

AIRPORT AUTHORITIES AMENDMENT BILL

AS REPORTED FROM THE TRANSPORT COMMITTEE

COMMENTARY

Recommendation

The Transport Committee has examined the Airport Authorities Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Airport Authorities Amendment Bill was introduced and referred to the Transport Committee on 7 December 1995. The closing date for submissions was 14 February 1996. A departmental draft of relevant regulations was provided and considered in conjunction with the bill. The committee received and considered 19 submissions from industry organisations and other interested groups and individuals. Eleven submissions were heard orally. Eight hours 30 minutes were spent hearing evidence and two hours 52 minutes on consideration.

Advice was received from the Ministry of Transport. The Regulations Review Committee reported to the committee on the powers contained in all four clauses of the bill.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Background

The bill aims to guard against potential monopoly pricing by airport companies and protect consumers' interests. While airports should provide their services efficiently and make commercially appropriate investments, competition between airports, especially the international airports, is weak. A requirement for airport companies to consult with airline companies before setting charges is the main regulatory protection offered to users of airport company services. However, users see this level of protection as inadequate, especially the airlines, and consultation has been the subject of dispute in the courts.

The bill is the result of extensive consultation which commenced in April 1995. The new regime proposes consultation by airport companies at least every five years and, for airport companies with annual revenue of over \$10 million,

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consultation on capital expenditure coupled with detailed information disclosure on monopoly activities. There is to be a Government review of the regime within five years. If the review shows evidence of monopoly abuse, the regime can be strengthened.

Amendments are proposed, particularly with regard to having consultative and information disclosure provisions in statute rather than in regulations.

Commencement

Clause 1 provides for enactment on a date to be appointed by the Governor-General by Order in Council. The Regulations Review Committee expressed concern about the use of an Order in Council to trigger the implementation of legislation. We agree and recommend that the clause be amended to require the Act to come into force one year after it receives the Royal assent, unless it is earlier brought into force on a date appointed by the Governor-General by Order in Council.

Interpretation

We recommend that some important definitions contained in the draft regulations be included in clause 2. The definitions are for “charge” and “specified airport company”, as well as “identified airport activities”, which include “aircraft and freight activities”, “airfield activities”, and “specified passenger terminal activities”.

Meaning of “substantial customer”

The Regulations Review Committee, concerned that the definition of “substantial customer” was in the draft regulations, submitted it should be in statute. The committee also suggested that the threshold for consultation should be lowered from the proposed level of five percent of an airport company’s annual revenue because small operators and new entrants could be excluded from consultation.

We agree and recommend in new clause 2A that the definition of “substantial customer” include provision for small customers, whether airlines or not, to form a collective for consultation purposes. However, we recommend that the threshold remain at five percent because it is reasonable and a lower level could result in an onerous consultation process.

Powers of airport companies

Clause 3 alters the obligations that are placed on airport companies by section 4 (2) of the principal Act. We recommend a number of amendments to the clause.

Additional powers of airport authorities

A new section 4 (additional powers of airport authorities) is recommended to replace the bill’s provision to amend the principal Act on the powers of airport companies. The new section separates the capital improvements and expenditure powers of airport companies. A new section 4A is also proposed to clarify the ability of airport companies to set charges.

Consultation

The current legislation (section 4 (2) of the Airport Authorities Act 1966) provides for the setting of fees, charges and dues after consultation. The bill, as introduced, proposed that fee setting be contained in statute, but to have a consultation regime on fees and capital expenditure provided for in regulations. However, there was strong concern from all quarters that the obligation to consult on

setting of charges and capital expenditure plans should be contained in statute. We agree.

We recommend a new section 4B to provide for every airport to consult with substantial customers over that customer's charge at least every five years.

Departure charges

Wellington International Airport Limited said the bill was silent on the need to consult on proposed passenger departure charges. Airline companies submitted these charges should be the subject of consultation, but the airport companies maintained these were contestable activities rather than a monopoly charge. As the intention of the consultation regime is to include departure fees, we recommend new section 4B also include a requirement that airport companies consult with all substantial customers in respect of any direct charge payable by any passenger in respect of any or all identified airport activities. This provision will cover not only current departure charges, but also include any future charges, such as an arrival charge, that may arise.

