



COMMERCE COMMISSION

Please refer to:

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31 August 2011

Mr Geoff Lewis
Inquiry Director
freightinquiry@productivity.govt.nz

Dear Mr Lewis

Commerce Commission submission on the International Freight Transport Services Issues Paper July 2011

We consider that it would be useful to provide information about two aspects of the Commerce Commission's activities that have some relevance to the Productivity Commission's considerations. This information relates to:

- The streamlined authorisations process for merger and restrictive trade practices applications; and
- Airport regulation under Part 4 of the Commerce Act 1986.

The streamlined authorisations process

Some businesses may be reluctant to apply to the Commission to have a potentially anti-competitive practice or acquisition authorised. This can be due to a number of factors, such as the risk of third party appeal, the public nature of the process, cost and the length of time it may take for the Commission to determine the application.

In 2008, the Commission embarked on a project to create a streamlined authorisation process to address these potential perceptions and concerns. The rationale for this was to:

- provide a practical and accessible process for arrangements with obvious public benefits that are currently not undertaken because the parties perceive that the potential benefit would be outweighed by the high cost and lengthy time taken for the Commission's full authorisation process;
- provide a practical and accessible process for sectors that may otherwise wish to avoid the Commission and lobby the government for a statutory authorisation; and

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- change the perception that the Commission is an obstacle for businesses seeking to collaborate in ways that might have a net public benefit.

There have been few applications since the introduction of the streamlined authorisation process and the Commission attributes this, in part, to the state of the financial market due to the global financial crisis.

While the Commission cannot specifically comment on whether the time it takes to determine an application deters potential applicants, we do recognise that timely disposition is beneficial to applicants and other parties involved. The Commission has determined one authorisation under the streamlined process, the merger between Palmerston North's only two private hospitals. This authorisation was determined in 46 working days. This was a relatively complex matter.

Outside of the streamlined process, the Commission is committed to determining authorisation applications in a timely fashion, having regard to the market issues under consideration. This is demonstrated by the recent consideration by the Commission of Cavalier's application to acquire the wool scouring assets of WSI Ltd. This was a high profile and complex application. It involved significant industry opposition and a public hearing. The Commission completed its decision on this application in 83 working days.

We note that potential applicants may be still be deterred from lodging an application because the process allows third parties to appeal the Commission's decision. MED is recommending that this third party appeal right be removed as part of the Commerce (Cartels and Other Matters) Amendment Bill.

For further information, a link is attached to the Commerce Commission's Streamlined Authorisations Guidelines.

<http://www.comcom.govt.nz/streamlined-authorisation-process-guidelines/>

Regulation of specified airports under Part 4

This section provides comments relevant to the issue raised in question 34 of the Productivity Commission's Issues Paper (Is the existing and planned Commerce Commission regulation of airports sufficient to restrain monopoly pricing and induce an efficient level of investment? If not, what should change?)

The Productivity Commission is also interested in understanding data available on airports, in particular in relation to air freight (questions 30 to 33). This section also provides comments relevant to those questions.

In addition, Appendix 1 sets out:

- a brief overview of Part 4 of the Commerce Act, information disclosure regulation and input methodologies; and
- upcoming dates for information disclosures.

For further information, refer to:

- the airports information disclosure final determination and reasons paper¹
- the airports input methodologies determination and reasons paper²

Airports are subject to information disclosure regulation under Part 4. The information disclosure requirements and the input methodologies that apply under information disclosure were determined in December 2010. The input methodologies which are part of the regulation of airports are subject to merits review appeals. These appeals are likely to be heard next year.

A meaningful ex-post assessment of the impact of regulation requires information on the performance of airports over a sufficiently long time frame. Airports have been subject to information disclosure regulation under Part 4 for less than a year. Any assessment of the impact of airport regulation under Part 4 undertaken at this point in time is likely to provide very limited insights.³

However, section 56G requires the Commission to report to the Minister of Commerce and the Minister of Transport as to how effectively information disclosure regulation for airports is promoting outcomes consistent with those in workably competitive markets. This will include looking at factors such those outlined in the Part 4 purpose statement (s 52A of the Act, see below).

