

12 March 2008

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By Email: commerceactreview@med.govt.nz

Dear Geoff

In November 2007 Cabinet decided that the information disclosure regime for the three largest New Zealand airports should be strengthened, with the strengthened requirements to include the development of binding guidelines and methodologies, as well as a price monitoring regime, both to be carried out by the Commerce Commission under the amended Commerce Act.

In addition, Cabinet decided that consultants should be engaged in 2008/9 to report on whether further regulation is warranted for airports (including the option of a negotiate/arbitrate regime), and whether the coverage of regulated airports should be widened.

~~The rationale for these decisions was that, given the findings of the Commerce Commission relating to market power of airports in 2002, the power of the airports to set charges unilaterally and a current requirement for airports to consult only, - the current regulatory system for the three major airports is inadequate and there is a need to strengthen it.~~

Given this clear decision by Cabinet, BARNZ cannot see the justification now for revisiting this decision. It is BARNZ's strongly held view that the decision of Cabinet, that further work be undertaken, should stand.

The clear benefit of continuing with the decision is that it will enable work to be undertaken now as to the need for a further strengthening or widening of the regime, without further delay. Waiting until after 2012, when the strengthened information disclosure, guidelines and monitoring regime has commenced, would mean any further changes would not be in place until the price reset in 2017 – ten years or two full price resets in the future. Passengers are already paying considerably higher charges than can be justified at Auckland and Wellington Airports, yet the new regime is not envisaged to be in place until the 2012 price reset. This situation was recognised in the 2000/2 Airfield Inquiry where the Commerce Commission defined pricing principles that airports have not accepted as binding nor, in too many cases, as relevant. Separate Inquiries by the Commerce Commission (and the Productivity Commission in Australia) involving other monopoly industries continue to reinforce

these principles. This inequity does not appear to be able to be addressed by the Government, with the result that airports will continue with over recovery to the extent of several hundred million dollars in the period to 2012, without any apparent means of redress. The result of postponing the further work until 2012, would be to delay any further changes to the regime until 2017 leaving a continuation of the over recovery situation – which is clearly unacceptable.

BARNZ urges that the further work proceed in 2008/9 as decided by Cabinet however this is on the clear understanding that it will not be holding up the introduction and passing of the amendments to the Commerce Act.

As requested, attached is a list of the pros and cons (with quantitative analysis where possible) of the three options identified by the MED. If further information or clarification is required, please do not hesitate to contact the BARNZ office.

Yours sincerely



Stewart Milne
Executive Director

BARNZ ASSESSMENT OF PROS AND CONS AND COSTS OF EACH OPTION

Pros	Cons
<p>Option 1: Further work on both streams as directed by Cabinet;</p> <ul style="list-style-type: none"> • If any changes are required these would be able to be put in place by 2012 • Enables a full examination of all aspects of airport regulation to occur now • Would avoid piecemeal changes to the regulatory regime (i.e. all changes in place for 2012) • Cost of BARNZ and airlines participating in review estimated to be between \$50 000 to \$100 000. 	<ul style="list-style-type: none"> • Strengthened information disclosure requirements and guidelines/input methodologies may not be finalised
<p>Option 2: Limit scope to whether additional airports should be subject to regulation under the Commerce Act</p> <ul style="list-style-type: none"> • Enables second tier airports to be considered • Cost of BARNZ and airlines participating in review estimated to be between \$25 000 to \$50 000. 	<ul style="list-style-type: none"> • Would not consider whether regime itself needs strengthening or changing • Changes to regime (as opposed to airports included) would not be able to occur until 2017 or later • Piecemeal approach • Creates greater investment uncertainty as possibility exists of Commission determining further changes are needed in 2012 • The cost of this option to airlines and the travelling public would be a further 5 years of any over-recoveries which are not addressed by the planned changes to disclosure and monitoring regime. Over-recoveries over 2001 – 2007 pricing period were between \$180m to \$270m for airfield activities alone and are estimated to be up to * over 2007 – 2012 for airfield and terminal activities at AIAL and WIAL. Over-recoveries from 2012 – 2017 are an unknown quantity, but past history suggests figures in excess of \$100m.
<p>Option 3: Do not proceed with further work at this time</p> <ul style="list-style-type: none"> • Cannot see any 	<ul style="list-style-type: none"> • Creates greater investment uncertainty as possibility of Commission determining further changes are needed in 2012 • Further changes to regime would not be introduced until 2017 or later • Piecemeal approach • Very real danger that further work might never take place, as occurred with the second review directed by Cabinet in 1997 which was to take place after several years of the new regime. • The costs would be a further 5 years of any over-recoveries not addressed by changes to disclosure and monitoring regime. See above for details, estimated as likely to be in excess of \$100m.

* This figure is confidential as it is based on information provided by AIAL and WIAL during consultation. The details behind this figure have previously been advised to the Associate Minister of Finance.

