



Corporate Head Office
Dublin Airport
County Dublin
Ireland
Telephone: +353 1 812 1212
Fax: + 353 1 812 1213
Telex: 33588 FROP EI
Sita: DUBHGFR
Reservations: +353 1 6097800
Website: www.ryanair.com

Department Fax Numbers:
Finance: 01 8121330
Sales & Marketing: 01 8121331
Flight Operations: 01 8444404
Engineering: 01 8121338
Reservations: 01 6097901

22 June 2010

Mr John Spicer
Commission for Aviation Regulation
3rd Floor Alexandra House
Earlsfort Terrace
Dublin 2
Email: info@aviationreg.ie

By hand and by email

Re: Ryanair's submission in response to CAR's consultation on the decisions of the 2010 Aviation Appeal Panel (CP1/2010).

Dear Mr Spicer,

Please find attached Ryanair's submission in response to Commission Paper 1/2010.

Ryanair is available to meet with the Commission if the Commission wishes to discuss the Panel's decisions and/or any of the points made in our submission or indeed in the submissions of other parties.

We also request an opportunity to provide written comments to the Commission on submissions made by other parties in response to CP1/2010. We believe that it would be fair and reasonable to afford all parties such an opportunity and we suggest that a deadline for these comments be set at 30 June. This would not prevent the Commission from carrying out its review of the Panel's decisions prior to this date, while providing for greater transparency and user engagement in the process.

I look forward to your positive response.

Yours sincerely,

Juliusz Komorek
Director of Legal and Regulatory Affairs

Ryanair Limited

Response to

**Consultation on the Decisions of the 2010 Aviation Appeal Panel
CP1/2010**

22 June 2010

Response on behalf of Ryanair Limited to the Consultation CP1/2010 on the Decisions of the 2010 Aviation Appeal Panel

Introduction

1. Ryanair welcomes the decision of the Aviation Appeal Panel, issued on 1st June 2010, in response to its Appeal to refer two specific matters relating to the CAR's Determination CP4/2009 of December 2009 back to the CAR for reconsideration, namely Differential Pricing and the treatment of T1X Incremental Revenues and Remuneration. Ryanair also welcomes the clear recommendation of the Appeal Panel that *“regulated entity accounts with detailed divisional analysis should be prepared by DAA and that variance analysis be carried out by the Commission for future Determinations.”*
2. The decisions of the Appeal Panel confirm once again that the actions of the DAA regulated monopoly are bad for competition and bad for consumers, echoing the findings of the UK Competition Commission in respect of the BAA London airports.
3. This response also deals with those additional matters referred back as a consequence of the appeals by Aer Lingus and by the DAA.

Treatment by the CAR of Matters Referred Back on Appeal

4. At the outset, Ryanair feels compelled to comment on the CAR's treatment of the appeal process and its willingness to engage with appellants to resolve or clarify its Determinations.
5. The Appeal Panel represents the only avenue which users (or others) have to challenge the technical merits of a Determination. The Appeal Panel is by definition an expert body appointed by the Minister to determine the appeal. The Aviation Regulation Act provides for the Appeal Panel to act as a backstop for genuine regulatory grievances by users. Ryanair does not consider it sufficient or fair for the Commission to simply dismiss the recommendations of the Panel and the concerns of users, as it did last time, without full engagement with the parties and complete transparency of reasoning.
6. Hence, when a matter is referred back on technical grounds, Ryanair does not consider it adequate for the Commission to simply reiterate its past Determination without dealing fully and transparently with issues referred back by the expert Appeal Panel. The lack of information and explanation in CP1/2010 does not facilitate the process and leaves users handicapped by the same lack of information as identified by the Appeal Panel to be the case throughout the regulatory process and to which we refer at the end of this submission.

7. The 2008 Appeal Panel was critical of the CAR's approach to regulating Dublin Airport, referring to this approach as "*passive regulation*".¹ Again in 2010, an expert Appeal Panel has found aspects of the CAR's regulation of DAA flawed, notably in the failure to adopt or incentivize differential pricing and in the treatment of the excessive development of areas for retailing without satisfying itself that revenues are genuinely incremental and that users will benefit from the expenditure incurred by the DAA. Ryanair requires full engagement by the CAR with users in the process for resolving these issues.

Differential Pricing

8. **The Appeal Panel has stated that the CAR should consider how best differential pricing might be initiated.**
9. The issue of differential pricing is inextricably linked with the "*user pays principle*" which has previously been set out as core regulatory principle by the CAR:

"In previous determinations, when considering what capital expenditures to include in the regulated asset base (RAB), an underlying principle that has guided the CAR, consistent with its statutory objective, is that "user pays":

- *Only those users that actually benefit from a service should pay for it; and*
- *The charges users pay should only include the costs of the services that they are currently able to use."*²

The CAR discussed at length in CP1/2007, the desirability of providing users with a choice between terminals offered at differential prices³.

10. Ryanair has long advocated that there was a need for competing terminals at Dublin Airport to meet the distinct requirements of high fares airlines and low fares airlines, reflecting both the differences in facilities and services required by each and in the willingness and ability to pay. This extended as far as offering to build its own low cost Terminal 2, prior to DAA being mandated to build the new terminal under the Aviation Action Plan.

¹ Decision on Ryanair Appeal 2008, paragraph 8.12

² CP1/2007, paragraph 3.2.

³ Ibid, Section 6.