Capital expenditure plans

A number of submissions opposed the adoption of a 20 percent of asset value threshold for compulsory consultation on capital expenditure plans as being too high. Air New Zealand Limited suggested that airport companies could group capital development projects to avoid the consultation requirement. However, we consider it would be difficult for a project to be split in order to avoid consultation if a 20 percent threshold were employed.

We recommend a new section 4C which requires airport companies, with revenue over \$10 million per annum, to consult substantial customers over any new capital expenditure for identified airport activities that are likely, in the following five years, to exceed 20 percent of the value of the assets comprising identified airport activities. We believe that such a level of consultation on provincial airport capital expenditure, where revenue is significantly below \$10 million, is unnecessary given the countervailing market power of airlines.

Leasing powers of airport authorities

Wellington International Airport Limited submitted that rent should not be considered a charge as lease contracts provide their own properly enforceable legal obligations and, therefore, should not be included in the consultation regime. We do not agree. It is possible for an airport company to attempt to circumvent the consultation regime by granting leases over facilities that would otherwise be charged for in an alternative way. We have recommended in new clause 3A the repeal of the provision in the principal Act which defines a lease and have recommended a new definition of lease. However, as there may be transitional issues involved with existing leases, which may have rental review periods of greater than five years, we have recommended in clause 5 that new section 4B not apply to certain existing leases.

Regulations requiring disclosure of information by airport authorities

Auckland International Airport Limited believed that disclosure of information should be limited to "identified airport activities" as proposed to be defined in the bill. This would prevent regulations being made to cover disclosure of an unlimited range of information which could lead to higher compliance costs. As the objective of the information disclosure regime is to separate non-contestable activities from contestable ones to ensure no cross-subsidisation, we feel that disclosure should be restricted to non-contestable activities. We recommend that

new section 9A be amended to limit the information disclosure regime to “identified airport activities”.

Reduction of information disclosed by airport companies

The airline companies were concerned that the implementation of the information disclosure regime would reduce the amount of information currently provided by the airport companies. Air New Zealand Limited submitted that the regulations would effectively reduce the scope of discovery in judicial proceedings to the information required to be disclosed under the proposed regulations. However, the information currently provided by airport companies is not prescribed and they could, if they wanted to, reduce the amount of information. We consider that, although the information disclosure regulations may become the standard, they will not by themselves restrict the level of information supplied during a consultative round or discovery in judicial review processes.

Methodology and guidelines

Air New Zealand Limited was concerned that airport companies would continually revalue their assets and, therefore, increase charges in a continual process. It submitted that any guidelines issued under the regulations should be determined by an independent panel. The bill empowers regulations to be made providing for the making of guidelines for the completion of disclosure statements. Regulations may also be made enabling any person or persons (determined by the regulations) to issue recommended guidelines for the completion of disclosure information, which could include a valuation methodology.

While we would expect an extensive consultation process before any methodology was prescribed or guidelines adopted, we believe it desirable to strengthen the procedures for doing so. We, therefore, recommend that new section 9A be amended to require that guidelines be made only after consultation with interested parties (new subsection 9A (3)) and that they be regulations for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989 (new subsection 9A (4)). This proposal ensures that there will be a statutory requirement for public input and that the guidelines will be subject to Parliamentary scrutiny.

Exemptions

Concern was raised by four submissions about the power of the Secretary for Transport to issue exemptions to the regulations. Air New Zealand Limited questioned why such a provision would be required. We were advised by the Ministry of Transport of the need for an exemption power. For example, Chatham Islands Airport Limited should be able to hold disclosure statements at its offices as the airport itself is unstaffed. However, we agree with Auckland International Airport Limited that the exemption process should be open to scrutiny. We recommend paragraph 9A (1) (l) be amended so that the regulations contain criteria for granting exemptions and require the Secretary for Transport to notify publicly the intention to grant an exemption.

Regulations requiring consultation by airport authorities

New section 9B would enable regulations requiring consultation to be made. As we are recommending that consultation be provided for in statute, we recommend that this new section be omitted from the bill.

