

**Options for Further Work on Airport Regulation Proposed for 2008/09**

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SUBMISSIONS ON BEHALF OF AUCKLAND  
INTERNATIONAL AIRPORT LIMITED

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RUSSELL McVEAGH

## 1. INTRODUCTION

- 1.1 This submission is provided by Auckland International Airport Limited ("**Airport**") in response to the Ministry of Economic Development's ("**MED**") invitation for comment on the three proposed options for carrying out a further review on the scope and form of airport regulation in New Zealand, as directed by Cabinet in November 2007 ("**Review**").
- 1.2 As requested by MED, this submission is limited to comment on the options outlined in the Discussion Paper. It does not include the option of revisiting the Cabinet decision to introduce an enhanced information disclosure regime for Auckland, Wellington and Christchurch airports, with the development of input methodologies and pricing principles ("**proposed regulatory regime**").

## 2. EXECUTIVE SUMMARY

- 2.1 **The Airport rejects Option 1 ("do further work on both streams as directed by Cabinet"), and supports Option 3 ("do not proceed with further work at this time").** A further review will deliver no benefits but will introduce excessive costs, as follows:
- (a) **An ongoing review process further undermines regulatory certainty and therefore puts efficient investment in infrastructure at significant risk.** The Airport has already come through a period of regulatory uncertainty as a result of the review of the regulatory control provisions of the Commerce Act 1986 ("**Commerce Act**").
  - (b) **The Review would be a duplication of process, and will require the Airport to expend significant management time and resources responding to the Review.** It is unclear what the Review would achieve that the proposed regulatory regime could not already achieve. The proposed regulatory regime will provide for information disclosure and review/analysis of this information by the Commerce Commission ("**Commission**") for the purposes of assessing whether further regulation is warranted.
  - (c) **It would be good regulatory practice to determine whether the new regime is delivering the required outcomes before reviewing whether further regulation is required.** Time is needed to allow the changes brought about as a result of the proposed regulatory regime, if enacted, to become established before their effect becomes clear.
  - (d) **It is difficult to see how the Review will be able to make an informed assessment on whether further regulation is required,** without reliable information around the outcomes and effect of the proposed regulatory regime. Again, sufficient time is required for the proposed regulatory regime to become established before this information becomes clear.
  - (e) **There is no sound policy justification for implementing both the proposed regulatory regime and concurrently undertaking the Review.** The Government has already responded to the concerns that the current regulatory regime is inadequate by introducing legislation to implement the proposed regulatory regime. There is no policy justification for the Government to conduct a further review now.
- 2.2 It follows that avoiding the costs of Option 1 are the benefits of Option 3.

- 2.3 **The Airport is neutral on whether Option 2 (limit the scope of further work to an assessment only, of whether additional airports should be subject to regulation under the Commerce Act) should be implemented**, given that it is subject to the proposed regulatory regime. The Airport believes that regional airports would be best placed to comment on this issue. However, as a general observation, the regional airports do not have a substantial degree of market power vis-à-vis the airline and therefore the perceived justification for more regulatory intervention for regional airports is even less sound than for the metropolitan airports.

### 3. BACKGROUND

- 3.1 The review of Parts 4 and 5 of the Commerce Act was announced in May 2006 (Part 4A was subsequently included in the review). The regulatory regime applying to airports (notably the Airports Authorities Act 1966 and regulations made under the Act, including information disclosure requirements) was not part of the Commerce Act review.
- 3.2 However, following the consultation process, Ministers decided that the regulatory regime for Auckland, Wellington and Christchurch airports needed to be strengthened by specifically regulating airports under the Commerce Act, including requirements for information disclosure, input methodologies and pricing principles for the three main airports.
- 3.3 Under the proposed regulatory regime, if enacted, the Auckland, Wellington and Christchurch airports will be subject to more rigorous information disclosure requirements, under the Commerce Act. The Commission will develop binding input methodologies for the information disclosure regime and non-binding guidelines covering pricing principles and the weighted average cost of capital for monitoring and analysis purposes. In addition, the Commerce Commission will monitor and review the disclosed information at set intervals in order to assess the efficacy of the regime and assess whether further regulatory measures are warranted.
- 3.4 An advantage of this regime was perceived to be the increased threat of further regulation should prices be excessive. It was also perceived that the Commission would be well placed to determine whether additional regulation of Auckland, Wellington and Christchurch airports is required and would be able to impose this regulation in a timely manner.<sup>1</sup> In other words, if there was a problem with the current regime (which the Airport does not accept), then the proposed regulatory regime purports to address those problems.
- 3.5 Thus, the Airport's submission is underpinned by its view that a further review cannot provide any benefits, and will only incur costs for the Airport and the wider New Zealand economy. The following elaborates on that view.

