



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



# **Effectiveness of Information Disclosure Regulation for Major International Airports**

**August 2014**

# 1. Information for submitters

---

Written submissions on the issues raised in this document are invited from all interested parties. The closing date for submissions is 28 November 2014.

Submissions should be sent to:

Major Airports Review  
Ministry of Business, Innovation and Employment  
P.O Box 1473  
Wellington 6140  
New Zealand

Email: [majorairports@mbie.govt.nz](mailto:majorairports@mbie.govt.nz)

It would be useful if submissions sent in hard copy were also provided in electronic form (Adobe Acrobat, Microsoft Word 2000 or compatible format).

Any queries should be directed to Janet Humphris either at the above email address, or by telephone at 04 470 2314.

## 1.1 Official Information Act and Privacy Act

### 1.1.1 Posting and release of submissions

The Ministry of Business, Innovation and Employment generally posts all submissions received on its website at [www.mbie.govt.nz](http://www.mbie.govt.nz). The Ministry will consider you to have consented to posting all your submission, unless you clearly specify otherwise in your written submission.

In any case, submissions provided to the Ministry are subject to public release under the Official Information Act 1982 following requests to the Ministry. Please state if you have any objection to the release of any information contained in a submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. The Ministry will take into account all such objections when responding to requests for copies and information on submissions to the document under the Official Information Act 1982.

### 1.1.2 Privacy

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not wish your name or contact details to be posted on the Ministry website or included in any summary of submissions the Ministry may publish.

## 2. Introduction

---

Many airports, particularly larger international airports, have strong natural monopoly characteristics in that the services they provide can be more efficiently provided by one supplier. In some cases, natural monopoly characteristics can translate to market power depending on:

- the nature of the market and the services provided;
- the degree to which services are substitutable; and
- the extent to which ownership structure, countervailing power of airlines, and regulation are effective in disciplining any market power.

To address these issues, three major international airports – Auckland, Wellington and Christchurch International Airports (AIAL, WIAL and CIAL) – are currently subject to information disclosure regulation under Part 4 of the Commerce Act. Separately, they set prices using the provisions of the Airport Authorities Act (AAA).

Following price setting by major international airports in 2012, the Commerce Commission (the Commission) undertook a series of reports examining the effectiveness of the information disclosure regime for major international airports, as required under section 56G of the Commerce Act. This paper highlights the results of the Commission's reports and the new information available since the reports. It seeks feedback on issues relating to the effectiveness of the current regulatory regime for major international airports to determine:

- whether there are any existing or new matters to consider that could affect acceptance of the conclusions of the Commission's reports in relation to the three airports;
- whether, in light of the Commission's reports and new information, the regulatory regime for major international airports is working effectively to achieve the objective of Part 4 of the Commerce Act or whether further policy work is required; and
- whether the provisions of the AAA and its interface with information disclosure under Part 4 of the Commerce Act are efficient and effective to provide for regulation of major international airports.

This paper first outlines historical and current regulation of the major international airports. It then examines the results of the Commission's section 56G reports in relation to the current regulatory regime, and seeks feedback on these reports and on the interaction of information disclosure with the price setting provisions of the AAA.

Following the close of the submissions period, submissions will be analysed to answer the questions above. This will assist the Government to determine whether the regulatory regime for major international airports is effective or whether further policy work is required.

In parallel, feedback is being sought on the '[Civil Aviation Act 1990 and Airport Authorities Act 1966 Consultation Document](#)'. That consultation document contains a section reviewing airport-related legislative provisions, including the provisions of the AAA. It examines a number of the AAA provisions, including price setting and associated consultation provisions in relation to smaller airports that are not subject to the Commerce Act. It proposes changes including the removal of specific airport price setting provisions in section 4A of the AAA for smaller airports and amendments to the thresholds for capital expenditures set under section 4C of the AAA. This paper looks at larger airports and focuses on the interaction between the Commerce Act information disclosure regime and the provisions for consultation and price setting under the AAA.