Information to be supplied to Secretary for Transport

Auckland International Airport Limited submitted that the information supplied to the Secretary for Transport should be limited to that necessary for the purpose of monitoring compliance and that the release of confidential information should be subject to the consent of the person to whom the duty of confidence is owed. The airport company also sought a prohibition on the Secretary releasing confidential information whether under the Official Information Act 1982 or otherwise and argued that the party providing the information should be protected from any liability that results from the release of such information.

We do not agree. While much of the information supplied to the Secretary will be commercially sensitive, we consider it appropriate to test the release of any such information against the provisions of the Official Information Act 1982. We do not consider protection from liability for releasing third party information is necessary. The statutory duty to provide information and the use by airport companies of disclaimers should provide the companies with an adequate defence.

Offences

Wellington International Airport Limited submitted that there should be similar fines for not certifying "disclosure financial statements" and not supplying a verified declaration in respect of information requested by the Secretary for Transport. Under the draft regulations, there is a maximum fine of \$200,000 and, if the offence is a continuing one, a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued. By contrast, the maximum fine for not supplying a verified declaration in respect of information released under the disclosure regulations or requested by the Secretary is \$20,000, as contained in section 9D of the bill. We do not believe that the bill treats the offences for the two provisions differently, but recommend that the relevant draft regulation be reviewed to ensure consistency with the bill.

Transitional provisions

We recommend a new clause 5 to cover transitional provisions for consultation over charges and lease arrangements. Where an airport company has not consulted with a substantial customer about any charge within a period of five years before enactment of the bill, the airport company must consult with that substantial customer about that charge within twelve months. However, this will not apply to any lease entered into before the bill becomes law that has a rental review period greater than five years.

Provision of forecast information

Auckland International Airport Limited was concerned that the disclosure of forecast information would have legal and commercial consequences. It submitted that the duration of forecasts should be two years, rather than the five years proposed, to minimise incorrect forecasting. Air New Zealand Limited, on the other hand, submitted that the financial forecasts should be on a 20-year basis. We favour staying with the 5-year forecast period. While we acknowledge it is difficult to provide accurate financial forecasts, airport companies build and operate facilities with long economic lives. Further, the proposed five year forecast timeframe, to be provided for in regulations, is consistent with the five year period for consultation on charges. We do not consider that airport companies would be exposed to unacceptable legal liabilities resulting from incorrect forecasts. Any exposure for liability would be for extreme negligence and we consider it desirable that there be an incentive for airport companies to

disclose proper information. We, therefore, propose that, along with financial statements, financial forecasts should be included as part of the information disclosure regime.

Consideration of an alternative negotiation/compulsory arbitration regime

A negotiation/compulsory arbitration regime was submitted by the airline companies as an alternative solution to the perceived problem of monopoly abuse. Negotiation would be in addition to consultation in respect of charges and capital expenditure plans, with arbitration in the event of disagreement.

Negotiation versus consultation

The substitution of negotiation for consultation would give airlines the option of vetoing all airport financial decisions because agreement between the parties would be required. This would be a significant departure from the bill's consultation process which leaves the final decision to an airport company. It would be difficult for an airport company to negotiate unanimous agreement with all relevant airlines in pricing or capital expenditure decisions. For example, at Auckland International Airport, there are approximately 25 airlines operating scheduled services alone. Arbitration would, therefore, be a likely outcome.

Arbitration

Arbitration is useful to resolve disputes, but usually involves only two parties. The airlines' negotiation/compulsory arbitration proposal would involve a number of parties, with diverse interests and complex issues.

All of the international examples submitted by the airlines require central government involvement, normally in the appointment of the arbitrator, and/or in setting the principles and rules of arbitration. The Australian model concerns access disputes rather than monopoly pricing per se while the British models provide for specific industry regulators to set prices and resolve pricing disputes. The American complaints procedure involves airlines seeking a determination from the Secretary for Transportation as to the reasonableness of an airport's charge, but the Secretary is not entitled to set the actual charge.

