



26 February 2016

Autumn Faulkner

Major Airports Review

Ministry of Business, Innovation and Employment

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Dear Autumn,

SUBJECT: OPTIONS FOR IMPROVEMENTS TO INFORMATION DISCLOSURE REGULATION FOR SPECIFIED AIRPORT SERVICES

The International Air Transport Association (IATA) represents some 260 airlines comprising 83% of total air traffic. The major scheduled airlines operating to the three major international airports in New Zealand are members of IATA. We appreciate the opportunity to provide our views for consideration by MBIE.

IATA is aware of a submission made by the Board of Airline Representatives New Zealand (BARNZ) on this consultation and supports the views expressed by BARNZ in its written submission. Additionally, IATA is supplementing BARNZ's comments with views drawn from its international experience and recognized research on economic regulation.

IATA made an earlier submission to MBIE in November 2014 on the "Effectiveness of information disclosure regulation for major international airports" where we put forward our views on the shortcomings in the New Zealand airport regulatory framework. IATA remains convinced that information disclosure in New Zealand is not delivering needed outcomes for consumers. For purposes of this submission we will put aside our broader concerns and instead focus on options for improvement to information disclosure regulation.

The MBIE consultation document seeks comments on two issues. IATA has provided general and specific comments to a select number of questions raised in through the consultation document.



Issue 1: Ensuring that the Commission has adequate powers to review the information disclosed by airports as part of the information disclosure regime

Question 1.1: Do you agree with the identified risks with the Commission's existing powers?

- IATA is concerned that the risks identified by MBIE could lead to further erosion of what is already a weak, and in our view inadequate, oversight system. While IATA does not consider that New Zealand's light-handed multi-till approach to airport regulation, primarily comprising consultation and information disclosure, is sufficient to constrain the ability of the airports from exercising monopoly power, IATA does nevertheless support steps being taken to try and increase the level of oversight on airports in New Zealand by the Commerce Commission.
- IATA has views on more practical elements of the Commission's approach to assessing information disclosure, particularly in relation to the quality of facilities and services provided by the airports. IATA is of the view that the assessment framework needs to develop more robust counterfactuals or alternatively assess the airports based on objective measures of productivity efficiency and service quality, for example through benchmarking the performance of New Zealand's major airports against comparable international airports.

Question 1.2: Are there additional risks to be addressed?

- The biggest risk facing New Zealand is that its approach to regulating monopolies will result in poor productivity, in part explained by misplaced focus on measurement of process or outputs (often the wrong ones) rather than desired outcomes. In the UK airport sector, this is exemplified at LHR where years of inefficiency has been allowed to be built-in to the Regulatory Asset Base. So even though there is a robust approach for determining the cost of capital and the corresponding price cap, serious questions remain on the extent to which airport services there offer good value for money. For a remote nation like New Zealand the impacts on connectivity from reduced productivity in its airport sector should not be understated or dismissed.
- Furthermore, it is not in consumer interest to deviate away from a single-till regulatory framework when assessing whether excessive returns have been earned at airports. Airport non-aeronautical services are exactly the same solution to covering fixed costs, as competitive markets have developed in industries such as restaurants, cinemas, sports venues, hotels and more. If there were strong competitive pressures on airports they



would be disciplined by market forces to reduce their charges and improve their services in order to survive in the business. Airports would automatically utilize, what is called in the airport charges jargon, a “single till” mechanism. Therefore, assessment of whether airports earn excessive profits must be made on the basis of a single-till regulatory framework.

Question 1.3: What impact would each of these options have, and what approach would you prefer and why?

- IATA prefers option 2. Requiring a review (see comments on need to enhance the review in questions 1.1 and 1.2 above) to be undertaken offers greater continuity over monitoring outcomes achieved through the regulatory process. Evidence collected through such reviews on a systematic basis can serve to trigger the necessary regulatory intervention and where appropriate tighten economic regulatory oversight.

Question 1.4: If the Commission is to comment on whether information disclosure had been effective at promoting the Part 4 purpose, when would it be most useful for this inquiry to occur?

- The commission should undertake this inquiry both to each pricing setting event as well as soon after it:
 - The Commission should take stock of historical performance towards the end of a pricing period with findings on the historical performance made available prior to the next price setting event. The Commission should compare the airport’s forward looking expectation at the time it set prices with the outcomes actually achieved. In the event of notable deviation between these two results it should be prepared to undertake regulatory intervention.
 - Following the price setting event the Commission should compare the airport’s forward looking expectation to determine if the airport is generating excess profits. The review should also encompass an assessment of performance based on cost effectiveness and productivity. Doing so will enable the Commission to assess whether consumers are getting value for money from the airport services they use



Issue 2: Implementing a process for altering the type of regulation under the Commerce Act if required

Question 2.1: Do you agree with the problem definition? If not, why not?

- Having a clear process for altering the type of regulation can by itself potentially have a favorable impact on the performance under the existing framework if it serves to offer a credible threat of further regulation in case of underperformance.
- It can also serve to tighten regulation, which in the medium term can serve to improve outcomes for consumers.
- However, we also see the need for the regulatory scheme to build in design elements that could respond to immediate shortcomings or inequities. So while IATA does not consider the specific ex-post mechanism employed in New Zealand to be able to deliver efficient outcomes, putting aside consideration of other ex-post mechanisms, we are of the view that introducing ex-ante elements to the existing regulatory framework such as putting in place cost-effective arbitration can help deliver better outcomes and be used to address immediate shortcomings.

Question 2.2: Do you agree with the proposed triggers?

- The triggers identified should be included.
- Crucially the investigation needs to focus on the outcomes achieved in the airport sector and the extent to which those outcomes are aligned with furthering consumer interest (as articulated in 52A purpose of Part 4). As part of the investigation should not only review the extent to which airport have generated excess profits but also the extent to which other regulatory approach can offer better outcomes for the consumer.

Question 2.3: Should anything else trigger an investigation?

- Requests from users to launch an investigation should also be considered as a potential trigger point for launching an investigation.
- Furthermore, the inquiries (see question 1.4) on how effective information disclosure has been at promoting the Part 4 Purpose can also be used as triggers for launching an investigation.



Question 2.4: Do you agree with the proposed considerations?

- The assessment of benefits/costs of different approaches to economic regulation needs to be undertaken entirely from the perspective of the consumer interest (as per Purpose of Part 4). Consideration of impact on other stakeholders is only relevant to the extent it has a bearing on consumer interest. The description provided in the consultation document does not provide sufficient detail to explain how the various impact areas identified are envisioned to be aggregated and considered from the perspective of consumer benefit. Furthermore, the approach should also explicitly consider the impacts of economic regulation on avoiding distortions in the (downstream) airline market.

IATA is not commenting on the remaining questions.

Yours sincerely,

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section 9(2)(a)

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