## 3. Overview of Airport Pricing Regulation

---

### 3.1 Previous regulatory approaches

Various regulatory interventions have been used to address issues of market power in relation to major international airports. These include:

- Amendments to the AAA in 1997 to introduce requirements for consultation on pricing and capital expenditure and a regulation-making power to allow regulations to be made specifying requirements for information disclosure by airports. Regulations were made in 1999.
- Between 1999 and 2002, the Commission undertook an inquiry into whether price control should be imposed on airfield activities at WIAL, AIAL and CIAL. The Commission's analysis suggested that AIAL was earning excess returns and that if WIAL substantially increased its prices there may be net benefits in imposing price control on either AIAL or WIAL. In the event, price control was not imposed at this time as further analysis by the Ministry of Commerce suggested that the estimated net public benefits of imposing control were negative and the estimated net benefit to the acquirers of services was small (and negative at one end of the range). The threshold had not been met to impose control on CIAL. At that time, the only regulatory option available under the Commerce Act was full price control, i.e. there was no option for information disclosure only or negotiate/arbitrate regulation as alternatives to full price control. These forms of regulation were added to the Commerce Act in 2008.
- As part of the review of Parts 4 and 4A of the Commerce Act in 2008, the regulatory regime for airports was also reviewed. That review noted that a lack of guidelines and analysis of information disclosed under the AAA meant that disclosures were largely of the nature of general financial statements and did not provide a robust basis for assessing whether monopoly pricing was occurring. At that time, the Government decided that the three major international airports should be subject to the information disclosure regime under the amended Commerce Act.

### 3.2 Current regulatory regime for major international airports

The current regulatory regime provides that major international airports (AIAL, WIAL and CIAL):

- are subject to information disclosure under Part 4 of the Commerce Act;
- must consult with substantial customers:
  - before setting charges, in accordance with the requirements of section 4B of the AAA; and
  - before approving capital expenditure greater than 20% of the value of assets, in accordance with section 4C of the AAA;
- can set charges as they think fit under section 4A of the AAA.

#### 3.2.1 Commerce Act information disclosure regime

Major international airports must disclose information under Part 4 of the Commerce Act for 'specified airport services', in accordance with input methodologies (the upfront rules, requirements and processes for regulation) set by the Commission. The purpose and requirements of information disclosure under the Commerce Act (and compared with the AAA) are outlined in Box 1.

## Box 1 – Information Disclosure Requirements

### **Major Airports – Part 4 of the Commerce Act**

- **Purpose of Part 4** - to promote the long term benefit of consumers by promoting outcomes consistent with outcomes produced in competitive markets, such that suppliers of regulated goods/services:
  - have incentives to innovate and invest;
  - have incentives to improve efficiency and provide services at a quality that reflects consumer demands;
  - share with consumers the benefit of efficiency gains in the supply of the regulated goods or service, including through lower prices; and
  - are limited in their ability to extract excessive profits.
- **Purpose of information disclosure** - to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 4 is being met.
- **Coverage** - Auckland, Wellington and Christchurch International Airports must disclose information for 'specified airport services' including aircraft and freight activities, airfield activities, and certain passenger terminal activities i.e. car parking and retail activities are not regulated.
- **Disclosure** - Airports must disclose annually on their financial performance and quality of airport services. Following price setting events, airports must disclose information on the price setting framework, pricing methodology, an explanation of the extent to which airports consider the application of their pricing leads to efficient prices. All disclosures are made in accordance with the Commerce Commission's disclosure requirements. The first disclosures were undertaken in 2011.
- **Analysis** – once information has been disclosed:
  - **Section 56G** required the Commission to review information disclosed as soon as possible after prices are set in 2012, and report to the Ministers of Commerce and Transport on how effectively information disclosure is promoting the purpose of Part 4 of the Act for specified airport services. This requirement is a one-off requirement, and is now complete.
  - **Section 53B** requires the Commission to publish a summary and analysis of information to promote greater understanding of the performance of individual regulated suppliers, relative performance, and changes in performance over time.

### **Other Airports – Airport Authorities Act**

- Requirements for information disclosure under the Airport Authorities Act are set out in the Airport Authorities (Airport Companies Information Disclosure) Regulations 1999. The regulations require that:
  - Airport companies must disclose financial statements and financial forecasts, in relation to identified airport activities.
  - Airport companies must notify disclosures in the Gazette and must make information publicly available.
- The Ministry of Transport is not required to undertake any analysis of the information disclosed.

