



## **Notice on PRM Charges at Dublin Airport**

Commission Notice 1/2009

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## **1. Introduction**

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- 1.1 The Commission for Aviation Regulation (the "Commission") was designated as the National Enforcement Body (NEB) for Regulation (EC) No. 1107/2006 which concerns the rights of disabled persons and persons with reduced mobility when travelling by air (hereafter called "the Regulation") on the 25<sup>th</sup> July 2008 by way of Statutory Instrument 299 of 2008.
- 1.2 The overall objective of the Regulation is to give disabled persons and persons with reduced mobility opportunities for air travel comparable to those of other citizens by providing assistance at airports as well as on board aircraft.
- 1.3 Article 8(2) of the Regulation states that an airport management body can elect to provide the assistance itself or alternatively it can contract out to one or more parties for the supply of assistance.
- 1.4 Article 8(3) of the Regulation states that *"The managing body of an airport, may on a non-discriminatory basis, levy a specific charge on airport users for the purpose of funding this assistance"*.
- 1.5 Article 8(4) then states that the *"..specific charge shall be reasonable, cost-related, transparent and established by the managing body of the airport in cooperation with airport users, through the Airport Users Committee where one exists or any other appropriate entity. It shall be shared among users in proportion to the total number of all passengers that each carries to and from the airport"*.
- 1.6 In early July 2008 the Dublin Airport Authority (the "DAA") engaged 'One Complete Solution Ltd' ("OCS") to supply PRM assistance at Dublin, Cork and Shannon airports. The DAA indicated to the air carriers that the PRM charge at Dublin airport would be €0.33 per passenger throughout the period 26/07/2008 – 31/12/2009.
- 1.7 In September 2008, the DAA requested that the Commission review the process employed by them to contract OCS for the supply PRM assistance at the aforementioned airports. The air carriers, represented by a Sub-Committee of the Airport Operators Committee (the "AOC") reiterated this request later that same month. In so doing the Commission had regard to the criteria set out in Article 8(4) i.e. *"...reasonable, cost-related, transparent and established by the managing body of the airport in cooperation with airport users.."*.
- 1.8 The Commission reviewed the process and then published its views up to that point in Commission Notice 5 of 2008 (hereafter called "CN5/ 2008") and it also requested submissions from interested parties.

## **2. Summary of Events post CN5/ 2008**

- 2.1 The Commission received a total of eleven submissions<sup>1</sup> in response to CN5/ 2008. In their response the AOC stated that they *"...would therefore propose the following: Direct DAA to disclose to the Dublin AOC PRM Sub Committee the full details of its negotiations with all potential PRM service providers: details of the tender process: and full details of the agreed costs and service levels with OCS. The Sub-Committee is willing to sign confidentiality agreements not to disclose details of these costs, as necessary..."*.
- 2.2 In their representation, the DAA suggested *"...holding a number of meetings in the coming weeks, giving an opportunity for the AOC to discuss the issue of service level and therefore costs of the service being provided, with both the DAA and OCS which DAA hopes will result in a positive conclusion for all parties involved. ...It is the hope of the DAA that, subject to confidentiality concerns being sufficiently allayed, OCS would be in a position to disclose some level of costs to a group comprising 3 or 4 members who have all signed Non Disclosure Agreements, to address the issues raised by the Commission and the AOC in this regard in the coming weeks"*.
- 2.3 OCS, in their submission, expressed their concern at the situation at Dublin airport. They stated that the *"..make up of our pricing and cost models is a matter for OCS. It is unheard of in our opinion for a supplier of a public contract to be asked to make commercially sensitive information of this nature widely available.."*.
- 2.4 A meeting between the DAA and the AOC PRM Sub-Committee took place on 6<sup>th</sup> March 2009 which was attended by the Commission in an observer capacity. At this meeting the members of the AOC who were present advised that they wanted full transparency on how the charge was determined. The DAA asked if the AOC PRM Sub-Committee would sign a non disclosure agreement (hereafter called an "NDA") in order to obtain this information. The AOC representatives advised that they would require a mandate from their constituents to do so. They confirmed that the entire AOC was scheduled to meet the following week and pursuant to this meeting a definite response would be forthcoming.
- 2.5 In subsequent correspondence to the DAA<sup>2</sup>, the AOC advised that they *"...were willing to accept a charge of no more than 20% above the original cost prior to OCS taking over the services.."*. They also reiterated their request that *".. the DAA furnish us with a full breakdown of exactly how they arrived at this figure of €0.33 per passenger. Until we have transparency we will be unable to move forward"*. The DAA, in their response advised *"...we are currently awaiting a response from you in relation to the issue of the NDA which is needed if we are to ascertain what information can be provided in line with your request for cost data. Without such an agreement it is unlikely that DAA will be able to provide any further data"*.

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<sup>1</sup> Submissions were received from the following: Aer Lingus, DAA, Mr. David Egan, Dublin Airport AOC, Disabled People of Clare Ltd, Irish Hard of Hearing, Irish Wheelchair Association, People with Disabilities in Ireland, People with Disabilities in Ireland (Clare Network), Ryanair and One Complete Solution Ltd. All submissions can be viewed on the Commission's website: [www.aviationreg.ie](http://www.aviationreg.ie).

<sup>2</sup> Correspondence dated 13<sup>th</sup> March 2009 which was provided to the Commission by the DAA.

