



International Air Transport Association's Response to the Review of the Regulatory Control Provisions of the Commerce Act

This submission presents the response of International Air Transport Association (IATA). IATA's mission is to represent, lead and serve the airline industry and brings together 240 member airlines whose flights account for 94% of all international scheduled air traffic. IATA welcomes this opportunity to submit its response to the review of the regulatory control provisions of the Commerce Act. IATA's comments are from an international perspective and are based on the requirements of, and practices in, international civil aviation.

Response to Proposed Amendments

IATA is pleased with the recommended amendments to the Commerce Act pertaining to airports. Given that both IATA and the New Zealand government agree that:

- Airports, in particular larger international airports have strong natural monopoly characteristics
- The current regulatory regime for airports is insufficient

Therefore, the proposed changes to the current Airport Authorities Act are definitely headed in the correct direction, geared towards building a credible and effective regulatory regime that protects consumers and end users from any potential abuses of monopoly power on the part of airports. But, there remain some outstanding issues related to Airport Charges and IATA would like to take this opportunity to express the following concerns over some aspects of the Proposed Amendments:

- Improvements in the regulatory regime will occur after December 2009 and real regulation can only be expected in 2012. In the interim, airports will still be able to exploit the weaknesses in the current regime to increase prices via asset revaluation, etc. Therefore, an interim set of rules and regulation should be put in place to prevent the former from taking place (e.g. putting any price increases on hold).
- The findings do not address the issue of the recent Charges increases unilaterally announced by Auckland airport.
- The appeal process and the imposition of penalties in case of non-compliance by airports are not clear.

Feedback on Appendix B

In response to the request for feedback on Appendix B of the paper entitled "Review of Parts 4 and 4A of the Commerce Act", we wish to provide critique on Section C: Test for whether regulation may be imposed.

It is stated that "Goods or services in a market may be subject to regulation where:

- There is little or no competition and prospect of competition and there is substantial scope for the exercise of market power, taking into account the effectiveness of existing regulations or arrangements (including ownership arrangements)
- The benefits of regulation in meeting the objectives of the purpose statement clearly exceed the costs and risks of regulation"



Firstly, it should be cautioned that any judgement involved should take into account the costs/benefits associated with a counterfactual case (e.g. it is not the gross costs of regulation but the net additional costs with regard to costs such as litigation, etc associated with a do-nothing option).

Next, if given that both conditions are fulfilled, then perhaps regulation should be mandatory, instead of being open to further subjective debate. Therefore, a rewording of the key statement should be “Goods or services in a market will be subject to regulation...”

Lastly, given that there is strong interest by equity investors in New Zealand airports, the likelihood of an airport coming under new ownership (e.g. private equity investors) is significant. Therefore, if given an event of a material change in circumstances such as the fore-mentioned happens, end users or consumers should have the option of demanding a new test for regulation.

IATA hopes that the New Zealand government will take these views into account and is willing and able to assist in any follow-up that is required in this regard.