

14 March 2008

**Ministry of Economic Development**

P.O. Box 1473

Wellington

Attention Corporate and Competition Policy

Dear Sir,

**Proposed Options for review of Scope and Form of Airport regulation**

You have requested feedback on the options for a further review of the scope and form of airport regulation in New Zealand as directed under the Cabinet Policy decision of November 2007.

I attach our response for your consideration.

Yours sincerely,



Neil Cochrane  
**General Manager Business Services**

## CHRISTCHURCH INTERNATIONAL AIRPORT LTD (CIAL)

### WRITTEN SUBMISSION ON THE OPTIONS FOR CARRYING OUT A FURTHER REVIEW ON THE SCOPE AND FORM OF AIRPORT REGULATION

#### 1. INTRODUCTION

The Cabinet Paper on the Commerce Act Review (dated 21 November 2007) indicates that the previous light-handed regulatory regime for airports<sup>1</sup> was found to be inadequate; and that the regulatory regime for airports would therefore be strengthened, principally by means of enhanced information disclosure and a system of price monitoring by the Commerce Commission.

The detailed changes included:

- *“providing for a wider range of regulation (including information disclosure, negotiate/arbitrate, and a default/customised price-quality path) in addition to conventional price control;*
- *a more conventional, qualitative test, with quantification where possible, for when regulation may be imposed;*
- *a requirement that the Commerce Commission set “input methodologies” (how to determine the weighted average cost of capital, value assets, allocate common costs etc) as an upfront and stand-alone process, to improve certainty and predictability for businesses; and*
- *providing for limited merits review of Commission decisions on input methodologies.”*

The supporting recommendations to the Cabinet Policy Committee from the Ministers of Transport and Commerce went on to propose that further work should be undertaken in 2008/09 to consider whether other additional airports (in addition to Auckland, Christchurch and Wellington International Airports<sup>2</sup>) should be made subject to regulation under the Commerce Act; and whether other forms of regulation should apply to regulated airport companies under the Commerce Act.

There seems to be no further amplification of the other forms of potential regulation that the Ministers had in mind - other than that a review of other forms of regulation “would provide useful regulatory information and would influence how consultation processes are undertaken”. This latter reference could be taken as possibly meaning that the Ministers felt that there was a need for future tightening of the definition of what constitutes effective consultation (viz. the CAA guidelines in the UK on “*Airport Regulation – the process of constructive engagement*”).

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<sup>1</sup> Under the Airport Authorities Act and Information Disclosure Regulations.

<sup>2</sup> E.g. Hamilton, Palmerston North, Dunedin and Queenstown Airports.

## 2. CIAL SUBMISSION

The invitation by the Ministry of Economic Development (MED) for submissions on the additional review work to be undertaken in 2008/09 includes a number of strong inferences that a further review of other regulatory options at the present time would be likely to raise additional uncertainties about the parameters of the new regulatory environment and thereby create additional ongoing business and investor uncertainty. The MED's papers also seriously question the merits of undertaking such a review at the present time:

- *"The proposed new regime under the Commerce Act for AIAL, WIAL and CIAL is a significant change to the regulatory framework for the regulator and for these airports, and so will take some time to be implemented. Given this, an overlap in the timing of the development of the new regime and the proposed further work would create additional costs for airport companies going forward.*
- *Given the recent decisions on the regulatory regime for AIAL, WIAL and CIAL, there will also be costs associated with the uncertainty about the final form of any regulatory regime for airports. A conceptual analysis without any experience of the effectiveness of the new information disclosure regime would have its limitations.*
- *In addition, once the proposed information disclosure with binding input methodologies and price monitoring regime for the three major international airports is established, sufficient information should be available to make an informed decision as to whether and how additional forms of regulation should be warranted. This may be preferable to relying on a conceptual analysis to assess the need for further regulation. Thus there may be little value in reviewing airport regulation for the AIAL, WIAL and CIAL in particular, in the interim."*

Notwithstanding this, under the terms of the originating Cabinet directive, a further review has to be carried out by the Commission anyway in 2012 (at the conclusion of the next price reset), to assess both the efficacy of the new regulatory environment, and whether further regulation is warranted.

The Cabinet Policy papers indicated that one of the main problems with the previous regulatory regime was that airport companies had a statutory requirement [only] to consult, not to negotiate. Accordingly, in line with the general nature of airport regulation internationally, the overall intent of the new regime in New Zealand in the interim is that outcomes should, as far as possible, "be primarily dictated by commercial agreements negotiated by airport operators and airlines"<sup>3</sup>.

This obviously puts a lot of weight on the overall effectiveness of the process of consultation and negotiation between airport companies and airlines in the future. In CIAL's opinion, the continuing lack of clear guidelines on the type of consultation/negotiation definitional issues referred to previously is one of the main deficiencies with the new regulatory framework that needs to be resolved as quickly as possible. The present consultation process is both expensive in terms of time committed by both parties to a lengthy consultation process and in the use of external expertise to clarify issues of specific technical nature. The determination of these guidelines should reduce the cost to both parties.

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<sup>3</sup> of the Australian Productivity Commission Final Report on the regulatory framework in Australia.

### 3. CONCLUSION

CIAL generally supports Options 2/3 in the MED Discussion Paper Inviting Submissions and strongly recommends that no further work is carried out at the present time on whether other forms of regulation should apply to regulated airport companies.

The scope of the immediate work, if any is to be carried out, should be limited to an assessment only of whether additional airports should be subject to regulation under the Commerce Act). However, we are also of the view that the Commission should be charged, as part of its immediate work in "developing guidelines and methodologies", with producing guidelines as soon as possible on

- (i) what constitutes meaningful consultation and
- (ii) the key parameters of an appropriate negotiation process.

In this regard, although CIAL notes the view that inclusion of an automatic, final negotiate/arbitrate mechanism would potentially provide "an independent circuit breaker if the parties are unable to negotiate a commercial agreement", we nevertheless continue to maintain that, there are real dangers that it is likely to lead to gaming problems and hence fundamentally undermine the intended workings of the new regime<sup>4</sup> and as such should not be included as a component of the forthcoming regime.

These aspects need to be carefully researched and evaluated and any further work (including research into corresponding guidelines, commentaries and empirical data or anecdotal evidence for both airports and other relevant sectors overseas) should usefully form part of the work to be undertaken by the Commission or consultants for 2008/09. In the interim, 'officially sanctioned' guidance on these important aspects would undoubtedly add to the effectiveness of the new regime in the meantime; and the fact that this work is being undertaken ought not to engender any business/investor concerns or uncertainty.

14 March 2008

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<sup>4</sup> Refer the similar concerns of the Australian Productivity Commission.