11. In CP6/2007, the CAR made clear that it supported the view of Ryanair, and other users, in respect of the desirability of differential pricing being introduced: *“the Commission agrees with those parties – bmi, Ryanair and Forfás – that support the principle of differential pricing between terminals”* and recognized that *“as might be expected, those airport users who would prefer better facilities favour uniform prices, effectively requiring other users who do not value the improved facilities to pay some of the costs associated with the higher service level.”*⁴ Ryanair made clear that it was willing to pay for facilities that met the reasonable requirements of users but not the over-specified facilities being provided by DAA.
12. The CAR commissioned work from consultants which demonstrated that price differentiation between terminals was possible and becoming increasingly commonplace across Europe. The CAR concluded *“the Commission believes that allowing airlines more discretion over the price and travel experience that they offer passengers can potentially enhance airline competition. Airlines should not be forced to accept more expensive facilities than they desire merely because a rival argues it cannot compete if airport charges differ. Instead, in this scenario the “complaining” airline needs to decide whether its passengers would prefer higher charges and better facilities or the lower charges and lesser facilities offered by its rival(s). The DAA should then seek to provide the appropriate mix of facilities, to the extent that this is practical.”*⁵
13. In the 2005 Determination, the CAR made clear that *“The Commission supported the principle of users being charged different prices for different levels of service. It indicated that the costs of future capital expenditure plans to improve the quality of service in T1 (or T2) would only be included in the RAB if users of the terminal indicated a willingness to pay for the improvements. Where users indicated a preference for lower charges rather than higher service quality, the DAA should seek to meet these requirements.”*⁶ It went on to conclude that *“The Commission reiterates that it is keen for the DAA to tailor services for users at Dublin Airport so that if different users would prefer different mixes of quality and price, these options should be provided where possible. The building of a second terminal will afford the DAA more opportunity to do this. Airlines should be offered non-discriminatory access to both low-cost and high-cost facilities, when both are available. Plans to spend money upgrading a terminal will need to have the support of users. If T1 users indicate a preference for a lower quality of service and lower airport charges, the Commission will expect the DAA’s plans to reflect these preferences.”*⁷

⁴ CP5/2007, page 84.

⁵ Ibid, page 85.

⁶ CP6/2007, page 20.

⁷ Ibid, page 24.

14. It is clear from DAA's actions in wasting capital on over-specified facilities in T1 that it has not acted in a manner consistent with those clear principles. Rather, despite objections to the scale of expenditure in T1 by Ryanair and other users, the DAA has abused its dominant position by failing to offer users differentiated services and differentiated prices, consistent with the reasonable requirements of users.
15. In the present case, DAA is bundling 'basic' access to Dublin Airport (a service in which it is dominant by virtue of its monopoly over airport facilities in the Greater Dublin region), together with the provision of high cost/specification facilities at Dublin Airport to meet the alleged requirements of high fares airlines, including those offering long haul flights, a product that the majority of users objected to and do not wish to use. DAA's expenditure on alleged improvements at Dublin Airport that exceed the reasonable requirements of users, combined with its decision to charge all airlines equally for those facilities (even those who opposed the expenditure on the basis that they neither requested nor required the alleged improvements), represents an abuse of its dominant / monopoly position.
16. Ryanair considers that the DAA's recent expenditure on T2, T1X, Pier D and Area 14 at Dublin Airport, combined with its intention to raise the revenue permitted under the CAR price cap, constitute abusive discriminatory conduct whereby the DAA is imposing a bundled package of (a) airport access and (b) high cost/specification infrastructure on Ryanair. The DAA's abusive conduct is exemplified by the higher airport charges that it requires Ryanair to pay. The increase in airport charges represents an increase in the costs to Ryanair of operating flights in to and out of Dublin Airport. This increase in price will clearly harm the consumers, both those that continue to purchase at the higher price and those that choose no longer to purchase or for whom flights are no longer available due to their withdrawal as no longer being profitable.
17. As well as harming consumers and airport users, including Ryanair, the increase in airport charges resulting from the DAA's abusive conduct is also likely to bring about a distortion of competition in the downstream market for air travel. The specification of airport infrastructure and structure of airport charges chosen by the DAA has the effect of benefiting high fares carriers at the expense of low fares carriers such as Ryanair. By imposing the costs of an unnecessarily highly specified terminal on Ryanair, more than Ryanair reasonably requires given its customer profile, the DAA is undermining Ryanair's ability to promote low fares competition and choice for users in the market which it has chosen to target. By contrast, the higher specification/cost terminal facilities put in place by the DAA align directly with the requirements of high fares airlines.

18. Under the DAA's uniform pricing policy, airlines which do not require such high cost/high specification facilities are disadvantaged by having to bear a substantial share of the associated costs and by having to cross-subsidise the operating costs of rival high fares airlines. Low fare airlines are disadvantaged by facing higher airport charges than would be the case if charges reflected their reasonable requirements, while high fares airlines enjoy a competitive advantage by having the cost of the airport infrastructure that benefits their business subsidised by rivals. Each of these distortions will serve to harm Ryanair, other airlines and their customers that place a lower value on full service airport infrastructure.
19. The requirement to provide users with differentiated terminal services is also a requirement of the Airport Charges Directive⁸ at Article 10.2, whereby "*Member States shall take the necessary measures to allow any airport user wishing to use the tailored services or dedicated terminal or part of a terminal, to have access to these services and terminal or part of a terminal.*" Whilst this Directive has not yet been incorporated into Irish law, the Government is required to ensure compliance with the Directive by 15th March 2011, within the period covered by the Determination.
20. Ryanair reiterated the case for low cost terminal facilities to be provided at Dublin in its submission to the CAR in August 2009. However, although supporting Ryanair's position ("*the Commission supports the principle of differential pricing, allowing users to pay more or less depending on exactly what services they want and the value of those services to them*"), the CAR failed to address the substantive issue in the Determination and referred only to the perceived technical difficulties of setting separate price caps.⁹
21. Hence, Ryanair was compelled to address its requirement for low cost terminal facilities and differentiated charges to the Appeal Panel. The Panel made clear that it supported Ryanair's case:

*"The Panel is of the view that there is considerable merit in Ryanair's submission for differential pricing. Ryanair is a low cost airline. It operates an internet on-line check in system where the passengers print their boarding passes before leaving for the airport. This means that they need neither boarding desks nor check-in kiosks. The end result is that T1 is capable of dealing with significantly more passengers than it was a few years ago. This potentially contrasts with the services likely to be required by longer haul passengers at whom T2 is largely aimed."*¹⁰
22. The Panel went on to say that "*It is precisely because of Dublin Airport's monopoly position that it should strive to cater for different 'airline business models'. DAA's failure thus far to do so has the possible effect that some business models are favoured over others. This in turn implies a potential restriction or distortion of competition in airline markets which the Panel feels should be addressed by the Commission.*"¹¹

⁸ Directive 2009/12/EC.

⁹ CP4/2009, paragraph 10.10.

¹⁰ Decision on Ryanair Appeal, paragraph 8.4.6.

¹¹ Ibid, paragraph 8.4.7.

23. Ryanair welcomes the Appeal Panel's confirmation that the failure of the DAA to introduce differential pricing is a potential distortion of competition. Given the statutory objectives of the Commission "*to facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport*", and "*to protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport*", it is imperative that the CAR addresses and eliminates this potential distortion by imposing differential pricing to ensure that users are provided with economically efficient choice of facilities and prices.
24. The introduction of differential pricing would not undermine the CAR's third statutory objective in relation to the sustainability and financial viability of Dublin Airport.
25. The Appeal Panel made clear that it would expect differential pricing to be in place from the date when Terminal 2 becomes operational¹². T2 is scheduled to become operational before the end of 2010. Ryanair and its passengers are already subsidising the costs of facilities used by high fares airlines since DAA increased its charges to all airport users from 1st May this year.
26. Further, the Panel has confirmed its belief that the DAA will only introduce differential pricing if it is mandated by the Commission, either in the form of different charge caps for each terminal or alternatively by introducing incentives into the price cap to encourage DAA to employ differential pricing. This view finds confirmation in the position taken by the DAA in recent correspondence with Ryanair, whereby the DAA refused to introduce differential pricing or even to constructively engage with Ryanair on the issue of differential pricing.¹³ The Panel suggested that "*a start could be made with a small nominal difference in the price cap between T1 & T2 once T2 is operational which would establish the principle*". Ryanair submits that it is not open to the CAR, in the light of the Appeal Panel's reasoning, to fail to impose differential pricing as an outcome of the present consultation, notwithstanding the identified information requirements to enable it to do so.
27. Ryanair would highlight to the CAR that differential pricing would generate benefits in terms of airport resource allocation. As the CAR has previously identified, if airlines are able to choose between facilities with different combinations of price and quality then the choices that they make will provide a signal to the DAA as to which services and facilities are required by users, and are therefore worth investing in. In the absence of differential pricing, the DAA has to decide on the optimal service level (and cost) without such feedback. Even if the DAA is trying to invest efficiently in users' interests (rather than 'empire building'), it would be better able to make those decisions with empirical information on customers' preferred level of service and cost.
28. We now go onto explain how the CAR can derive the differential prices for the two terminals.

¹² Ibid, paragraph 8.4.9.

¹³ See attached book of correspondence between Ryanair and the DAA.

Assessing the Differential Price

29. To determine appropriate differential prices, it is necessary to consider separately the Operating Cost, Commercial Revenues and Capital Costs associated with:
 - T2,
 - That portion of T1 which will either become redundant or which is intended to be allocated for use by users of T2, for example Pier B.
 - That portion of T1 which will continue to be in use (by users of T1).
 - Common Areas (both landside and airside), where costs will not vary depending on whether the user is a T1 or T2 user..
30. Airport Charges for users of T1 and for users of T2 respectively, would be calculated by adding together the costs of providing required terminal services and facilities to each (i.e. relevant Capital Costs plus relevant operating cost less relevant commercial revenues) and the costs of providing common services and facilities to each.
31. The costs of providing the required terminal services to users of T2 would be the relevant capital and opex costs, less commercial revenues, associated with T2 and with that portion of T1 that will become redundant and/or which is intended to be allocated for use by users of T2 such as Pier B, divided by the number of passengers using those facilities.
32. The costs of providing the required terminal services to users of T1 would be the relevant capital and opex costs, less commercial revenues, associated with that portion of T1 that is allocated to users of T1, divided by the number of passengers using that facility.
33. The costs of providing common services and facilities to both groups of users would be the relevant capital and opex costs, less commercial revenues, associated with common facilities and services, divided by the total number of passengers using the airport.
34. Since each category of user would be paying the appropriate costs for the relevant services and capital being used by each (consistent with the 'user pays' principle), the net effect on DAA profitability would be neutral: DAA would continue to receive the regulated return on its investment.
35. Using the Opex, Commercial Revenues and Capital costs figures for 2011 that have been used by CAR to determine the price cap for 2011 and using the assumptions and basis of apportionment set out at Annex 1 to allocate costs between users of T1, users of T2 and common areas, Ryanair, has calculated differential prices for the period 2011 to 2014 as set out at Table A hereunder;