### **Amending the coverage and scope of regulation**

- Following a Commerce Commission Part 4 inquiry, additional airports can be added to Part 4 of the Commerce Act via Order in Council.
- The goods and/or services that are regulated under Part 4 of the Commerce Act can be amended via Order in Council.

Major international airports must disclose information on their financial performance and quality of specified airport services annually to the Commission. Major international airports must also disclose prices and pricing methodologies after setting prices. Pricing disclosures must include:

- a summary of the price setting framework and pricing methodology;
- details of the pricing methodology; and
- an explanation of the extent to which airports consider the application of their pricing methodology leads to efficient prices.

The Commission set input methodologies for information disclosure for airport services in 2010<sup>1</sup>.

<sup>1</sup> All of the input methodologies were appealed to the High Court. In its judgment, issued in December 2013, the High Court upheld the airports' appeal on the date at which their land is to be valued for the first time under information disclosure regulation. The Court ruled that a materially better asset valuation input methodology would provide for the initial market value alternative use (MVAU) valuation of airports' land assets to be undertaken as at 1 April 2010 in the case of WIAL and 1 July 2010 in the case of AIAL and CIAL. The Commerce Commission is currently in the process of implementing these changes to input methodologies.

Airports' first disclosures under the Commerce Act regime were undertaken in 2011.

After airports set prices and undertook price setting disclosures in 2012, the Commission undertook one-off reports under section 56G on how effectively information disclosure regulation is promoting the purposes of Part 4 of the Commerce Act in respect of specified airport services. These were completed over the course of 2013 and 2014 and are discussed in the next section.

More generally, after information has been disclosed, section 53B of the Commerce Act requires the Commission to publish a summary and analysis of information to promote greater understanding of the performance of individual regulated suppliers, relative performance and changes over time. On 30 June 2014, the Commission released spread sheets of the information disclosed by airports for feedback. The Commission will be undertaking more in-depth summary and analysis of airports' information disclosure in future, following further scoping.

### 3.2.2 Airport Authorities Act

As noted, although major international airports are subject to information disclosure under the Commerce Act, prices are set under the AAA. The AAA sets out requirements for consultation on prices and capital expenditure, and provides for airports to set prices following consultation. Box 2 sets out the key provisions of the AAA.

#### *Box 2 – Key price setting requirements under the Airport Authorities Act*

**All Airports** set prices under the **Airport Authorities Act**. Key Provisions are:

**Section 4A:** provides that every airport company can set such charges 'as from time to time it thinks fit', subject to requirements for consultation with substantial customers in section 4B. Section 4A(4) notes that section 4A does not limit the application of regulation under Part 4 of the Commerce Act.

**Section 4B:** sets out requirements for consultation with substantial customers. Each airport must consult substantial customers before fixing/altering charges, and within five years after fixing/altering charges. Airports are not required to consult if a substantial customer consents in writing to not being consulted in respect of charges.

**Section 4C:** sets out that airports must consult with all substantial customers on 'major' (>20% of the value of assets of an airport company) capital expenditure before it is approved. Airports are not required to consult on particular capital expenditure if a substantial customer has consented in writing to not being consulted in respect of that capital expenditure.

## 4. Section 56G reports

Following airports' price setting in 2012, the Commission commenced its [section 56G review of the three major international airports](#). The Commission completed the first section 56G report for WIAL in February 2013. A report on AIAL was completed in July 2013. The final report on CIAL was completed in February 2014.

### 4.1 The Commission's approach and process

The Commission reported separately on each of the three airports, noting that information disclosure may be having a different impact across each of the three airports. The scope of the Commission's review was limited to the effectiveness of information disclosure in promoting the purpose of Part 4, as required by the legislation. The Commission did not consider whether other forms of regulation should apply.

In examining the effectiveness of information disclosure at each airport, the Commission:

- examined the performance (historical and expected) and conduct (behaviour) of each airport, both before and after the Part 4 information disclosure regime came into effect; and
- assessed the extent to which information disclosure had an impact on the airport's performance and conduct and any changes in conduct and systems to comply with information disclosure regulation.

