



COMMISSION NOTICE CN 2/2008

Interaction between Access to Installation Fees and the Airport Charges Price Cap

This note discusses the interaction between the regulations governing access to installation fees at the airport and the price cap on airport charges at Dublin airport. It makes some suggestions that might provide a more satisfactory regulatory regime for airport users.

The Commission has just approved an application from the DAA to increase its check-in desk fees. A number of groundhandlers made submissions to the Commission prior to this approval. Some of these submissions referred to the price cap governing airport charges at Dublin Airport and suggested that this Commission should reject the application from the DAA on the basis that the DAA recovered the check-in desk costs from its airport charges. The Commission concluded that the Statutory Instrument governing the approval of access to installation fees limited the Commission to making a decision solely on four criteria: were the charges set in a relevant, objective, transparent, and non-discriminatory manner. On this basis, the Commission approved the application.

Nevertheless, the Commission understands the rationale for the concerns some parties have expressed, and believes that the current relationship between fees charged to groundhandlers and the airport charges regime may not be ideal. The remainder of this note elaborates on the possible problem with the current situation, and concludes with a number of suggestions that might better align the two regimes:

- A re-definition by the Department of Transport of 'airport charges' as defined in the Air Transport and Navigation Act 1998 to include airport installations;

- Prior to each determination for the DAA to commit to a price path for all access-to-installation fees to last for the duration of the price-cap period and for this commitment to be used when making commercial revenue forecasts;
- Assume full cost recovery for the relevant class of airport installation when making commercial revenues forecasts; or,
- Revise the price cap formula to allow for an adjustment in the cap when an access to installation fee is introduced or increased.

The Commission seeks the views interested parties on the desirability and feasibility of these various options. It would also welcome any other suggestions or comments parties may have.

ACCESS TO INSTALLATION FEES AND AIRPORT CHARGES

Under Section 14(30) of Statutory Instrument 505/1998 the Commission's analysis shall focus only on whether the proposed access to installation fee has been set in accordance with relevant, objective transparent and non-discriminatory criteria. The analysis does not relate to the Commission's role in setting a price cap on airport charges at Dublin Airport, which is subject to a different set of objectives and procedures.

The Commission has to date not regarded such fees as constituting an airport charge. In the context of litigation with Ryanair, it has been contended by Aer Rianta before the High Court that check-in desk rental charges are not airport charges within the meaning of the Air Transport and Navigation Act 1998. Although that contention did not either arise before the Supreme Court in the later appeal or affect the outcome of the case, it is notable that Mr. Justice Butler in the High Court agreed with the submission of Aer Rianta.¹

The Commission's current view on check-in desks does not preclude a fee levied for access to other airport installations being regarded as a regulated airport charge which would be subject to the prevailing price cap. For instance if an access fee were levied in respect of outgoing baggage infrastructure under the S.I. such a fee could also be regarded as a regulated airport charge as it would relate to the departure of passengers from an airport. If it were to be regarded as an airport charge the DAA would need to have regard to the price cap.

The revenues generated by the DAA are taken into account by the Commission in setting the price cap on airport charges. Forecasts of such revenues form part of the Commission's expectation of commercial revenues which is deducted from the DAA's capital and operating costs to determine the revenues that can be recovered through airport charges. All things being equal the higher are commercial revenues the lower the price cap.

¹ Ryanair Limited v. Aer Rianta cpt., Judicial Review No. 801/2000, Judgment of Mr. Justice Paul Butler delivered the 20th day of February, 2002; [2002] IEHC 37. Judgment of the Supreme Court delivered by Chief Justice Ronan Keane on the 13th day of March 2003; [2003] 2 IR 143, [2003] IESC 19.

The commercial revenues that are taken into account in setting the price cap are expectations of future revenues. In order to incentivise the DAA to make the best use of its assets to the benefit of users the DAA is allowed to keep any commercial revenues in excess of the Commission's forecast. This additional revenue is passed through to users at the next price cap through lower airport charges.

It is reasonable to incentivise the DAA to outperform the Commission's forecasts in markets where it faces competition, e.g. car-parking, commercial letting and food and beverage retailing. However in the provision of check-in desks the DAA is the sole supplier of what could be described as an essential facility. The Commission would therefore like to remedy a situation whereby the DAA can avoid having revenues from access fees to essential airport installations fully incorporated into the regulated airport charge by increasing the access fees after the setting of a price cap, as is the case with this application.

The Commission believes that the most appropriate mechanism for a better alignment between the airport charges price cap and access to installation fees is the price cap itself. The Commission's current suggestions as to how this can be resolved at the time of the next price cap are set out in Box 1 below. ²

² Some of the proposals in Box 1 have been expressed by the Commission to the Department of Transport during bilateral correspondence.

Suggestions on how to protect users from increases in access to installation fees after the setting of a price cap

1. Redefinition of 'Airport charges'

The Department of Transport could consider a redefinition of 'Airport Charges' as defined in the Air Transport and Navigation Act 1998 to include certain essential facilities at such as check-in desks and other airport installations. This would ensure that any increase in access to installation fees would have to have regard to the prevailing price cap.

2. Build future increases in access fees into the commercial revenue assumption

If the DAA were so disposed, it could commit to structured path of access fee increases which could be built into the Commission's commercial revenue assumption when setting the airport charges price cap. Such a policy would ensure that an access fee increase is already taken account of in the prevailing price cap.

3. Assume full cost recovery

In the absence of an agreement regarding a structured path for access fee increases, the Commission could assume the highest possible access fee that would comply with the criteria set out in Section 14(3) of the S.I. in its commercial revenue expectation when setting the price cap. This would likely be an access fee based on full cost recovery. The effect of such a policy would be regardless of when an access fee increase occurs the prevailing price cap will already incorporate this increase.

4. Revise the price cap formula

The Commission could revise its price cap formula to include an extra term that would adjust the airport charges price cap when an access fee is either introduced or increased.

Box 1: Commission proposals to integrate access to installation fees with airport charges price cap