Table A

Differential Price Cap Calculation for 2011 (€2009) with no adjustment for T2 unitisation

Summary of Building Blocks		Total	T2	T1	Common
		(€m,2009)	(€m,2009)	(€m,2009)	(€m,2009)
Opex	Annex 1	205.31	77.88	58.37	69.06
Commercial Revenues	Annex 2	-122.83	-22.96	-39.45	-60.42
Capital Costs	Annex 3	118.80	30.38	33.16	55.26
Required Revenues		201.29	85.30	52.09	63.91
Price Cap and Differential		Total	T2	T1	Common
Forecast Pax (mppa)		19.89	7.96	11.93	19.89
		(€2009)	(€2009)	(€2009)	(€2009)
Required Revenues per Pax	100.00%	10.12	10.72	4.36	3.21
T2 Revenue per pax	138%	13.93	10.72		3.21
T1 Revenue per Pax	75%	7.58		4.36	3.21
		2011	2012	2013	2014
		(€2009)	(€2009)	(€2009)	(€2009)
Average Price Cap per CAR	100%	10.44	10.23	10.03	9.83
T2 Price Cap	138%	14.37	14.09	13.81	13.53
T1 Price Cap	75%	7.82	7.66	7.51	7.36

36. Notwithstanding the significant differential between the price cap for users of T1 and that for users of T2 that is indicated by the calculations summarised at Table A, no adjustment has been made within those calculations to correct for a significant distortion in prices that arises as a result of T2 capital costs being unitised (with returns deferred), while T1 capital costs are calculated on the basis of straight line depreciation with no deferral of returns.
37. The mismatch in the treatment of capital costs between T1 and T2 distorts the differential price cap calculation and needs to be addressed.
38. Ryanair has sought to eliminate the mismatch by assessing what the capital costs of T2 would be if calculated on the basis of conventional straight line depreciation assuming a 40 year asset life consistent with the treatment of T1 capital costs.
39. Using the Opex and Commercial Revenues that have been arrived at on the bases already set out in Annex 1, and using Capital Costs figures for T2 that have been recalculated on a basis that is identical to that used for the calculation of capital costs for T1 as set out at Annex 2, Ryanair has adjusted differential prices for the period 2011 to 2014 as set out at Table B hereunder;

Table B

Differential Price Cap Calculation for 2011 (€2009) with adjustment for T2 unitisation

Summary of Building Blocks		Total	T2	T1	Common
		(€m,2009)	(€m,2009)	(€m,2009)	(€m,2009)
Opex	Annex 1	205.31	77.88	58.37	69.06
Commercial Revenues	Annex 2	-122.83	-22.96	-39.45	-60.42
Capital Costs	Annex 4	173.64	85.22	33.16	55.26
Required Revenues		256.13	140.13	52.09	63.91
Price Cap and Differential		Total	T1	T2	Common
Forecast Pax (million)		19.89	7.96	11.93	19.89
		(€,2009)	(€,2009)	(€,2009)	(€,2009)
Required Revenues per Pax	100.00%	12.88	17.61	4.36	3.21
T2 Revenue per pax	161.73%	20.83	17.61		3.21
T1 Revenue per pax	58.84%	7.58		4.36	3.21
Average Price Cap per CAR		2011	2012	2013	2014
		(€,2009)	(€,2009)	(€,2009)	(€,2009)
		100%	10.23	10.03	9.83
T2 Price Cap	162%	16.88	16.55	16.22	15.90
T1 Price Cap	59%	6.14	6.02	5.90	5.78

40. On the basis of the assumptions, apportionments and analyses set out above and in the Annexes 1 & 2, the sub-cap for users of T1 should be set at no more than 58% of the price cap allowed by the CAR in CP4/2009 leading to maximum price caps for users of T2 and users of T1 as set out in Table B.
41. In making these calculations, Ryanair has not factored in the implications of other matters referred back by the 2010 Appeal Panel or indeed our ongoing concern at the over-specification and over-spending in relation to the so-called upgrades of T1.

Alternative simplified Differential Price Assessment.

42. For the period 2010 to 2014 the 'T1 only' average price cap was calculated by the CAR as €7.79 per passenger. This is the price cap that would apply to all users if T2 does not become operational. It would appear logical that this should represent the absolute maximum price that users who remain in T1 should pay under a differential pricing regime in order to ensure that those users are not penalised as a result of T1 becoming underutilised following the opening of T2 (in disregard to their objections) and the transfer of some other users to that facility.
43. A further alternative simplified Differential Price Assessment is set out at Annex 5 hereto, for the CAR's consideration and assistance.
44. Ryanair considers that the CAR needs to impose differential pricing and does not consider that DAA will respond to mere incentivisation. If the CAR proposes to rely on incentivisation, at the very least there will need to be a further round of consultation on how such incentivisation would work in practice before any final determination.

45. Ryanair considers that its analysis as set out above demonstrates that the CAR can put itself in a position to calculate a differential price now, and that it should adopt an approach to setting such differential prices in line with the principles set out above.
46. If the CAR determines that it is not in a position to determine differential prices on the basis set out in paragraphs 29 to 41 above, then it should adopt as a ceiling on prices for T1 users, the value which it previously calculated as the relevant cap pending full consultation in an interim review, or follow the alternative methodology presented in Annex 5.

