotlight is being placed on airports – the part of the system already subject to oversight – when the most significant competition concerns lie elsewhere and are acknowledged to be less amenable to policy intervention.

50 Any credible analysis from MBIE must begin with the consumer. Since 2019, passengers have experienced:

- Higher fares and diminished affordability, even as airline profitability rebounds;
- The loss of approximately 1.5 million seats from the network, with regional routes hit hardest;
- Reduced frequency, delays, and a decline in schedule resilience; and
- Insufficient capital investment in domestic fleet renewal and capacity expansion.

51 None of these issues arise from a failure in airport regulation. On the contrary, airports have maintained infrastructure investment and service availability through COVID-19, cost inflation, and volatile demand. The bottlenecks are increasingly airline-driven: fare-setting, capacity choices, fleet decisions and service reliability all sit within airline control. The government's reluctance to acknowledge this dynamic is leading to growing disillusionment among airports, regional communities, and consumer groups.

52 MBIE must consider the broader structural effects of market power in the aviation system. The countervailing market power of airlines in the New Zealand system is extreme when

compared to other jurisdictions. Air New Zealand controls 84% of the domestic market and 55% of international airline capacity through codeshare arrangements. This is far higher than Auckland Airport's 75% share of international passenger traffic, which has been used by airlines to argue for greater airport regulation. By this measure, Air New Zealand's dominance merits far greater scrutiny (see Figures 1 and 2).

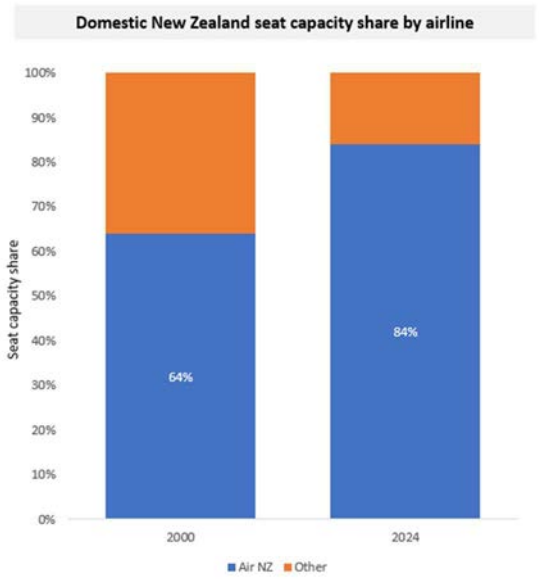


Figure 1: Air New Zealand's market share has grown to 84% since 2000.