The Commission broke its assessment down into seven criteria relating to the purpose of Part 4 as set out in section 52A of the Commerce Act. The relationship between the Commission's seven outcome areas and section 52A is outlined in Box 3.

*Box 3 – Relationship between the Commission's section 56G outcome areas and the purpose of Part 4*

<b>Purpose of Part 4 (section 52A)</b>	<b>Commerce Commission section 56G criteria</b>
<ul style="list-style-type: none"> <li>• Suppliers have incentives to innovate and invest, including in replacement, upgraded and new assets.</li> </ul>	<ul style="list-style-type: none"> <li>• Appropriate levels of innovation.</li> <li>• Efficient investment.</li> </ul>
<ul style="list-style-type: none"> <li>• Suppliers have incentives to improve efficiency and provide services at a quality that reflects consumer demands.</li> </ul>	<ul style="list-style-type: none"> <li>• Quality of regulated services responsive to consumer demands.</li> <li>• Pricing methodology likely to improve efficiency.</li> <li>• Efficiency of operating expenditure.</li> </ul>
<ul style="list-style-type: none"> <li>• Suppliers share benefits of efficiency gains in the supply of regulated goods or services with consumers, including through lower prices.</li> </ul>	<ul style="list-style-type: none"> <li>• Pricing methodology likely to improve efficiency.</li> <li>• Benefits of efficiency gains are shared with consumers.</li> </ul>
<ul style="list-style-type: none"> <li>• Suppliers are limited in their ability to extract excessive profits.</li> </ul>	<ul style="list-style-type: none"> <li>• Limited ability to extract excessive profits.</li> </ul>

The Commission used the input methodologies determined in 2010, where relevant, to inform its assessment of issues, including whether airports are limited in their ability to extract excessive profits. The three major international airports are only subject to information disclosure under the Commerce Act. Section 53F of the Commerce Act notes that suppliers that are only subject to information disclosure do not have to apply pricing methodologies or methodologies for evaluating or determining the cost of capital. However, suppliers must disclose information consistent with input methodologies, and the Commission may monitor and analyse pricing in accordance with

these input methodologies. In its reports, the Commission considered any variations from the input methodologies, the reasons for these variations and whether these had an effect on performance.

## 4.2 The Commission’s conclusions

Box 4 summarises the key conclusions in each of the performance areas for each of the three airports. More detailed information is provided in sections 4.2.1 to 4.2.4.

*Box 4 – Summary of section 56G conclusions on effect of information disclosure*

<u>Part 4 statutory outcomes</u>	<u>Commerce Commission conclusions on outcomes at the three regulated airports</u>		
	AIAL	WIAL	CIAL
<b>Innovation and investment</b>	No negative effect on innovation from information disclosure – Innovation continues to be appropriate.		
	Effect of information disclosure on capital expenditure is unclear - too soon to conclude whether investment is efficient in terms of level or timing. Current levels of investment appear prudent and necessary.		
<b>Airport efficiency and quality of services</b>	A positive effect on quality - the quality of regulated services is responsive to consumer demand.		
	Positive effect of information disclosure on pricing efficiency – methodologies used are likely to improve pricing efficiency.		A positive effect, but not as effective as expected due to lack of transparency in the pricing model.
	Evidence of the effect of information disclosure on operating expenditure is mixed.		
<b>Sharing of efficiency gains with consumers</b>	Effect of information disclosure on sharing of efficiency gains unclear. It is too soon to determine if there are any operating or capital efficiency gains that could be shared with consumers.		
<b>Excessive profits</b>	Effective - ability to extract excessive profits over time is limited.	Not effective - targeting to extract excessive profits.	Not effective – on track to make excessive profits over the 20 year pricing period used by the airport but acceptable over the five year period to 2017.