T1X Incremental Revenues and Remuneration

47. **The Appeal Panel has stated that the CAR should carry out an analysis of the extent of incremental revenue attributable to T1X (if any) before allowing the capital expenditure associated with this project into the RAB.**
48. The Panel specifically referred to the “*need to establish the counterfactual position, i.e., what would retail revenues have been in the absence of the investment*”.
49. Ryanair has always contended that the incremental commercial revenues deriving from T1X must be separately identified and analysed, net of any incremental operational costs incurred in operating and managing the additional area. Only when it can be demonstrated that revenues would not have been earned in any pre-existing retail or catering outlet in the absence of T1X can they be considered as incremental revenues. If it is determined that there are no incremental commercial revenues as a result of T1X, then the Opex costs associated with T1X must also be eliminated from the price cap calculation, in order to ensure compliance with the commitment of the Commission that “*the project should be charges neutral*”.¹⁴
50. Ryanair notes that the CAR initially assumed, in the Draft Determination that incremental commercial revenues would be €3.8 million per annum based on the DAA’s submission¹⁵. It never attempted to verify these figures, although noting that on this basis “*the project does not appear to be self financing*” as it was not covering its capital costs. In the final Determination, a figure of €5 million a year incremental revenues was assumed, without any reasoning or justification given other than in order to balance the capital costs. This does not appear consistent with the position that T1X is not self financing.
51. The CAR assumes in the Determination that retail incomes will grow based on fixed elasticities to passenger growth, with profits from direct retail assumed to grow more slowly and outsourced retail more quickly (presumably to reflect a planned shift between the two categories). The CAR then adds £5 million of additional retail and catering income based on an assumption that revenues being earned in T1X are incremental. Within the CAR’s ready reckoner, excluding T1X, retail revenues are projected to decline from €2.62 per passenger in 2010 to €2.58 in 2014 (in 2009 prices). T1X is assumed by the CAR, without any justification or evidence, to add around €0.24 per passenger across the period.

¹⁴ CP6/2007, page 30.

¹⁵ CP3/2009, paragraph 8.16.

52. The DACC highlighted in its response to the Draft Determination¹⁶ that it was incorrect to consider the extent to which T1X revenues are incremental by reference to the revenues earned in 2009, but that the extent to which they are incremental has to be assessed against the level of revenues per passenger earned prior to the closure of Pier C and the diversion of a proportion of passengers away from retail outlets at the Pier C end of the Street. The calculation is not how much retail income is earned from retail outlets in T1X but whether this income would have been earned from other outlets in the absence of T1X and other redevelopment at the Airport resulting in loss of retail and catering spend by passengers. This gives rise to two material considerations:
- are passengers buying additional goods or catering products in T1X over and above those they would have purchased any way – substitution of buying a burger in one outlet rather than another is not incremental;
 - what income has been lost due to closure of outlets at the Pier C end of the street, and other outlets in the vicinity of Pier A, as well as reduced patronage in others due to diversion of passenger flows away from the some outlets.
53. Figures given in the ready reckoner issued by the CAR with the Draft Determination showed that retail incomes per passenger were €2.89 (at 2009 prices) in 2007, prior to the closure of Pier C, falling to €2.70 in 2008, following closure of the pier in late 2007. The CAR gives no explanation as to why it has been willing to accept as its start point in the Determination, a retail revenue per passenger of €2.62 in 2010. Even allowing for the ‘assumed’ incremental revenue from T1X, the retail revenue per passenger never rises above the real figure achieved in 2007 over the period to 2014. This demonstrates clearly, even if the CAR’s assumed €5 million a year is established to be valid, that T1X does not generate incremental retail revenues over and above those which DAA was earning through pre-existing retail space. On this basis, T1X cannot, following the CAR’s own principles, be added to the RAB and, furthermore, the incremental T1X Opex costs must be excluded to ensure the project is cost neutral to users.
54. In summary, Ryanair considers that any commercial revenues being earned in T1X are not incremental by reference to historic levels of retail revenues, prior to development works in T1. Hence, under the CAR’s own criteria, as set out in CP5/2007, the cost of T1X cannot be added to the RAB. This is necessary in order to provide regulatory certainty to users. Furthermore, the retail revenues allowed in the price cap determination must, by definition, include those revenues being earned in T1X, even if the requirement for T1X to enter the RAB have not been met in order to ensure that the impact on users is net neutral as compared to the position prior to the development works in T1. A further adjustment is required to Opex to remove the operational costs associated with T1X in order to ensure that the facility is cost neutral as the CAR promised.

¹⁶ DACC Response to CP3/2009, paragraph 103.