The advice we received is that implementation of the proposed negotiation/compulsory arbitration system is not as simple as suggested nor is it likely to be practical. It also raises fundamental policy concerns because such an approach would be different to that adopted by the Government for other industry sectors. However, we consider that a more focused review mechanism, particularly for the valuation of airport company assets, has considerable merit. This could be similar to the Land Valuation Tribunal used when there is disagreement about valuations for rating purposes.

We, therefore, recommend that the Minister consider introducing a supplementary order paper to allow for the review of the valuation of airport company assets where the major parties affected are in significant disagreement.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon. Maurice Williamson

AIRPORT AUTHORITIES AMENDMENT

ANALYSIS

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1. Short Title and commencement	4. New sections inserted
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2A. Meaning of "substantial customer"	9C. Validity of certain arrangements not affected by failure to consult on capital expenditure
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A BILL INTITULED

An Act to amend the Airport Authorities Act 1966

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Airport Authorities Amendment Act 1995, and shall be read together with and deemed part of the Airport Authorities Act 1966* (hereinafter referred to as the principal Act).

Struck Out (Unanimous)

10 (2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

*R.S. Vol. 17, p. 1

Amendments: 1986, No. 128; 1988, No. 49; 1993, No. 72; 1996, No. 93

New (Unanimous)

(2) This Act shall come into force one year after the date on which it receives the Royal assent unless it is earlier brought into force on a date appointed by the Governor-General by Order in Council.

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Struck Out (Unanimous)

2. Interpretation—Section 2 of the principal Act is hereby amended by adding the following definition:

“‘Specified airport authority’ means an airport authority that, in any period specified in regulations made under this Act, has a revenue that equals or exceeds, or has had a revenue that equalled or exceeded, an amount prescribed, for the purposes of this definition, by regulations made under this Act.”

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New (Unanimous)

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2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Aircraft and freight activities’ means the activities undertaken (including the facilities and services provided) to enable, within a security area or areas of the relevant airport, the servicing and maintenance of aircraft and the handling of freight transported, or to be transported, by aircraft; and includes—

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“(a) The provision within a security area or areas of the relevant airport, of any one or more of the following:

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“(i) Hangars:

“(ii) Facilities and services for the refuelling of aircraft, flight catering, and waste disposal:

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“(iii) Facilities and services for the storing of freight:

“(iv) Security, customs, and quarantine services for freight:

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New (Unanimous)

- 5 “(b) The holding of any facilities and assets
 (including land) acquired or held to provide aircraft
 and freight activities in the future (whether or not
 used for any other purpose in the meantime):
- “ ‘Airfield activities’ means the activities undertaken
 (including the facilities and services provided) to
 enable the landing and take-off of aircraft; and
 includes—
- 10 “(a) The provision of any one or more of the
 following:
- “(i) Airfields, runways, taxiways, and parking
 aprons for aircraft:
- 15 “(ii) Facilities and services for air traffic and
 parking apron control:
- “(iii) Airfield and associated lighting:
- “(iv) Services to maintain and repair airfields,
 runways, taxiways, and parking aprons for
 aircraft:
- 20 “(v) Rescue, fire, safety, and environmental
 hazard control services:
- “(vi) Airfield supervisory and security services:
- “(b) The holding of any facilities and assets
25 (including land) acquired or held to provide airfield
 activities in the future (whether or not used for any
 other purpose in the meantime):
- “ ‘Charge’ includes a fee or due and also includes rent
 payable under any lease:
- 30 “ ‘Identified airport activities’ means any one or more of
 the following, as the case may be:
- “(a) Airfield activities:
- “(b) Aircraft and freight activities:
- “(c) Specified passenger terminal activities:
- 35 “ ‘Lease’ includes any form of tenancy and a licence to
 occupy or use any premises or appliance:
- “ ‘Security area’ means an area of an airport that the
 Director of Civil Aviation has declared to be a
 security area under section 84 of the Civil Aviation
 Act 1990:
- 40 “ ‘Specified airport company’ means an airport company
 that, in its last accounting period, received revenue
 that exceeded \$10 million, or such other amount of

New (Unanimous)

revenue that the Governor-General may from time to time prescribe for the purposes of this definition by Order in Council:

- “ ‘Specified passenger terminal activities’ means the 5
 activities undertaken (including the facilities and
 services provided) in relation to aircraft passengers
 while those passengers are in a security area or areas
 of the relevant airport; and includes—
- “(a) The provision, within a security area or 10
 security areas of the relevant airport, of any one or
 more of the following:
- “(i) Passenger seating areas, thoroughfares, and
 airbridges:
- “(ii) Flight information and public address 15
 systems:
- “(iii) Facilities and services for the operation of
 customs, immigration, and quarantine
 checks and control:
- “(iv) Facilities for the collection of duty-free items: 20
- “(v) Facilities and services for the operation of
 security and Police services:
- “(b) Any activities undertaken (including the
 facilities and services provided) in a passenger
 terminal to enable the check-in of aircraft passengers, 25
 including services for baggage handling:
- “(c) The holding of any facilities and assets
 (including land) acquired or held to provide specified
 passenger terminal activities in the future (whether or
 not used for any other purpose in the meantime);— 30
 but does not include the provision of any space for
 retail activities:
- “ ‘Substantial customer’, has the meaning given to that
 term by **section 2A** of this Act.”

New (Unanimous)

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2A. Meaning of “substantial customer”—The principal Act is hereby amended by inserting, after section 2, the following section:

New (Unanimous)

5 “2A. (1) For the purposes of this Act, ‘substantial customer’, in relation to an airport company, means any person that paid, or was liable to pay, that airport company in relation to identified airport activities in that airport company’s last accounting period an amount that exceeded 5 percent of the revenue paid or payable to that airport company during that accounting period in relation to those activities.

10 “(2) A person shall be deemed to be a substantial customer of an airport company for the purposes of this Act if—

15 “(a) That person has been authorised in writing to represent, and exercise the powers of a substantial customer under this Act in relation to, a number of persons that in aggregate paid, or were liable to pay, that airport company in relation to identified airport activities in the airport company’s last accounting period an amount that exceeded 5 percent of the revenue paid or payable to that airport company during that accounting period in relation to those activities; and

20 “(b) That person has produced those authorisations to that airport company for inspection by it; and

“(c) Those authorisations have not been withdrawn.

25 “(3) A person who is deemed to be a substantial customer under **subsection (2)** of this section may exercise all the powers of a substantial customer under this Act and any regulations made under this Act and shall be treated in all respects as if that person were a substantial customer.”

Struck Out (Unanimous)

30 **3. Powers of airport companies**—(1) Section 4 (2) of the principal Act (as inserted by section 5 (3) of the Airport Authorities Amendment Act 1986) is hereby amended by repealing paragraph (a) as amended by section 101 (3) of the Civil Aviation Act 1990), and substituting the following paragraph:

35 “(a) Notwithstanding the provisions of any regulations in force under section 38 or section 100 of the Civil Aviation Act 1990, but subject to any regulations

Struck Out (Unanimous)

made under **section 9B (1) (a)** of this Act, charge and set such fees, charges, and dues as it from time to time thinks fit for the use of the airport operated or managed by it, or the services or facilities associated therewith; and any such fees, charges, or dues may be charged to persons or classes of persons owning or operating aircraft, or to persons or classes of persons using or otherwise enjoying the benefit of the airport, services, or facilities, or to any other persons; and”.

(2) The Civil Aviation Act 1990 is hereby amended by repealing so much of the Second Schedule as relates to section 4 (2) (a) of the Airport Authorities Act 1966.

New (Unanimous)

3. New sections substituted—(1) The principal Act is hereby amended by repealing section 4, and substituting the following sections:

“4. Additional powers of airport authorities—(1) In the exercise of its powers under section 3 of this Act, and any other powers which it has, any airport authority may from time to time,—

“(a) Improve, maintain, operate, or manage an airport, whether or not the airport was established under this Act:

“(b) Improve, maintain, operate, or manage an airport which has been added to, improved, or reconstructed by Her Majesty, or by some other authority, body, or person since the establishment of the airport:

“(c) Establish, improve, maintain, operate, or manage an airport on any land, whether or not the land is wholly or partly owned by the airport authority:

“(d) Improve, add to, alter, or reconstruct any airport or any part of an airport maintained or operated by the airport authority:

“(e) Establish, operate, or manage, or cause to be established, operated, or managed at airports, refreshment rooms, book stalls, booking offices, travel agencies,

New (Unanimous)

and such other facilities as may be considered necessary:

5 “(f) Enter into and carry out any agreement or arrangement necessary for the exercise of any power or function conferred on the airport authority by this Act.