### 4.2.1 Efficiency of operating expenditure and capital expenditure

In a number of areas, the Commission concluded for all three airports that it was too early to assess the effects of the information disclosure regime. These areas included:

- **Efficiency of investment.** The Commission noted that stakeholders were generally satisfied with proposed investment plans for the next pricing period. The Commission noted in all cases that it was unable to conclude whether information disclosure regulation is effectively promoting incentives to invest efficiently, as it did not have a sufficiently long time series on actual capital expenditure under information disclosure.
- **Efficiency of operating expenditure.** The Commission noted in all cases that it was unable to conclude whether information disclosure regulation is effectively promoting



improvements in operating efficiency. The Commission noted that it did not have a sufficiently long time series on actual operating expenditure under information disclosure regulation and that forecast operating expenditure may not include all expected efficiencies. Additionally, the Commission noted:

- For WIAL, that it is unclear whether changes in operating expenditure were due to efficiency improvements, economies of scale from growth of the airport services or airlines' efforts to increase passenger volumes.
  - For AIAL, evidence of improvements in operating expenditure efficiency since information disclosure regulation under Part 4 was implemented is mixed and inconclusive.
  - For CIAL, that the airport may have increased its operating efficiency but that any change was obscured by the increase in its operating costs resulting from the earthquakes.
- **Whether operating or capital expenditure efficiency gains are shared with consumers.** For all three airports, the Commission could not conclude whether information disclosure regulation is effectively promoting sharing of efficiency gains, due to limited evidence of historic efficiency gains that could be shared. The Commission notes that information disclosure will have had a limited effect to date as it has not been in place for long and any effect would only become apparent over time.

#### 4.2.2 Quality and Innovation

The Commission concluded that information disclosure was having a positive effect or no negative effect in relation to whether it is promoting:

- **Quality of regulated services responsive to customer demand.** The Commission noted that airlines were generally satisfied with the quality of services at all three airports. It noted that:
  - Quality at WIAL compares well with other airports. WIAL has attributed the introduction of information disclosure regulation as partly responsible for improvements to customer survey results.
  - While information disclosure regulation has not had an additional impact on incentives at AIAL, it has not negatively affected existing incentives.
  - Quality at CIAL has improved since information disclosure was introduced and compares well with other airports, as measured by passenger surveys. While information disclosure has not had an additional impact on quality, it has not negatively affected existing incentives.
- **Appropriate levels of innovation.** The Commission noted that the level of innovation appears to be appropriate across all three airports. It also noted that airlines did not raise concerns in this area and generally considered airports receptive to airline-led innovation. The Commission's final conclusion for all airports was that while information disclosure had not had an additional impact on incentives to innovate, it had not negatively affected existing incentives.

#### 4.2.3 Pricing efficiency

In the area of whether prices promoted efficiency, the Commission made different conclusions for each of the three airports.

For AIAL and WIAL, the Commission concluded that prices are more likely to promote efficiency than those previously in place:

- For WIAL, the Commission noted that prices set in 2012 are more likely to promote efficiency than those previously in place. WIAL also indicated that information disclosure was one reason for changing its pricing methodology.
- AIAL has amended charges and introduced new charges to better reflect and optimise resource use, such as amending check-in counter charges. The airport has also adjusted existing charges to limit the likelihood of cross-subsidies, for example by introducing charges for transit customers and 2-12 year olds for the domestic terminal. AIAL indicated that information disclosure had an impact through the requirement to outline its pricing methodology.

For CIAL, the Commission concluded that information disclosure was having some positive effect on pricing efficiency, but that information disclosure was not as effective as expected, due to the development of CIAL's pricing methodology not being fully transparent. The Commission noted that CIAL has sought to improve efficiency of its pricing to some extent, for example, through making changes to the pricing methodology to address previous concerns around cross-subsidisation.

#### **4.2.4 Ability to make excessive profits**

The area where there was the greatest divergence in the Commission's reports between the three airports related to whether airports are making excessive profits:

- For WIAL, the Commission concluded that information disclosure regulation had not been effective in limiting the ability to extract excessive profits. In particular, the Commission estimated that WIAL was likely to earn a return of 12.3% to 15.2% post tax for the 2013-2017 pricing period when the information disclosure framework is applied. This estimate is significantly higher than the Commission's estimate of an appropriate return for WIAL in a competitive market of 7.1% to 8.0% post tax. When the report was completed in 2013, this equated to estimated excess returns over the 2013-2017 pricing period of \$19.7 to \$46.1 million. The Commission considered these excessive profits were largely attributable to:
  - WIAL valuing its land assets using a market value existing use (MVEU) methodology, which results in higher values than the Commission considers would exist in a workably competitive market. The Commission's input methodologies use a market value alternative use (MVAU) approach to land valuation.
  - WIAL targeting a return of 8.9% post tax, which the Commission considered was higher than appropriate for an airport business with a similar level of risk in market conditions expected when the prices were set.