Over-specification of T2 Retail and the consequences for Opex

55. **The Appeal Panel has stated that the CAR should consider how recovery of such overheads (relating to the excessive retail areas provided in T2) could be postponed until they are commercially justified.**
56. Implicit in the Appeal Panel's decision to refer this specific matter back to the CAR is the acknowledgement, consistent with 2008 Appeal Panel decision that T2 has been constructed to a greater scale than is required for the traffic which is planned to use it. Specifically, this has been attributed by the 2010 Appeal Panel to the provision by DAA of a higher level of retail space than is the norm at European airports for this volume of passenger demand. The Appeal Panel notes¹⁷ that this error is common to T1X.
57. The DACC argued, in response to the Draft Determination, that the operating costs of T2 should not be charged to users in full in so far as these related to the excess floor area which DAA has built and as acknowledged by the CAR in setting part of the capital costs into Box 2. Effectively, the Appeal Panel has indicated this to be the correct approach, specifically in relation to the excess retail areas within the terminal.
58. It is clear that, within the CAR's approach to estimating the commercial revenues to be earned in both terminals, no account is taken for any uplift in relation to the additional areas in T2. Hence, if no incremental revenues are assumed in relation to the additional retail areas, DAA should not be allowed to recover any additional operating costs associated with these areas. This highlights an inconsistency in respect of the treatment of T1X and T2, whereby the CAR proposed an approach which simply assumed a level of incremental commercial revenue per passenger from the provision of additional retail space in T1X but made no matching assumption regarding incremental retail revenue from the substantial additional space in T2.
59. Ryanair considers that that CAR faces the same problems in assessing the incremental retail revenue per passenger from this additional space in T2 as it currently faces in T1X. Any assumed increase will need to be verified by reference to the amounts historically earned in T1. As with T1X, there can be no case for including an assumption about the potential for DAA to generate incremental retail revenues on a per passenger basis from this space and using such assumed income to net off against the Opex cost implications of the additional space.

¹⁷ Paragraph 8.5.5.

60. Rather the Opex costs in T2 and in relation to T1X have to be reduced pro-rata to the excess floor areas constructed. Ryanair considers that in both T2 and in T1, this will require adjustment to staff costs in relation to Terminals, Maintenance, Cleaning, Airport Management, Commercial and Retail, and to non-staff costs relating to Repairs and Maintenance Costs, Rents and Rates, Energy Costs, Insurance, Cleaning Contracts & Materials, Fees and Professional Services, Marketing & Promotional Costs. Ryanair is not in a position to estimate by how much each of these Opex headings should be reduced as a consequence of the level of redaction in the reports on Opex which accompanied the Draft Determination and Determination.

PRM Revenues

61. **The Appeal Panel has stated that the CAR should review whether there has been an error resulting in double counting for PRM charges by it being included under both aeronautical revenues and ‘other commercial revenues’.**
62. DAA has previously argued that under the PRM Regulation 1107/2006, the costs associated with providing the PRM service should be passed through to users outside of the price cap. Ryanair, and other airline users, continue to challenge the basis of the PRM cost which DAA imposes at €0.33 per departing passenger and plans to increase to €0.39 per passenger in 2011.
63. In making the Determination, Ryanair notes that the CAR has allowed for the costs of providing the service within Opex at €3.8 million in 2010 rising to €4.4 million in 2014, according to the ready reckoner issued with the Determination. At €0.33 per departing passenger, revenues raised would be €3.22 million in 2010 rising to €3.69 million in 2014. To the extent that DAA seeks to pass through the full costs of providing the service, the PRM charge may increase still further.
64. The total amount allowed by the CAR for other commercial revenues in making the Determination was €5.7 million each year. Given the increase in revenues expected from PRM charges, if the CAR has allowed for this income within the other commercial revenue heading, the implication is that revenues from other sources, (including Executive lounges and VIP services, Taxi permit income, US Customs Border Protection income and Income from waste disposal, utility handling charges, communications and cabling charges and identity badge income) will be falling over the life of the Determination. This is not credible given the increase in provision of Executive lounges and US Border protection facilities as a consequence of T2 opening, coupled with expected passenger growth over the period. It is not reasonable to assume that the expected income from these sources would decline from €2.48 million in 2010 to €1.94 million in 2014, as would be implied if PRM revenues were included in this heading even at the current level, without factoring in DAA’s planned increase in such charges.

65. This would suggest that the CAR did not make include PRM income within other commercial revenues in its calculation of the price cap. PRM income must, therefore, be included within the price cap. To the extent that DAA is seeking to charge for this service outside of the cap, the price cap must be adjusted downwards and the CAR must ensure that mechanisms are in place to control any increase in costs to users so as to ensure that DAA is not able to increase charges and double recover within the regulatory period as has occurred in the past with Access to Installation charges relating to check-in desks and kiosks. Overall, Ryanair considers it preferable that such charges for essential facilities or otherwise unavoidable by airlines should be included within the overall price cap to ensure that efficiency incentives apply.

Treatment of Inflation in the Reconciliation of CIP 2006-9

66. **The Appeal Panel has stated that the Commission should review and consider the effect of its application of deflation of 6.6% for 2009 to the DAA's submitted figures for reconciliation of project outturn costs for the 2006-09 CIP (which had allowed for an estimated inflation figure of 4% in 2009).**
67. Ryanair has reviewed the project outturn costs used by the Commission in its reconciliation of allowed and outturn costs which was set out on an item by item basis in Annex 3 of the Draft Determination CP3/2009, and summarised at paragraph 9.6 of that document. In doing so, Ryanair notes that the purpose of a Regulatory Asset Base is not to ensure that the regulated entity is precisely remunerated for the capital costs it has incurred, whether efficient or not, but to ensure that the regulated entity is remunerated on the efficient costs of facilities required by users, i.e. it is the regulatory value of the assets¹⁸. Fundamentally, it should in part reflect the value users place on those assets and ensure that regulated entity is generating sufficient funds to replace those assets which are valued by users.
68. In response to the Draft Determination, DAA submitted that following an earlier request for information by the Commission, DAA had submitted CAPEX outturn costs for the period 2006 – 09 on a project by project basis, all of which had been converted by DAA to 2006 priced in order to facilitate reconciliation with the 2006 CIP. When converting its outturns costs from nominal to 2006 prices, DAA indicates that it assumed a 4% increase in CPI for 2009.
69. In CP3/2009, the Commission set out its reconciliation of the CAPEX expenditure 2006 – 2009 with the CIP for that period, not in 2006 prices, but in 2009 prices. The DAA claims that, when the Commission was re-inflating the figures from 2006 prices to 2009 prices, it had used the 1% decrease in CPI set out in its draft determination for 2009 rather than the 4% increase that had been assumed by DAA.