“(2) Every airport company may—

10 “(a) Borrow such amounts of money on such terms and conditions and from such persons as it from time to time thinks fit; and

“(b) Acquire, hold, and dispose of such real and personal property as it from time to time thinks fit.

15 “(3) Every airport operated or managed by an airport authority shall be operated or managed as a commercial undertaking.

“4A. **Charges**—(1) Subject to **section 48** of this Act, every airport company may, notwithstanding the provision of any regulations in force under section 38 or section 100 of the Civil Aviation Act 1990, set such charges as it from time to time thinks fit for the use of the airport operated or managed by it, or the services or facilities associated therewith.

25 “(2) Any charges set under this section may be charged to persons or classes of persons owning or operating aircraft, or to persons or classes of persons using or otherwise enjoying the benefit of the airport, services, or facilities, or to any other persons.

“(3) Nothing in section 43 of the Commerce Act 1986 shall apply in relation to the setting and charging of charges by an airport company.

30 “4B. **Airport companies must consult concerning charges**—(1) Every airport company must consult with every substantial customer in respect of any charge payable by that substantial customer to the airport company in respect of any or all identified airport activities—

35 “(a) Before fixing or altering the amount of that charge; and

“(b) Within 5 years after fixing or altering the amount of that charge.

40 “(2) Every airport company must consult with every substantial customer in respect of any direct charge payable to the airport company by any passenger in respect of any or all identified airport activities—

New (Unanimous)

“(a) Before fixing or altering the amount of that charge; and

“(b) Within 5 years after fixing or altering the amount of that charge.

“(3) Notwithstanding **subsections (1) and (2)** of this section, an airport company to which **subsection (1) or subsection (2)** applies is not required to consult under this section in respect of any charge with a substantial customer who has consented in writing (and not withdrawn that consent) to not being consulted under this section in respect of that charge. 5 10

“**4C. Specified airport companies must consult concerning capital expenditure plans**—(1) In this section,—

“‘Identified assets’, in relation to a specified airport company, means the assets of that airport company in relation to identified airport activities: 15

“‘Identified capital expenditure’, in relation to a specified airport company, means capital expenditure in relation to identified airport activities:

“‘Related capital expenditure’, in relation to identified capital expenditure, means capital expenditure (whether paid or proposed) which relates to or is connected with that identified capital expenditure. 20

“(2) A specified airport company must not approve any identified capital expenditure if the amount of that identified capital expenditure (and the amount of any related capital expenditure) will, or is likely to, within the following 5 years exceed an amount which is equal to 20 percent of the value of the identified assets of that airport company at the commencement of the then current accounting period unless that airport company has consulted with all its substantial customers in respect of that capital expenditure (and all related capital expenditure). 25 30

“(3) A specified airport company is not required to consult under **subsection (2)** of this section in respect of identified capital expenditure (or any related capital expenditure) with a substantial customer who has consented in writing (and not withdrawn that consent) to not being consulted under this section in respect of that identified capital expenditure and any related capital expenditure.” 35 40

New (Unanimous)

(2) Section 5 of the Airport Authorities Amendment Act 1986 is hereby consequentially repealed.

5 (3) The Civil Aviation Act 1990 is hereby amended by repealing so much of the Second Schedule as relates to section 4 of the Airport Authorities Act 1966.

New (Unanimous)

10 **3A. Leasing powers of airport authorities**—Section 6 of the principal Act is hereby amended by repealing subsection (9).