The Commission considered that WIAL had not provided evidence of superior performance to justify this level of return.

- For AIAL, the Commission concluded that information disclosure is effective at limiting its ability to extract excessive profits over time. AIAL set prices such that its expected return from 2013-2017 is equivalent to 8.0% post tax when the information disclosure framework is applied, which lies just within the Commission's estimated range of acceptable returns (7.1% - 8.0%).
- For CIAL, the Commission concluded that information disclosure is not effective in limiting its ability to extract excessive profits over time. When setting prices for the current consultation period, CIAL has targeted returns over the 20 year economic lifetime of its investment in its new integrated terminal, rather than over a 5 year period. The expected

returns over the 20 year period are equivalent to 8.9% post tax when the information disclosure framework is applied, higher than the Commission's estimate of an acceptable range of returns over the 20 year period of 7.6% to 8.5% post tax. However, CIAL's target return for 2013-2017 falls within the acceptable range of returns for that initial five-year period. The Commission notes that setting of this return for the five year period appears largely to be driven by demand-related considerations (such as the impact of the Canterbury earthquakes) rather than by the information disclosure regime.

The Commission's conclusions were based on the airports' conduct when they set prices for the current pricing period, in light of the input methodologies and disclosure requirements in place at that time.

## **4.3 New information**

### **4.3.1 Commerce Commission Review of Input Methodologies**

Although a December 2013 High Court judgment on the merits review appeals on input methodologies dismissed all appeals relating to the cost of capital, it questioned whether empirical evidence and theoretical results justified the use of a 75<sup>th</sup> percentile estimate relative to a 50<sup>th</sup> percentile estimate of the weighted average cost of capital (WACC). Following the court's comments, the Commission is currently undertaking further work on the cost of capital input methodologies.

On 22 July, the Commission released its draft decision that:

- amended the WACC percentile for default price-quality regulation for electricity lines businesses (including Transpower) and gas pipeline businesses from the 75<sup>th</sup> percentile to the 67<sup>th</sup> percentile;
- amended the WACC percentile for information disclosure regulation for electricity lines businesses and gas pipelines businesses from a range between the 25<sup>th</sup> and the 75<sup>th</sup> percentile to a range between the 33<sup>rd</sup> and the 67<sup>th</sup> percentile; and
- proposed to examine the WACC percentile for information disclosure regulation for airports separately, most likely in 2015.

The Commission is currently consulting on its draft decision with submissions due on 29 August. A final decision on the WACC percentile for electricity lines and gas pipeline businesses is expected by 31 October 2014.

As noted above, the three major international airports are only subject to information disclosure under the Commerce Act. Section 53F of the Act provides that suppliers that are only subject to information disclosure do not have to apply pricing methodologies or methodologies for evaluating or determining the cost of capital. However, the use of a different percentile or percentile range for WACC could have an impact on how the Commission analyses and monitors airports' profitability in future price setting periods.

The Commission's section 56G reports were based on the input methodologies and disclosure requirements in place at the time that prices were set. It follows that the Commission's further work on WACC does not affect the validity of the Commission's section 56G conclusions on the prices that were set in 2012.

### **4.3.2 Wellington Airport repricing**

As noted above, the Commission's final report on WIAL released in February 2013 noted that information disclosure had not been effective in limiting the airport's ability to extract excessive profits. Since that report was released, WIAL made a decision to undertake another price setting

event, to set new prices to apply from 1 June 2014 to 31 March 2019. WIAL set prices on 30 June 2014.