¹⁸ http://www.caa.co.uk/docs/5/ergdocs/ccreport_appe.pdf

70. In its submissions in response to CP3/2009, the DAA enclosed a schedule setting out the outturn costs and the original CIP Costs on a project by project basis stating that it was making the submission *“in order to clarify all of the valid project costs for each project in the CIP, DAA has restated its original reconciliation (see schedule at back of this detailed assessment) as follows:*
- *Original CIP submission inflated to 2009 prices using CAR’s proposed indices (Column A)*
 - *DAA project outturn costs (excluding Project Management Costs), inflated to 2009 prices using CAR’s proposed indices, in order to align both calculations (Column B)”*
71. DAA included a “Restated reconciliation of CIP 2006 – 2009” at pages 11 and 12 of Supporting Document IV of its submissions in response to CP3/2009. It is clear from a review of the data set out on this schedule, that the figures that were used by the Commission were, in the main, precisely the same figures as are set out on the DAA document.
72. Whereas users do not have access to data on each individual CIP item (as a result of redactions of information on the DAA’s schedule), it is clear from the analysis set out at Annex 6 to this document that in the cases of 104 Capex projects where users have visibility on outturns, the aggregate outturn stated by the Commission in CP3/2009 amounted to €488.37million (in 2009 draft determination prices) whereas the aggregate outturn required by the DAA for these projects amounted to €487.56million. It is apparent from a review of the schedule that the vast majority of items matched precisely and the difference of €0.81million arose as a result of small differences in 15 of the 104 projects analysed.
73. If the Commission had erred in the manner suggested by the DAA, each of the project outturns (in 2009 prices) would have been expected to be calculated using an incorrect formula and as a consequence, each would differ from the DAA restated figures. The evidence suggests that the Commission did not err when re-inflating the figures submitted by the DAA and that both the “Allowed Capex” and the “Outturn Capex” were correctly expressed in 2009 prices based on the CPI assumptions used by the commission in CP3/2009.
74. Bearing in mind the change in 2009 CPI assumptions between -1% in the Draft Determination and -6.56% in the Final Determination, two possible course of action were open to the Commission when considering the reconciliation of allowed and actual Capex Outturns; (a) the entire reconciliation could be recast applying the revised indices to both the allowed and actual outturn figures on a line by line basis in order to assess the differences, or (b) the Commission could simply apply the change in CPI to the differences which had been calculated in the draft determination. As is evident from the ‘CPI and Control’ section of the Commission’s spreadsheet model, this latter approach is the one adopted by the Commission.

75. In summary, the evidence that is visible to Ryanair suggests that Commission has not made a fundamental mathematical error when converting the DAA's CAPEX allowance and CAPEX outturn costs 2006 – 2009 to 2009 prices. The evidence further suggests that the deflation of -6.56% in 2009 has been correctly incorporated by the Commission into its computations relating to the CAPEX 2006-09 reconciliation. If it is the case that issues arise with respect CAPEX outturns for individual projects where costs have been redacted, Ryanair believes that users must be afforded an opportunity to review and consider those costs fully in advance of any adjustment taking place.

Disallowance of Pier D costs

76. **The Appeal Panel has stated that the Commission should review its disallowance of €15.3 million Pier D over-run costs.**

77. It is clear from CP3/2009¹⁹ that the Commission considered that, within the cost of capital allowance, the DAA received compensation for the risk of cost overruns on capital projects. The substance of DAA's argument, as set out at 8.5.9 of the Appeal Panel's decision on the DAA appeal, is that, notwithstanding the Commission's position, there was no evidence of any specific change to the DAA cost of capital allowance on foot of this decision. Ryanair had made a substantially similar argument to the Appeal Panel regarding the visibility of individual elements or constituents in the cost of capital calculation.

78. The Appeal Panel at 8.9.9 and 8.9.10 of its decision on Ryanair's appeal, with respect to such individual constituent parts of the Cost of capital allowance, stated;

“The difficult task for the Panel is that there are a series of individual calculations involved in the cost of capital. It requires the exercise of judgment on a whole range of detailed issues. It is not, in the Panel's view, appropriate to cherry pick one aspect, even if it is significant component, and seek to vary it without looking at the whole. This is especially so when the Panel is being asked to assess one component in the abstract. In the absence of information that suggests that the Commission's determination on this issue clearly falls outside the reasonable scale of this kind of debt the Panel is not inclined to refer matters back to the commission for review.

Even if such information were available, the issue would then have to be considered in the context of the overall cost of capital estimation, as a less generous view taken by the Commission on one component may be counterbalanced by a more generous view on another component”

¹⁹ Paragraph 9.17.