### 4. REGULATORY UNCERTAINTY

- 4.1 The primary cost of the Review is that it will create significant regulatory uncertainty, thereby undermining incentives for investment and innovation.
- 4.2 Regulatory certainty allows the Airport to invest with confidence in long-lived assets such as terminal buildings and runways. Investors make these investments based on expectations of an appropriate return, taking into account regulatory requirements. Changes to the regulatory regime discourage investment by making returns uncertain.
- 4.3 The Airport is an important asset for Auckland and New Zealand. The Airport:

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<sup>1</sup> Cabinet Paper, Commerce Act Review: Airports, 21 November 2007, paragraphs 48-49

- (a) efficiently processes more than 70 per cent of the country's international passengers, which equates to over 6 million people each year;
  - (b) efficiently processes more than 12 million international and domestic passengers each year;
  - (c) is the second-ranked freight port by value, handling some \$7 billion of exports annually;
  - (d) generates more than \$19 billion worth of value for the economy annually; and
  - (e) contributes, directly and indirectly, around 238,000 full time equivalent jobs or roughly 15 per cent of national employment.
- 4.4 Investment in and development of the Airport's facilities is vital for the ongoing health of the New Zealand economy as it increases its connections with international markets. In particular, the New Zealand tourism industry relies heavily on the Airport as New Zealand's gateway.
- 4.5 A further review of airport regulation will increase uncertainty in the final form of regulation for the Airport. This will discourage airports from investing in key infrastructure. In particular, the Airport is entering the final stages of a four-year \$500 million capital expenditure programme, including investment in:
- (a) the Northern runway;
  - (b) a new pier at the international terminal;
  - (c) significant extensions and upgrading of the international terminal building, including passenger and retail space;
  - (d) redevelopment and redesign of the domestic terminal; and
  - (e) redevelopment of freight facilities.
- 4.6 These investments are required for the Airport to be able to meet the ongoing growth in passenger numbers, which are predicted to double to 24 million by 2025. Other developments, such as the Airport's investment in additional air bridges capable of holding all aircraft types, including the A380, are required to advance competition in the airline sector. The Airport's goal is to ensure that all airlines and passengers have the benefit of first class, but not gold-plated, facilities.
- 4.7 In summary, these investments are put at risk by the regulatory uncertainty created by the Review.

## **5. DUPLICATION OF EFFORT AND RESOURCES**

- 5.1 The duplication of process and resources required by the Review will impose costs for the Airport and the Government.
- 5.2 The purpose of the Review is to assess whether further regulation is required. The proposed regulatory regime already has provision for further review of the regulation of Auckland, Wellington and Christchurch airports through price monitoring by the Commission. The Commission will undertake periodic reviews of the disclosed information against its pricing principles. This review will be undertaken after airports set charges, starting from when airport charges are reset in 2012. As Cabinet said at paragraph 48 of the Cabinet Paper:

The other benefit of enhanced information disclosure and price monitoring is that the additional regulation (or removal of regulation) could also be identified and considered in a timely manner.

- 5.3 Undertaking a separate review now will duplicate the periodic reviews to be undertaken by the Commission and consideration of the Commission's views by Ministers. The Review process would undoubtedly require the collection of information around charging and the development of pricing principles and input methodologies against which the level of charging would be assessed. This is exactly the process that the new regulatory regime is intended to achieve. If the Review will follow a different process, then it is not clear what that process will be, adding to the regulatory uncertainty. The benefits of the further review are unclear and are likely to be already achieved through price monitoring by the Commission.
- 5.4 In short, it is difficult to see what the Review would achieve that the proposed regulatory regime will not already achieve. The Review would be a duplication of effort and expense for both Government and the Airport.

## **6. TIME REQUIRED TO ALLOW NEW REGIME TO BECOME ESTABLISHED**

- 6.1 Time will be needed to assess the effect of the proposed regulatory regime, if enacted, and whether the changes are having the intended effect. It would be good regulatory practice to determine whether the new regime is delivering the required outcomes before determining whether further regulation is required.
- 6.2 It is difficult to see how the Review will be able to make an informed assessment on whether further regulation is required, without sufficient time to ensure there is reliable information around the outcomes and effect of the proposed regulatory regime.
- 6.3 A record of information on market performance under the proposed regulatory regime will be required in order to ensure the Review can make a properly informed analysis of whether further regulatory intervention is warranted. The proposed regulatory regime must be allowed to become established for robust information to be collected on its effect, to ensure sound regulatory analysis.

## **7. INSUFFICIENT REASON FOR THE REVIEW**

- 7.1 The airlines argue that there is insufficient threat of price control under the current regulatory regime and that the absence of guidelines or binding input methodologies is problematic. If those complaints are well founded, Ministers have decided that they have been addressed through the proposed regulatory regime.
- 7.2 The Airport therefore considers that the Government has already responded to any potential deficiencies in the current regime and thus fulfilled its policy objectives through the proposed regulatory regime. The Airport is unable to see a sufficient justification to take this further by also implementing the Review.