WIAL indicates that the changes made between 2012 and the 2014 price setting event aim to address the comments made by the Commission. The key revisions in WIAL's pricing relate to adoption of approaches in line with the Commission's input methodologies on land valuation and WACC:

- WIAL's pricing reset uses an approach to asset valuation generally consistent with the Commission's input methodologies. Land is valued using a MVAU valuation, rather than MVEU, which was the approach taken in the previous pricing event. Specialised assets have been valued using an Optimised Depreciated Replacement Cost valuation rolled forward from WIAL's 2013 information disclosures. This approach has reduced WIAL's land valuation by approximately \$76 million.
- WIAL notes that it is forecasting a return adopting a WACC consistent with the Commission's cost of capital input methodologies (at the 75<sup>th</sup> percentile) rather than using a previous approach of basing forecast returns on a WIAL-specific WACC. WIAL has indicated that on this basis it is targeting a return on assets of 8.36% post tax. As noted above, the Commission is currently reviewing the percentile range used in the cost of capital input methodologies, in light of comments made in the High Court judgment on merits review appeals and intends to release a draft decision on the WACC percentile for information disclosure for airports after it has reviewed the WACC percentiles for electricity lines and gas pipelines. WIAL's current price reset is based on the current input methodologies.

Now that WIAL has set prices, it is required to disclose information on the price setting within 40 working days. After this information has been disclosed the Commission intends to undertake a review of the information disclosed. The Commission has indicated it is likely to complete this review in early 2015.

### **4.3.3 Christchurch and Auckland Airports**

AIAL and CIAL are not planning to update prices following the Commission's reports, until the end of the current five year consultation period:

- The December 2013 High Court Judgment on merits review appeals ruled that a materially better asset valuation input methodology would provide for initial MVAU valuation of AIAL's land assets to be undertaken from 1 July 2010. The Commission noted that it would expect the 2010 valuation to be higher than the 2009 valuation used, which would bring AIAL's returns further within the range of acceptable returns. (The High Court judgment did not affect the conclusions of the reports on WIAL and CIAL as the Commission's analysis for those reports was based on more up to date asset valuations). At this stage, AIAL plans to consult on prices again in 2017, at the end of the current five year pricing period. AIAL currently has a moratorium on asset valuation, which expires in 2017.
- CIAL has indicated that it will consult on a reset of prices in 2017 and will take the Commission's comments into account in that pricing reset. In the meantime, CIAL has engaged an independent expert to provide assistance in improving the clarity of its information disclosure on its pricing model and intends to release updated information disclosures for the current pricing period.

## **4.4 Questions**

Now that the section 56G reports on effectiveness of information disclosure have been completed, it is timely to examine the results of the reports, and to seek feedback on issues raised in the reports and on the broader regulatory regime for price setting at major international airports.

We note that following completion of the 56G reports, the Commission wrote to stakeholders seeking feedback on the processes used in those reports. This feedback will be used to make improvements to the Commission's processes for summary and analysis of the airports' performance under section 53B of the Commerce Act. The Commission will also use this feedback as an input to future work to consider whether any changes to the requirements for information disclosure are needed.

The following set of questions may prompt your thinking on issues relating to the section 56G reports:

- **Are there any reasons why the Commission's analysis should not be accepted?**
- **Are there any matters that were not considered that you believe may have affected the Commission's conclusions?**
- **Are there any new matters or information that may affect any of the Commission's conclusions regarding the effectiveness of information disclosure for the three major international airports? If so, how?**
- **In areas where the Commission has been unable to draw a conclusion on the effectiveness of information disclosure, do you consider it likely that conclusions would be able to drawn in future?**
- **What scope of future analysis by the Commission would ensure that sufficient information is readily available to interested parties to assess whether the purpose of Part 4 is being met?**
- **Is information disclosure for major international airports working effectively to achieve the objectives in Part 4 of the Commerce Act?**

## 5. Airport Authorities Act

---

As noted above, although major international airports are subject to information disclosure regulation under the Commerce Act, they do not set prices under the Commerce Act. Prices are set under the AAA, which provides that airports set prices 'as they think fit', after meeting the consultation requirements set out in the AAA.

Feedback is currently being sought on the '[Civil Aviation Act 1990 and Airport Authorities Act 1966 Consultation Document](#)'. One section of that consultation document seeks feedback on airport-related legislative provisions, including the provisions of the AAA relating to price setting and consultation. It may be useful to refer to that document in considering issues relating to the AAA.