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- 2.6 Further exchanges occurred between the DAA, the AOC and the Commission and on the 27<sup>th</sup> May the DAA advised the Commission that it was *".. seeking to provide the AOC with all the information related to the PRM charge that is reasonably necessary to satisfy our obligations under the PRM Regulation 1107/2006. ...We have sent a meeting request to the AOC PRM sub group to discuss the detailed PRM cost data. The information DAA wish to share ...is commercially sensitive, which if released or discussed with potential competitors could jeopardize the competitive position of OCS in any future tender process. In order to discuss the cost information with the AOC PRM sub group, it is necessary for each member who wishes to attend the PRM costs briefing to have signed the attached non disclosure agreement..."*.
- 2.7 The chairman of the AOC PRM Sub-Committee emailed the DAA on the 11<sup>th</sup> June 2009<sup>3</sup> advising that *"This was discussed at the AOC and the entire membership was in agreement that if we can't discuss the issue with our own colleagues and senior management at our own airlines then there is no point proceeding with this NDA. It is not feasible for us to have this information and then be unable to discuss it"*.
- 2.8 The Commission wrote to the AOC PRM Sub-Committee in early July 2009 expressing its disappointment at the position being adopted and highlighting the inconsistency in the AOC approach to the resolution of this issue when compared to the sentiment expressed in their submission pursuant to CN5/2008. The Commission reminded the AOC that when this dispute was originally brought to its attention, the AOC PRM Sub-Committee emphasised its requirement for transparency as to how the charge was established.
- 2.9 Furthermore the Commission reminded the AOC that the DAA had taken steps to address the issues raised by this Office as to the lack of sufficient involvement on costs with users at the relevant time whilst having regard to their own position and to the advices obtained on the release of commercially sensitive data. No communication was received by the Commission from the AOC PRM Sub-Committee in response to this letter.

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<sup>3</sup> A copy of this email was forwarded to the Commission by the DAA at the Commission's request.

### **3. Conclusion**

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- 3.1 In December 2008, the Commission in CN5/ 2008 concluded, on the evidence supplied, that in its view, the €0.33 charge levied by the DAA for the purpose of funding the provision of PRM assistance at Dublin airport was cost-related.

In relation to the criterion of reasonableness, the Commission's view – in the interests of users – and in the context of the definition of reasonableness, was that it was difficult to conclude at that time if this requirement had been met given the lack of adequate engagement by the DAA with users on the matter of cost.

Similarly, but even more particularly, with regard to the concept of transparency, the Commission stated that the absence of sufficient information on the part of users relating to costs led it to conclude at that juncture, that the requirement of transparency did not appear to be satisfied.

- 3.2 Against that background therefore, the Commission promoted a process whereby a sufficient level of information could be provided by the DAA to the AOC and that a satisfactory conclusion for all concerned could be achieved. Having received indications that there was a willingness on both sides to do so, the Commission pointed out that it was open to both the DAA and to the airlines to re-evaluate the rationale behind the charge by reference to the criteria in the Regulation. In that regard, paragraph 2.9 of CN5/ 2008 stated:

"If the Commission found evidence that the DAA had sought to engage the airlines in a co-operative process as part of a consultation but the airlines, through their behaviour, did not behave in a cooperative manner, then the Commission would be unlikely to conclude that the DAA has not complied with the Regulation - or, to put it more simply, genuine cooperation in the setting of PRM charges is a two-way affair."

Given the passage of time and the developments which have taken place, the Commission now wishes to notify interested parties of its conclusions on this matter and to address the obligations set out in Article 8 of the Regulation.

- 3.3 In light of the developments set out in the preceding sections of this Notice, the Commission is of the opinion that the DAA has now made reasonable efforts to address the requirement to establish a charge for PRM services in cooperation with users. It seems however, the AOC took the view that it could not cooperate with the DAA in the manner offered or in line with its own previous undertaking and a period of approximately 6 months has elapsed with no advancement on the issue identified by the Commission as requiring the commitment and cooperation of both sides.
- 3.4 The Commission is mindful of its own obligations as the competent authority for Article 8 to conclude its assessment of compliance by the airport authority on the issues raised.
- 3.5 With regard to reasonableness, the Commission in CN5/ 2008 interpreted this criterion to mean that the charge should be set in a fair and balanced way, commensurate with the assistance to be provided under the Regulation,

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based on a reasonable forecast of relevant passengers, and not such as to finance DAA activities other than those relating to PRM assistance.

Given the subsequent refusal of the AOC PRM Sub-Committee to discuss the costs of PRM assistance on the basis proposed by the DAA, no further user views on this requirement have been furnished to the Commission. The Commission has therefore come to the conclusion that the charge appears to it to comply with the definition set out in CN5 and accordingly the cost is reasonable as required by Article 8.

- 3.6 On transparency, the Commission in CN5/ 2008 interpreted this criterion to mean that the charge should be derived on a basis that would be clear and evident to all, that would bear scrutiny in all its elements and that it could be understood by those who pay the fees and by any other interested parties.

In CN5/ 2008, the Commission stated that the shortcomings in the DAA's consultation with airport users meant that "it appear[ed] to the Commission that the proposed PRM charge does not satisfy the transparency criterion." Given the subsequent refusal of the AOC PRM Sub-Committee to discuss the costs of PRM assistance on the basis proposed by the DAA, no further user views on this requirement have been furnished to the Commission. The Commission has reached the view that the charge is transparent i.e. it is clear and comprehensible to anyone willing to inspect the costs. The DAA detailed the charge and its constituent elements and offered to provide this information to the AOC PRM Sub-Committee subject to the signing of an NDA. The costs therefore in the Commissions view can be regarded as transparent.

- 3.7 Having regard to all the circumstances and the information to hand, the Commission concludes that the €0.33 charge levied at Dublin Airport is in compliance with the provisions contained in Article 8(4) and that the DAA is entitled to collect full payment of all monies owing in respect of this charge.
- 3.8 As the current charge is in respect of the period September 2008 to December 2009, the Commission calls on both sides to engage constructively on the question of costs prior to the setting of any future charge.