The Commission is required to review the information that has been disclosed by airports under the information disclosure regime (and consult with interested parties) in order to make this assessment. The information to be disclosed will include information on:

- Past financial performance;
- Quality;
- Forecasts of total revenue;

¹ Commerce Commission, *Commerce Act (Specified Airport Services Information Disclosure) Determination*, 22 December 2010; Commerce Commission, *Information Disclosure (Airport Services) Reasons Paper*, 22 December 2010.

² Commerce Commission, *Commerce Act (Specified Airport Services Input Methodologies) Determination*, 22 December 2010; Commerce Commission, *Input Methodologies (Airport Services) Reasons Paper*, 22 December 2010.

³ The specified airports are AIAL—Auckland International Airport Limited; CIAL— Christchurch International Airport Limited; WIAL – Wellington International Airport Limited.

- Prices.

The Commission will form its recommendations regarding the regulation of airports under Part 4 informed by the assessment to be undertaken.

The timing of the report depends on the timing of the setting of any new prices for specified airport services by the supplier of those services, but will not be before 2012.

Airports are required to disclose some information on freight, for example movements of freight only aircraft and some financial information concerning 'Aircraft and Freight Activities'. For further discussion on freight information that will be disclosed under information disclosure, refer to the Information Disclosure Reasons Paper, in particular paragraphs 4.140 to 4.144.

If you have any specific questions on this submission, please contact Yvette Popovic, Chief Adviser, Advocacy & Development, on (04) 9243771 or yvette.popovic@comcom.govt.nz in the first instance.

Yours sincerely



Dr Mark Berry
Chair
Commerce Commission

Appendix 1

Part 4 Purpose

Part 4 provides for the regulation of the price and quality of goods or services supplied in markets where there is little or no competition, and little or no likelihood of a substantial increase in competition.

Part 4 has the following overall purpose statement (s 52A):

to promote the long-term benefit of consumers [...] by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
- (c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and
- (d) are limited in their ability to extract excessive profits.

Information disclosure regulation

There is a range of regulatory instruments available under Part 4 to promote the objectives (a) to (d) in the purpose statement. Airports are only subject to information disclosure regulation. Information disclosure has the following purpose statement:

The purpose of information disclosure regulation is to ensure that sufficient information is available to interested persons to assess whether the purpose of [Part 4] is being met

The Act also provides that the Commission⁴

...must, as soon as practicable after any information is publicly disclosed, publish a summary and analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated suppliers, their relative performance, and the changes in performance over time.

Input methodologies

Input methodologies are binding methodologies, rules, processes that support each form of regulation for services regulated under Part 4. Their purpose is to promote certainty for suppliers and consumers. As airports are subject to information disclosure only, the input methodologies are applicable to information disclosure only. They do not apply to the setting of prices. The Commission has determined input methodologies for asset valuation, cost allocation, regulatory tax and cost of capital.

⁴ Section 53 B(2)(b)

Information disclosure timetable

Table 1 below sets out disclosure dates for information disclosure regulation of airports under Part 4.

Table 1 Airport information disclosure timetable

Disclosure description	Transitional year Disclosure Date		Continuing Years Disclosure Date	
	AIAL & CIAL	WIAL	AIAL & CIAL	WIAL
Annual disclosures	31-May-12	29-Feb-12	30-Nov-12	31-Aug-12
Disclosure following a Price Setting Event	30-Sep-11		20 working days from decision	

Notes: The transitional year disclosures comprise a subset of the continuing year disclosures.
The information disclosure determination defines a price setting event as the fixing or altering of price as a result of pricing consultation under the Airport Authorities Act for a specified airport service (subject to certain exemptions).

The Commission will publish a summary and analysis of that information as soon as practicable after any information is publicly disclosed by airports.