In relation to those provisions, the Civil Aviation Act consultation document proposes:

- Removal of section 4A of the AAA for the airports that are not regulated under the Commerce Act on the basis that airport companies are able to undertake the same activities as any other company, subject to the Companies Act 1993 and general corporate law. These activities include the ability to borrow money, acquire, hold and dispose of property, and set charges.
- No change to the requirements outlined in section 4B for airports to consult with substantial customers concerning the prices that are set.
- Retention of the requirement in section 4C for airports to consult on capital expenditure. The document also proposes amending thresholds for airports to consult on capital expenditure and seeks feedback on a number of options for amended thresholds. All the options proposed specify different thresholds depending on the size of the airport. To determine what is defined as a large airport for the purposes of consultation on capital expenditure, the document proposes a threshold of either >3 million passengers or >\$50 million annual revenue. For those larger airports, the document has a number of options for a threshold for requiring consultation on proposed capital expenditure. These options are capital expenditure of greater than:
  - \$30 million, or
  - 10% of identified airport assets (excluding land), or
  - the lower of 30% of airport assets or \$30 million.

This paper seeks feedback on both the information disclosure regime in the Commerce Act and AAA price setting regulation and the interaction between them, in relation to the overall regulatory regime for major international airports. Thinking about the provisions of the AAA for major international airports together with the Commerce Act information disclosure regime gives a picture of the overarching airport pricing regime.

## 5.1 Questions

The following set of questions may prompt your thinking in relation to the AAA provisions and their interface with the Commerce Act:

- **How does the presence of information disclosure affect how prices are set under section 4A of the AAA?**
- **Vice versa, do the price setting provisions in section 4A of the AAA affect how effective information disclosure is in promoting the purpose of Part 4 of the Commerce Act?**
- **If Section 4A of the AAA is removed for smaller airports, would this have an effect on price setting for major international airports? Should it be removed for larger airports also?**
- **How does the presence of information disclosure impact on the consultation requirements in section 4B of the AAA?**
- **Do you have any comments on how the requirement to consult on capital expenditure in section 4C of the AAA fits into the overall regulatory regime for major international airports?**
- **Do you see any issues in the interaction between the Commerce Act and the AAA for regulation of price setting at major international airports?**

## 6. Questions

---

This paper seeks feedback on a number of questions relating to the effectiveness of the currently regulatory regime for major international airports. Questions from the different sections of the discussion paper are replicated below. In addition to those questions, you may wish to consider whether there is anything else you wish to raise:

- **Do you have any other comments on the current regulatory regime for major international airports as a whole?**
- **Is there anything else that should be considered in relation to the current regulatory regime for major international airports?**

For convenience, the other questions posed in this discussion document are repeated below:

### *Commerce Act Section 56G reports*

- Are there any reasons why the Commission's analysis should not be accepted?
- Are there any matters that were not considered that you believe may have affected the Commission's conclusions?
- Are there any new matters or information that may affect any of the Commission's conclusions regarding the effectiveness of information disclosure for the three major international airports? If so, how?
- In areas where the Commission has been unable to draw a conclusion on the effectiveness of information disclosure, do you consider it likely that conclusions would be able to draw in future?
- What scope of future analysis by the Commission would ensure that sufficient information is readily available to interested parties to assess whether the purpose of Part 4 is being met?
- Is information disclosure for major international airports working effectively to achieve the objectives in Part 4 of the Commerce Act?

### *Airport Authorities Act*

- How does the presence of information disclosure affect how prices are set under section 4A of the AAA?
- Vice versa, do the price setting provisions in section 4A of the AAA affect how effective information disclosure is in promoting the purpose of Part 4 of the Commerce Act?
- If Section 4A of the AAA is removed for smaller airports, would this have an effect on price setting for major international airports? Should it be removed for larger airports also?
- How does the presence of information disclosure impact on the consultation requirements in section 4B of the AAA?
- Do you have any comments on how the requirement to consult on capital expenditure in section 4C of the AAA fits into the overall regulatory regime for major international airports?
- Do you see any issues in the interaction between the Commerce Act and the AAA for regulation of price setting at major international airports?