4. New sections inserted—The principal Act is hereby amended by inserting, after section 9, the following sections:

15 **“9A. Regulations requiring disclosure of information by airport companies**—(1) The Governor-General may from time to time, by Order in Council, make regulations for any or all of the following purposes:

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20 “(a) Prescribing the amount of revenue an airport authority must have in any period specified in the regulations in order to be a specified airport authority:

25 “(b) Requiring every airport authority, or every airport authority of a specified class or classes (and, in particular, every specified airport authority), to make publicly available information in relation to its activities or any of them, or any class or classes of its activities:

30 “(c) Requiring every airport authority, or every airport authority of a specified class or classes (and, in particular, every specified airport authority), to complete, within a time prescribed by the regulations, financial statements (in this section referred to as ‘disclosure financial statements’) and financial forecasts (in this section referred to as ‘disclosure financial forecasts’), or either of them, in

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relation to its activities or any of them, or any class or classes of its activities:

New (Unanimous)

“(b) Requiring every airport company, or every airport company of a specified class or classes (and, in particular, every specified airport company), to make publicly available information in relation to its identified airport activities or any of them, or any class or classes of its identified airport activities: 5
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“(c) Requiring every airport company, or every airport company of a specified class or classes (and, in particular, every specified airport company), to complete, within a time prescribed by the regulations, financial statements (in this section referred to as ‘disclosure financial statements’) and financial forecasts (in this section referred to as ‘disclosure financial forecasts’), or either of them, in relation to its identified airport activities or any of them, or any class or classes of its identified airport activities: 15
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“(d) Requiring every airport (*authority*) company to make publicly available, in the manner prescribed by these regulations and within the time prescribed by these regulations, any disclosure financial statements and disclosure financial forecasts, that the airport (*authority*) company is required to complete: 25

“(e) Prescribing the information and other matters that must be included in disclosure financial statements and disclosure financial forecasts: 30

“(f) Prescribing the certificates and reports that must be prepared in relation to the information, or any specified information, contained in disclosure financial statements and disclosure financial forecasts: 35

- “(g) Prescribing any standard or standards that disclosure financial statements and disclosure financial forecasts must comply with:
- 5 “(h) Prescribing any methodology or methodologies that must be used in completing disclosure financial statements and disclosure financial forecasts:
- 10 “(i) Enabling the making of guidelines by a person or persons specified by the regulations in relation to the completion of, or the use of any methodology or methodologies (including, without limitation, any methodologies relating to the valuation of assets) in, disclosure financial statements and disclosure financial forecasts:
- 15 “(j) Providing that compliance with the guidelines shall be deemed to constitute compliance with the relevant requirements of the regulations:
- 20 “(k) Prescribing the certificates, reports, and statutory declarations that must be prepared in relation to disclosure financial statements and disclosure financial forecasts or in relation to statements, forecasts, reports, agreements, particulars and information supplied to the Secretary for Transport under **section 9D** of this Act:
- 25 “(l) Exempting, or providing for the exemption (in accordance with prescribed criteria and after such public notification as is prescribed) of, any person or persons, or any class or classes of persons, from all or any of the requirements of the regulations.
- 30 “(2) Regulations made under **subsection (1)** of this section may require or prescribe different requirements or matters in relation to—

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- 35 “(a) Different classes of airport authority (and, in particular, in relation to specified airport authorities); and
- “(b) The disclosure financial statements and disclosure financial forecasts of different classes of airport authority (and, in particular, of specified airport authorities).

New (Unanimous)

“(a) Different classes of airport company (and, in particular, in relation to specified airport companies); and

“(b) The disclosure financial statements and disclosure financial forecasts of different classes of airport company (and, in particular, of specified airport companies). 5

“(3) No guidelines shall be made pursuant to regulations made under **subsection (1) (i)** of this section except after consultation with such persons, representative groups within the aviation industry or elsewhere, substantial customers of airport companies, Government departments, and Crown agencies as the person or persons making the guidelines think appropriate. 10

“(4) Any guidelines made by any person or persons pursuant to regulations made under **subsection (1) (i)** of this section are hereby deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989, but shall not be regulations for the purposes of the Acts and Regulations Publication Act 1989. 15 20

Struck Out (Unanimous)