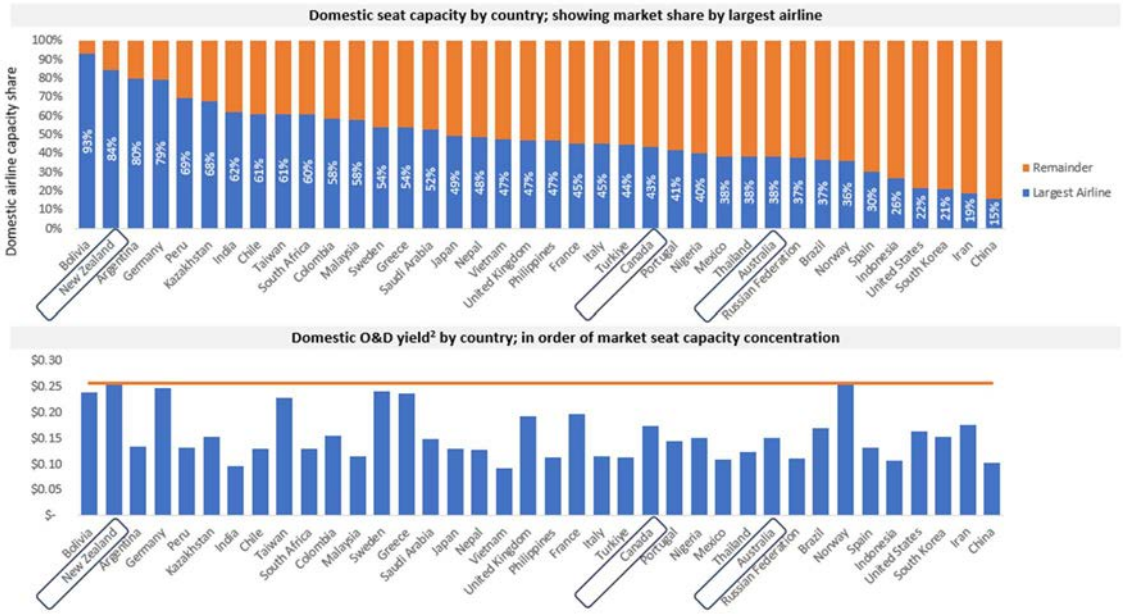


Figure 2: New Zealand is among the least competitive domestic airline markets in the world, but among the highest for yield (AirportIS, YE Dec 2024).

Only part of the price stack is regulated

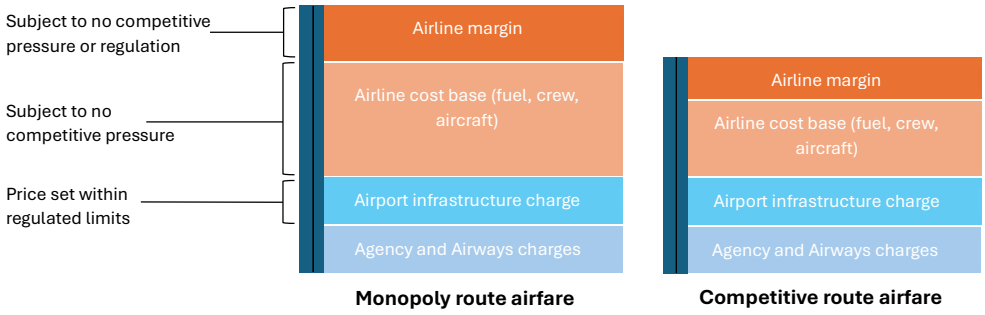
53 In theory, both infrastructure providers and service providers should be incentivised to grow volume and reduce costs, as MBIE and the Commerce Commission would want to see in

any well-functioning market. In practice, under current conditions, only airports face incentives to expand capacity, improve efficiency, and attract more traffic. This is because airports recover their costs by encouraging throughput. Airlines, by contrast, can optimise for yield - raising fares and constraining capacity where it suits their commercial interests, without regulatory constraint or transparency.

54 Most New Zealand air routes, especially regional ones, have a single airline operating. The airport charges airlines for infrastructure use, with the airline then adding its own markup on top of those charges when setting fares for consumers. Under current settings, the airport charges are regulated, while the airline charge is free to be maximised, as it is under no competitive pressure from other operators.[3]

55 This means prices for end consumers – passengers – are higher than they would be in a more competitive or regulated environment. Only half of the vertical pricing stack is monitored. The illustration below (Figure 3) shows the potential for double marginalisation in aviation markets where there is both airport and airline monopoly power. While regulation addresses this on the airport side, there is no competition or regulatory pressure on a monopoly airline. In a competitive market, pressure from other operators is expected to incentivise greater efficiencies in the airline cost base, as well as more competitive margins.

Figure 3: The vertical pricing stack. On monopoly routes, passengers face unregulated airline pricing stacked atop regulated airport and agency charges. In competitive markets, this margin is constrained by market forces. Only half of the vertical pricing stack is regulated.



56 Consumers ultimately bear the cost. Airfares often bear no relationship to the cost of service, and airlines face no obligation to support long-term infrastructure planning. Even if the airport, agency or Airways charges were reduced, there is no mechanism to ensure savings would reach passengers.

Regulators abroad are already acting

57 If regulatory reform is to be principled, it must be symmetrical. If the concern is protecting consumers from market power, then regulation must apply where that power is actually being exercised. That means:

- Investigating pricing conduct on monopoly airline routes;

[3] Airfare data shows that as a low cost carrier, Jetstar's influence on contested routes has not had a long term effect on Air New Zealand's airfares, beyond initial price drops when new routes are introduced.

- Scrutinising airline participation in airport consultation processes and their impact on investment cycles; and
- Considering whether dominant airlines should also be subject to information disclosure or economic oversight.

58 Regulatory authorities in other jurisdictions have recognised the risks of airline market power. In Australia, the Productivity Commission and the ACCC have both investigated airline conduct and considered whether targeted regulation or disclosure is needed. The ACCC's work is ongoing.

