

25th January 2002

Mr Bill Prasifka
Commissioner for Aviation Regulation
Commission for Aviation Regulation
36 Upper Mount Street
Dublin 2

Dear Bill,

Decision of the Appeal Panel

Thank you for your letter of 16th January inviting comments on the Appeal Panel's decision.

We welcome the Panel's decision and also the Commission's recognition that certain corrections need to be made to the determination, which will have the effect of further reducing the regulatory cap and ultimately the level of costs and fares into Ireland. Recent developments clearly indicate how crucial it is to lower air access costs in order to promote passenger growth and tourism. The Commission must take this opportunity to fully address the recommendations of the Panel in order to fulfil its statutory objective of *facilitating the development and operation of cost-effective airports which meet the demands of users*.

Aer Rianta has demonstrated in the 4 months since the determination that it is completely unwilling to address the high level of inefficiency identified in the Commission's determination or to reduce its monopoly level prices. Furthermore, Aer Rianta refused to give any economic justification or basis for its new charging structure but has merely imposed it on the users. Clearly this is because they cannot economically support these prices given that the cap in the determination is artificially inflated due to the various errors identified in the Panel's report and the Commission's letter.

Based alone on the revaluation of the RAB on the figures set forth in the annex to your letter, and the corrected passenger numbers in the Panel's report, the cap should be reduced by at least a further 7%, i.e., in addition to the 5% reduction set forth in the Commission's determination. This would reduce the overall cap stated in the determination from €6.71 to €6.27.

However, this is before implementing the other recommendations in the Panel's decision. Crucially, the Panel recognised the need for the Commission to set more demanding efficiency improvement targets for all three airports in light of the need to reduce the high levels of inefficiency that the Commission identified in its determination but which are not sufficiently reduced by the Commission's proposed efficiency targets. The panel also recognised that the Commission's efficiency targets do not take into account the economies of scale and technical improvements that will arise. Again, the fact that Aer Rianta has taken no actions to reduce

this inefficiency is evidence that the Commission's original targets have had no effect and must therefore be substantially increased.

Other recommendations by the Panel that will significantly reduce the level of the cap are the over-rapid depreciation rate (the Panel suggested a 50-year rate for many of the more capital intensive facilities as opposed to the Commission's highest rate of 20 years) and the closure of the cargo loophole, which would significantly reduce the level of the non-cargo cap.

Furthermore, the Panel recognised the serious level of dissatisfaction expressed by the appellants regarding the lack of consultation by Aer Rianta with its users. The Panel agreed with the appellants' (i.e., airport users) suggestions that the Commission should have an active role in future negotiations between Aer Rianta and its users. We again call on the Commission to actively involve itself in future consultation in order to avoid a further situation in the future whereby the Commission is forced to devalue facilities that users have clearly stated they do not want and which Aer Rianta has gold plated, and to prevent Aer Rianta from going forward with gold plated capex plans that do not meet users' requirements.

Given that it is impossible for us to determine the precise effect that the Panel's recommendations will have on the final level of the cap (i.e., above the additional 7% reduction discussed above) we request a copy of the Commission's detailed recalculation of the cap and a meeting with the Commission prior to February 9th. Given that this is the final opportunity for users to ensure that the determination is correct and accurate (short of requesting a judicial review of the determination) it is necessary to provide the users an opportunity to review the recalculation prior to its implementation.

Yours sincerely,

Jim Callaghan
Head of Regulatory Affairs