“**9B. Regulations requiring consultation by airport authorities**—(1) The Governor-General may from time to time, by Order in Council, make regulations for any or all of the following purposes: 25

“(a) Requiring every airport authority, or every airport authority of a specified class or classes (and, in particular, every specified airport authority), to consult, with persons specified in the regulations, about the charges, fees, and dues, to be made by the airport authority or the class of airport authority: 30

“(b) Prescribing the times at which, and the time limits within which, the consultation required by regulations made under **paragraph (a)** of this subsection is to take place: 35

“(c) Prohibiting every specified airport authority from approving any capital expenditure that exceeds an amount specified in the regulations unless the

Struck Out (Unanimous)

specified airport authority has first consulted with such persons or classes of persons as are specified by the regulations:

5 “(d) Specifying the manner in which any person who is required by any provision of any regulations made under this section to be consulted, whether as a person or as member of a group or class of persons, may waive the requirement to be consulted:

10 “(e) Exempting, or providing for the exemption of, any person or persons, or any class or classes of persons, from all or any of the requirements of any regulations made under this subsection.

15 “(2) Regulations made under **subsection (1) (a)** of this section may prescribe different requirements in relation to consultation by different classes of airport authority (and, in particular, in relation to specified airport authorities).

“9c. **Validity of certain arrangements not affected by failure to consult on capital expenditure**—A failure by a

20 specified airport (*authority*) company to comply with (*any regulations made under ~~section 9B (1) (c)~~ section 4c*) of this Act shall not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by that specified airport (*authority*) company.

25 “9D. **Information to be supplied to Secretary for Transport**—(1) Every airport (*authority*) company that is required by regulations made under **section 9A** of this Act to make any financial statement, financial forecast, or other information publicly available—

30 “(a) Shall supply to the Secretary for Transport, within 30 days after the day on which any such statement, forecast, or other information is so made available, a copy of that financial statement, financial forecast, or other information:

35 “(b) Shall, if the Secretary for Transport, for the purpose of monitoring the airport (*authority’s*) company’s compliance with those regulations, gives to the airport (*authority*) company a notice in writing requesting further statements, forecasts, reports,

40 agreements, particulars, and other information, supply to the Secretary for Transport, within

30 days after the day on which the request is given to that airport (*authority*) company (or within such additional time as the Secretary for Transport allows) the requested statements, forecasts, reports, agreements, particulars, and other information. 5

“(2) All statements, forecasts, reports, agreements, particulars, and information supplied to the Secretary for Transport under **paragraph (a) or paragraph (b) of subsection (1)** of this section shall be verified by statutory declaration in the form prescribed, and by the person or persons prescribed, by regulations made under **section 9A (1) (k)** of this Act. 10

“9E. **Offences**—(1) Every person commits an offence against this section who—

“(a) Fails, without reasonable excuse, to comply with any information disclosure requirements prescribed in regulations made under **section 9A** of this Act; or 15

“(b) Fails, without reasonable excuse, to comply with the requirements of **section 9D (1) (a)** or with a request made under **section 9D (1) (b)** of this Act.

“(2) Every person commits an offence against this section who makes a false declaration under **section 9D (2)** of this Act in relation to any statement, forecast, report, agreement, particulars, or information supplied under **section (9D (2)) 9D (1)** of this Act. 20

“(3) Every person who commits an offence against **subsection (1)** of this section is liable on summary conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued. 25

“(4) Every person who commits an offence against **subsection (2)** of this section is liable on summary conviction to a fine not exceeding \$20,000.” 30

New (Unanimous)

5. Transitional provisions—(1) Where an airport company has not, within a period of 5 years before the commencement of this Act, consulted with a substantial customer in respect of any charge to which **subsection (1) or subsection (2) of section 48** of the principal Act (as inserted by **section 3** of this Act) applies, that airport company shall, within a period of 12 months after the commencement of this Act, consult with that substantial customer in respect of that charge. 35
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New (Unanimous)

(2) **Section 48 (1) (b)** of the principal Act (as so inserted) shall not apply to any lease entered into before the commencement of this Act that has a rental review period of greater than 5 years.