59 New Zealand has yet to take similar steps, despite having a highly concentrated airline market and clear evidence of dominant operator behaviour. As noted above, in April 2025, the Commerce Commission informally assessed competition in domestic aviation, but decided a formal study was not justified. It consulted airlines, but not airports. The Commission's rationale – that a market study wouldn't increase competition – misreads the purpose of such studies. Under the Commerce Act, the test is whether a study serves the public interest.[4]

60 The Chair of the Commission notes that "economic and structural factors are the main driver of the current challenges in our domestic airline sector, including the limited competition we currently see"[5] and "[t]he routes without significant competition tend to be regional routes that are expensive to operate and therefore not very attractive to competitors. It's hard to see how an intervention that encourages competition would make much difference on those routes".[6] In our view, this assessment shows that Air New Zealand now meets the statutory test for inclusion under Part 4 on several regional routes.

Regional impact – a vulnerable tier of the system

61 The regulation of the three major airports does not operate in isolation. Standards, pricing expectations, and precedents set under Part 4 flow down to regional airports – influencing negotiations even though those airports are not formally regulated under the Commerce Act. Typically reliant on a single airline for service, these airports lack the commercial or legal leverage to resist aggressive negotiation tactics. As the 2009 Cabinet paper on regional airport regulation noted,[7] it is the airline – not the airport – that often holds the real market power. That conclusion remains as relevant today as it was 15 years ago.

62 MBIE must act as a system steward in this process. It has a responsibility to proactively understand how changes at the top of the network affect smaller airports. That means undertaking genuine consultation with regional airports, their local council owners, and stakeholders to assess the full network impacts of any proposed regulatory change. Local councils, which have invested significantly in airport infrastructure to support regional resilience and economic growth, cannot absorb the additional risk created by unpredictable or poorly targeted regulation.

[4] Section 50, Commerce Act 1986.
[5] Dr-John-Small-airlines-op-ed-1-May-2025.pdf
[6] Dr-John-Small-airlines-op-ed-1-May-2025.pdf
[7] Economic Regulation of Regional Airports: Report on the nature and scope of any issues [EG Min (09) 17/14]

Conclusion: protect what's working, act where the risk is

63 The evidence overwhelmingly supports maintaining the current regulatory architecture. NZ Airports recommends the following actions to preserve regulatory integrity and address the risks in the system:

- **Maintain regulatory stability**: Preserve the current framework under Part 4, and avoid legislative changes that would weaken safeguards or lower the bar for intervention.
- **Reinforce the role of the Commerce Commission**: Respect its position as the expert independent regulator and preserve the integrity of its inquiry and reporting processes.
- **Reject hybrid till without full analysis**: Reject any further consideration of hybrid till regulation. If it is to be further considered, there must be a full and transparent policy process - including a clearly defined problem statement, robust cost–benefit analysis, sector-wide consultation, and alignment with long-term infrastructure investment principles.
- **Avoid selective regulation**: Do not enable targeted changes to individual airports, which would fragment the regime and undermine peer accountability.
- **Address the regulatory imbalance**: Investigate whether dominant airlines should face similar oversight – including information disclosure – especially on monopoly routes.
- **Signal predictability to investors**: Reaffirm confidence in the regime. International investors have already expressed concern over perceived sovereign risk. Undue regulatory change could drive capital elsewhere — undermining government objectives to mobilise private investment for infrastructure.

64 These steps are essential to safeguard long-term airport investment, maintain public trust in the regulatory system, and ensure New Zealand's aviation network remains globally competitive, resilient, and consumer-focused.

65 We are at MBIE's disposal if we can provide any further information or support on these matters.

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Appendix: Table summarising MBIE's position in the 2018 review of the Commerce Act 1986

