

AIRWAYS CORPORATION OF NEW ZEALAND LIMITED
SERVICE FRAMEWORK REVIEW CONSULTATION PROCESS

DECISION PAPER

9 AUGUST 2021

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1. Executive summary

- 1.1. This paper outlines Airways' decision not to make any major changes to its Service Framework at this time, following industry consultation.
- 1.2. The Service Framework provides an outline of the basis on which Airways supplies its key air navigation services (**ANS**). Airways sought industry views on whether the current Service Framework can be improved and whether there are underlying structural issues that prevent Airways from supplying services in efficient and cost-effective ways. It asked whether the Service Framework should recognise a distinction between base services over which Airways has a statutory monopoly (**base services**), and aerodrome air traffic management services (**ATMS**) for which Airways is currently the only certified provider, but which can be supplied by other providers (**contestable services**).
- 1.3. Airways published a draft revised Service Framework and an accompanying consultation paper. Consultation of the industry took place between 4 May and 30 June 2021, allowing time for submissions and cross-submissions. Airways received 14 submissions and 3 cross-submissions.
- 1.4. Airways has considered all submissions carefully and appreciates the effort that stakeholders have put into sharing their views.
- 1.5. Submitters recognised the challenges that Airways is facing in the current climate, and its obligation as a state-owned enterprise to operate in an efficient and financially responsible manner.
- 1.6. Nevertheless, most submitters indicated that they were not convinced of the merits of drawing a distinction between base services and contestable services in the Service Framework without further economic analysis and discussion.
- 1.7. Airways has therefore decided not to make any major changes to its Service Framework at this stage. It will now proceed to the planned consultation on the Pricing Framework, Standard Terms and Conditions and the commercial terms of its relationships.

2. Background

- 2.1. As part of its new customer strategy, Airways has taken the opportunity to review its Service Framework and Pricing Framework. Airways identified the following objectives for its proposal:
 - a) a modern, fit for purpose aviation system that delivers safety and efficiency;
 - b) alignment with the aviation industry's commercial imperatives;
 - c) productive relationships with our customers and stakeholders;
 - d) closer alignment between customer relationships and the provision of Airways services; and
 - e) frameworks that incentivise innovation and quality outcomes.
- 2.2. In opening consultation on the Service Framework, Airways wanted to hear industry views on whether there were underlying structural issues that prevent Airways from supplying services in more efficient and cost-effective ways.
- 2.3. In particular, Airways sought views on whether contestable services should be treated differently to statutory monopoly (or base) services. Contestable services are purchased by airports to support their business. The kind of services that will be appropriate, and the terms on which those services are provided, may vary from airport to airport. Airways wanted to explore whether those services should be offered directly to airports on a commercial basis, instead of grouped with base services provided around the country. That approach could enable these services to be provided efficiently, to reflect the regulatory framework, and to set conditions that support allowing competitors to enter the market.
- 2.4. The Service Framework consultation is the first of a three-stage review. The second stage is to consider the commercial terms on which services are provided. This will involve reviewing the Pricing Framework, the Standard Terms and Conditions and other commercial terms, including contractual arrangements, under which Airways supplies its services. The third stage is to reset prices to take effect from 1 July 2022, taking into account any changes to the Pricing Framework and other commercial arrangements.

3. Consultation process

- 3.1. Our consultation opened on 4 May 2021 with the publication on our public website of:
 - a) the Service Framework Review Consultation Paper (**consultation paper**) setting out Airways proposal and questions to submitters,¹ and
 - b) the Proposed Revised Airways Service Framework showing marked up changes should the proposal be adopted by Airways.²
- 3.2. A key component of Airways' proposal was to amend the Service Framework to reclassify ATMS from a base service to a contestable service, to recognise its different status under the regulatory framework, to facilitate interacting with airports as direct customers, and to support the entry of ANS competitors into the New Zealand market in the interests of efficiency and productivity.
- 3.3. Changes to operational services was out of scope.

¹ <https://www.airways.co.nz/assets/Documents/Service-Framework-Consultation-Document.pdf>

² <https://www.airways.co.nz/assets/Documents/Proposed-Revised-Airways-Service-Framework-v3.pdf>

- 3.4. The consultation paper asked submitters the following questions:
- a) What role do you see Airways playing in the recovery of the aviation sector, and how can we support you in that process?
 - b) Do you have any comments on our timeline for consultation, and in particular, on the implementation of the new Service Framework?
 - c) What objectives do you think should guide the development of our Service and Pricing Frameworks?
 - d) Do you agree with our proposal to distinguish between contestable services and statutory monopoly services?
 - e) Do you support the direct charging to airports for Aerodrome Services? Do you agree that if contestable services and statutory monopoly services are distinguished in the way we have proposed, the former should be excluded from the Pricing Framework?
- 3.5. The consultation comprised a six-week submission period followed by a two-week cross-submission period. All submissions and cross-submissions were published on the Airways public website.³
- 3.6. Airways has carefully considered all the submissions received. It has made a decision that best accommodates the feedback received and is in accordance with the consultation principles set out in the consultation paper.

