



24 January 2008

Hon Lianne Dalziel
Minister of Commerce
PO Box 1473
Wellington

By email: commerceactreview@med.govt.nz
lianne.dalziel@parliament.govt.nz

Dear Minister

RE: 22 NOVEMBER 2007 CABINET DECISIONS ON THE COMMERCE ACT AND AIRPORT
ECONOMIC REGULATION

INTRODUCTION

Infratil is a listed New Zealand company with substantial interest in Wellington and Auckland airports, a number of airports in Europe and the energy and public transport sectors. Infratil supports Government's work to enhance New Zealand's regulatory regime. However, we believe the suite of airport specific measures in the Airport Cabinet Decisions will work against the Government's goal of an efficient regulatory regime. In the specific instance of Auckland Airport, the programme outlined in the Cabinet Decisions is likely to increase the prospect of the sale by New Zealand owners to offshore interests.

We are of the view that the process mapped out in the Airport Cabinet Decisions creates barriers to the development of an efficient regulatory regime, and that the process itself will have adverse consequences.

As set out in the Airport Cabinet Decisions a core reason for the development of a more robust regime at this time is concern that investors will find it hard to value Auckland Airport. In this regard it is our view that New Zealand investors are relatively disadvantaged by the programme of initiatives proposed, in particular by their sequencing. Investors looking to take very substantial holdings in an entity such as Auckland Airport will look through the programme outlined in the Cabinet Decisions. They are likely to assume economically rational regulation will ultimately eventuate and will value Auckland Airport accordingly. Smaller investors (even quite substantial institutional ones) tend to be less sanguine and less inclined to take the risk of an efficient regulatory regime eventuating.

COMMENT

The Cabinet Decisions outlines 3 distinct initiatives:

- Changes to the Commerce Act and Airport Authorities Act. Some of these relate specifically to airports.
- Development by the Commerce Commission of “input methodologies” and “pricing principles” under the general changes to the the Commerce Act (albeit they will be applied airports under a separate Part of the Act).
- Review in 2008/09 by consultants engaged by the Ministry of Economic Development of the need for further airport regulation under the airport specific Part of the Commerce Act.

To efficiently progress the changes to the Commerce Act and the development of a new regime for the price regulation of New Zealand airports we suggest changing the sequence of the 3 stages rather than have them occur with the current overlaps.

- Initially progress the changes to the Commerce Act without the complication of airport specific changes.
- Before undertaking airport specific changes to the Commerce Act or initiating any involvement by the Commerce Commission have the Ministry of Economic Development undertake an overall regime review.

Extracting the airport specific initiatives from the over-riding review of the Commerce Act will speed up the development of that legislation and increase its chances of progressing in a timely way.

Having the Ministry of Economic Development undertake its review as a first step will enable a much clearer programme for other changes to be formulated. It will also significantly reduce the cost of the process as interested parties will have the opportunity to focus on a single initiative at a time. In the context of Cabinet’s desire to help investors understand the value impact on Auckland Airport in a timely manner, we consider that the resequencing of the initiatives would be of great help.

In addition to the actual process itself, one of the greater uncertainties facing airport investors during the development of the proposed new regime is with regard to the likely outcome of the Commerce Commission’s review, especially given significant issues with their 2002 report. If the Ministry of Economic Development review progresses first it should provide some clarity, and hence reduce uncertainty, with respect to the development of the “input methodologies” and “pricing principles”.

CONCLUSION

Infratil endorses Government’s desire to enhance New Zealand’s economic regulation. Infratil further endorses the aspiration to provide investors with clarity as to regulatory boundaries and rules. However, the programme proposed in the Cabinet Decision will be counterproductive to these goals due to the complex and over-lapping nature of its initiatives and these will have real economic consequences, especially in the current capital markets environment.

In particular the programme will discourage the airports from investing in services and capacity. It will increase uncertainty and hence perceived risk for investors in New Zealand airports which will increase the likelihood of foreign control of Auckland Airport being attained because “trade” investors looking to take a substantial stake will be more inclined, and able, to look-through the programme to anticipate the outcomes than will local, smaller stake, investors.

A relatively simple resequencing of the regulatory programme would, in our opinion, mitigate some of the adverse consequences noted above. A programme which started with a Ministry of Economic Development review would give investors greater confidence of an efficient outcome and would reduce the uncertainty faced by both airports and airport shareholders.

I understand that we will be able to meet with you to discuss this matter as a part of your consultation. I look forward to discussing the issues raised in this letter at that time.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Brown', written in a cursive style.

Tim Brown
Infratil Limited