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MBIE check-in questions 2025	MBIE's position in the Departmental Report on the Commerce Amendment Bill 2018
Does the regime provide sufficient oversight during times of major capital investment?	Part 4 of the Commerce Act requires the Commission to make determinations about how relevant forms of regulation apply to regulated suppliers i.e. the Commission has the power to impose further information disclosure requirements on airports including in respect of major capital investment. In 2018, in response to submissions to clarify the Commission's powers under the information disclosure regime (in particular, the summary and analysis required from the Commission under s 53B(2)(b)), MBIE rejected calls for change and noted: "Retaining the current drafting gives the Commission the ability and flexibility to focus on the relevant issues that may provide the greatest value to the long-term interests of consumers, and highlight problems with each airport as it sees fit."[8]
Is the regime sufficiently flexible to provide a targeted and timely response when changes in regulatory approach are required?	The appropriate process to consider changing the form of regulation for airports was carefully considered and implemented by the Commerce Amendment Bill 2018. MBIE's preferred position was a truncated inquiry process through which the form of regulation could be changed via OiC. MBIE noted: "We recommend no change to the statutory criteria for the Minister's consideration and recommendation following a truncated inquiry. We also recommend no change to the steps in the truncated inquiry process for imposing further regulation. The threshold for applying additional regulation to airport companies does not need to be more than assessing the benefits against the costs of imposing that additional regulation"[9] MBIE provided further justification for its view in a Regulatory Impact Statement, noting: "These preliminary aspects of a Part 4 inquiry are relevant to inquiries into unregulated goods and services, and in situations where a regulated service ceases to hold a monopoly position, or where concerns about monopoly behaviour and profits have reduced. However, these aspects will tend to be unwarranted where it is already accepted that there is limited competition and that Part 4 regulation (of some form) is appropriate."[10]
Relevant to the flexibility of the regime: • Regarding the process to add new services to the regime	The Bill introduced a short-form process for adding new airport services to the regulatory regime whereby the Minister may recommend an Order in Council for a new airport service to be declared (and therefore regulated as) a "specified airport service". The Commission must assess the costs and benefits of regulation and consult with interested parties. The Minister and Commission must be satisfied that the services are supplied in a market where one or more of the airport companies have substantial market power.[11]

[8] *Commerce Amendment Bill – Report to the Transport and Infrastructure Committee* (16 August 2018), para [77]
[9] *Commerce Amendment Bill – Report to the Transport and Infrastructure Committee* (16 August 2018), para [82]
[10] MBIE *Regulatory Impact Statement: Amendments to Strengthen the Regulatory Regime for Major International Airports* (May 2017), para [39].
[11] Section 56M, Commerce Act 1986

	In 2018, in response to airport concerns that the truncated inquiry process would be too streamlined and omitted important factors from the Commission's consideration, MBIE noted that: "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. In the case of airports, Parliament has already decided that there is limited competition in these markets and it is in the long-term interests of consumers to regulate these airport companies… Putting further steps into this process would be contrary to the overall objective of the amendments, which is to streamline the process of imposing further regulation in order to strengthen the credible threat on airports if they are not acting in long-term interests of consumers.[12] [In response to submissions calling for reassessment of the appropriate regulatory till] "The Commission already has the ability to investigate and recommend an expansion of the regulatory till."[13]
Relevant to the flexibility of the regime: • Regulating the three airports together	There are regulatory cost efficiencies to keeping airports regulated as a single unit. As noted by MBIE in 2018, it is not clear that regulating individual airports separately would result in any benefit above the existing, effective regime: "We do not see a clear case to make this change [allowing for individual treatment of airports] to the Bill. There are merits in amending the Bill to allow for individual treatments 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."[14]
Relevant to the flexibility of the regime: • Process to add new airports to regulatory regime	The Commerce Act provides that goods or services in sectors that are currently unregulated may become subject to regulation under Part 4 following a Part 4 inquiry by the Commission and Order in Council process. MBIE considered this exact question in 2018 and confirmed: "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."[15] Consequently, s 56N was inserted into the Commerce Act to clarify that subpart 4 of Part 4 (which sets out the process to impose regulation on particular goods or services) is not limited by subpart 11 (Airport services) i.e. the Commerce Act currently includes the appropriate process for considering whether airports should be added.

[12] *Commerce Amendment Bill – – Report to the Transport and Infrastructure Committee* (16 August 2018), para [78] – [80].
[13] *Commerce Amendment Bill – – Report to the Transport and Infrastructure Committee* (16 August 2018), Item 83, page 82.
[14] *Commerce Amendment Bill – – Report to the Transport and Infrastructure Committee* (16 August 2018), para [99]
[15] *Commerce Amendment Bill – – Report to the Transport and Infrastructure Committee* (16 August 2018), para [103]