4. Analysis of submissions and cross-submissions

- 4.1. Airways received 14 submissions from:
- a) Air New Zealand
 - b) Auckland International Airport Ltd
 - c) Aviation New Zealand
 - d) Board of Airline Representatives of NZ
 - e) Christchurch International Airport Ltd
 - f) Civil Aviation Authority of New Zealand
 - g) International Air Transport Association
 - h) Kapiti Coast Airport Ltd
 - i) Nigel Fitzhardinge
 - j) New Zealand Air Line Pilots Association
 - k) New Zealand Airports Association (**NZAA**)
 - l) New Zealand Aviation Federation
 - m) Rotorua Regional Airport Limited
 - n) Wellington Airport
- 4.2. Airways received 3 cross-submissions from:
- a) Aviation Marine Engineers Association
 - b) NZAA
 - c) Rotorua Regional Airport Limited

³ <https://www.airways.co.nz/about/performance-and-pricing/ans-services-and-pricing-explained/>

- 4.3. Key themes drawn from the submissions and cross-submissions were:
- a) Submitters supported Airways examining the current commercial structure, expressed sympathy for Airways' position, and recognised that it has a duty under the State-Owned Enterprises Act 1986 (**SOE Act**) to explore ways to provide its services as efficiently and cost-effectively as possible given the current economic environment. They suggested financial support may be required to ensure Airways is able to deliver the services required to support economic recovery from the effects of COVID-19.
 - b) Submitters recognised that the statutory framework distinguishes between ATMS and statutory monopoly services, but argued that although ATMS are contestable in theory, they face obstacles to be contestable in practice.
 - c) Submitters recognised that Airways had no intention to compromise safety. However, some expressed concerns about safety and operational implications if other ANSPs were to enter the market to provide ATMS at particular airports.
 - d) Submitters queried whether separating contestable services from base services would improve competition and efficiency, including where further ANSPs entered the market, without further changes to the regulatory environment to support contestability, and that further information and economic analysis was required to assess the case for change.
 - e) Submitters suggested Airways pause its review in light of both the Civil Aviation Bill which is shortly to be introduced to Parliament and a review of ANS proposed by the Ministry of Transport (**MoT**).

5. Airways' assessment

Overall decision

- 5.1. Airways thanks submitters for their thoughtful and informed submissions. Airways has carefully reviewed and considered the submissions in coming to its decision.
- 5.2. Airways has decided not to proceed with its proposed amendments to the Service Framework to recognise the distinction between contestable and statutory monopoly services at this time. For now, ATMS will remain a base service in the Service Framework.

Contestability and the proposed change to the Service Framework

- 5.3. Airways has a duty under the SOE Act to explore ways to provide its services as efficiently and cost-effectively as possible, and to act as a profitable business. Submitters have recognised that Airways operates under a light-handed regulatory regime and may choose to proceed with its proposal without submitter support. However, Airways has sought through this Service Framework consultation to consider the views of the community within which it operates.
- 5.4. A number of responses suggested that ATMS were not yet contestable in practice, while also expressing concerns about operational and safety concerns if competing ANSPs entered the market to provide ATMS at individual airports.
- 5.5. Under the current statutory arrangements, alternative ANSPs are already entitled to enter the market with the necessary certification. Alternatives including digital service solutions or in-sourcing by airports are a key challenge and opportunity for the industry. Whether further development of the regulatory framework is required to support contestability, or protect operational and safety considerations, is a matter for regulators. Airways will work collaboratively to support these discussions.

- 5.6. Consumers (in particular, airports and airlines) are the most likely parties to invite competition, and should therefore be encouraged to commission their own competitive and economic analyses.
- 5.7. Airways remains of the view that recognition of the different status of contestable and statutory monopoly services can play a role in supporting the entry of other ANSPs, and promoting efficiency, productivity and innovation.
- 5.8. Nevertheless, we appreciate that the wider industry is not yet convinced of the merits of this change. Further analysis of the economic case, development of regulatory frameworks and exploration of what potential competitive entrants may emerge, may be helpful.⁴ In the meantime Airways has decided not to implement the proposed change to the Service Framework.

Other changes to the Service Framework

- 5.9. Airways thanks submitters for their additional suggestions and feedback on a number of specific issues and operational matters.
- 5.10. Attached to this decision paper at Annexure A is the new revised Service Framework. Minor changes have been made to the previous version to bring the document up to date or to correct inaccuracies that were either raised by submitters or identified internally. The changes made have no bearing on the operational aspects of the services Airways provides.

Next steps

- 5.11. Airways will now proceed with the next phase of its review, which is to consider the commercial terms on which its services are supplied.
- 5.12. The current Service Framework records that Airways has four groups of customers: airlines and commercial aircraft operators, general aviation, airports, and the New Zealand Defence Force.⁵ The consequence of the decision above is that Airways will continue with its current approach for the time being, that is generally charging airlines and general aviation users for ATMS provided at aerodromes. Airways will continue to engage airports as direct customers where they are willing, seeking a direct exchange of value for provision of services under negotiated terms. Such engagement with airports and reaching any subsequent agreements is not inconsistent with the current Service Framework.
- 5.13. As part of its consideration of the commercial terms on which it supplies its services, Airways will look at the Pricing Framework and the Standard Terms and Conditions under which Airways provides its services, as well as the arrangements it has with airports. This review will consider the extent to which service level agreements, posted terms or individual contracts are appropriate to govern provision of particular services. Bilateral and industry-wide consultation will inform this process.

⁴ In those circumstances it is not necessary to consider whether the proposed change should be deferred until the proposed MoT review is completed. The timing, scope and outputs of that review are currently uncertain, but Airways will engage and collaborate with regulators and industry as that develops.

⁵ Airways does not agree with the suggestion made by some submitters that airports are not Airways' customers and cannot be required to pay for services under the statutory framework while insisting on the receipt of those services.

Annexure A – Revised Service Framework