79. Ryanair contends that Appeal Panel’s response in relation to Ryanair’s argument regarding individual constituents of the cost of capital should be applied equally to the DAA’s similar argument regarding the allowance for risk of overspend within the Commission’s cost of capital allowance. In other words, the risk of cost over-runs on development projects are already captured in the cost of capital allowance as this reflects the general risk attaching to capital development at airports.
80. It is clear that the Pier D allowance for the 2006-09 period, which was determined by the Commission in the 2005 Determination and remained unchanged in the 2007 Interim Review, amounted to €93.4m in 2009 prices. The disallowed expenditure relates to an ‘overspend’. The Commission has explicitly stated that the DAA receives compensation for the risks of overspending within either the contingency allowance or the cost of capital allowance. Since DAA has already been compensated for such risks, any adjustment to the disallowance would amount to a duplication of charges to users and compensation to the DAA. In circumstances where the DAA has been compensated for the risk of cost overruns, it follows that the markets have no reason to react negatively or to view the disallowed cost overruns in a negative light.
81. Whilst the Commission refers to Aer Lingus’s submission in relation to cost over-runs at paragraph 8.18 of the Determination²⁰, there is another important principle of regulatory certainty in relation to the treatment of such cost over-runs where the scope of the project has changed, as is clearly the case here. In order to allow any additional costs, the Commission has to satisfy itself that the additional expenditure has been efficiently incurred and meets the reasonable requirements of users. This principle was set out in CP6/2007²¹ and was evident at the time when the cost of capital allowance was set. In other words, the financial markets would have been aware of the risks attaching to development undertaken by DAA without the agreement of its users.
82. In deciding how much of the additional Pier D expenditure to allow, the Commission stated clearly that it had “*not been convinced that the DAA consulted with users and established that they supported the additional work given its associated costs.*”²² Hence, it is clear that the CAR considered the issues in the round in deciding how much of the cost over-run to allow and what to disallow. Regulatory certainty to users dictates that the CAR was correct in disallowing certain costs in line with its own regulatory principles. This, by definition, cannot give rise to any additional regulatory risk impacting on cost of capital.

Disallowance of Pier D Fit out and TFL costs

83. **The Appeal Panel has stated that the Commission should review its disallowance of Temporary Forward Lounge and Pier D fit out costs.**

²⁰ CP4/2009.

²¹ Page 44.

²² CP4/2009, paragraph 8.18.

84. The DAA argued that the €124.9m referred to by the Commission at 8.20 of the Determination as representing the reported outturn capex amount for Pier D does not include TFL costs incurred of €6.2m and Pier D Fit Out costs incurred of €1.2m. The Commission has indicated that the €124.9m fully accounts for the outturn costs of the TFL and Pier D Fit out projects. The €124.9m figure referred to by the Commission at the Table 9.2 of the Draft Determination²³ which purported to show DAA's breakdown of Pier D outturn costs, as set out in Appendix D to the DAA response to the October 2008 Issues Paper (published on the Commission's website) and that the Commission has netted €7.6m from figures to account for remuneration received by the DAA for its Pier D investment prior to 2006.
85. The DAA's restated reconciliation of Capex outturns 2006-09, set out at Page 11 and 12 of Supporting Document IV of its Submissions in response to the Draft Determination, gives the following information with respect to Pier D Outturn costs for the relevant projects:

Table C

Extracts from DAA submission on CP3/2009 - Supporting Document IV

		DAA Outturn costs Inflated to 09 (Draft) prices using CAR methodology
		€
CIP7.012	Pier D	124.33
CIP7.020	Temporary Forward Lounge	6.49
CIP4.019	Pier D Tenant Fit out Projects	1.41
		<u>132.23</u>
CP3/2009 [9.14]	PierD Capex Remunerated Pre 06	<u>(7.60)</u>
		124.63

86. When the adjustment for remuneration that the DAA had received for the project prior to 2006 in the amount of €7.6m (expressed in 2009 prices²⁴) is deducted from the DAA's aggregate outturn figures for the three projects in the amount of €132.23 (expressed in 2009 Draft prices), it can be seen that the relevant outturn figure is €124.63. This would suggest that outturn figures used by the Commission as set out at Table 9.2 of the Draft Determination in the amount of €124.9 does not exclude CIP7.020 (Temporary Forward Lounge) and CIP4.019 (Pier D Tenant fit-out projects) as has been claimed by the DAA. The above evidence suggests that the outturn expenditures related to the two projects have not been disallowed by the Commission but have been fully taken into account in its reconciliation and analysis. As a consequence, no adjustment is required or should be made.

²³ CP3/2009.

²⁴ CP3/2009, paragraph 9.14.

Regulated Entity Accounts and Accounting Practices

87. Although not matters expressly referred back for immediate reconsideration by the CAR, the Appeal Panel made clear that it strongly recommended that regulated entity accounts with detailed divisional analysis should be prepared by the DAA, and that variance analysis be carried out by the Commission for future determinations. In arriving at its conclusion, the Appeal Panel indicated that;

“A cursory analysis of the regulated entity accounts without a more detailed consideration of the cost allocation processisdifficult to justify”

“the DAA should produce divisional financial accounting information in any way that may be required (retail/regulated/other) including a separate analysis for T1 & T2”

“by merely using the information contained in the regulated entity accounts prepared by the DAA to estimate the return on the RAB the Commission is not doing enough to satisfy itself that there is no cross subsidization between the regulated and commercial activities of the DAA”.

“The absence of detailed accounting information creates suspicion and confusion amongst users and may lead to protracted procedures in finalizing determinations”

88. Ryanair calls on the Commission to act now in order to ensure that adequate and appropriate information is produced, audited and made available throughout the current regulatory period to enable users to consult more fully and properly on any future decisions.
89. It is be crucial that sufficient accurate accounting information be available both to the Commission and to users to enable the profit/loss performance of each division and subdivision of regulated entity to be separately viewed and analysed in order that decisions can be properly grounded and delivered more readily.

ANNEX 1 – Assessment and apportionment of Opex Costs

**Table1
Analysis and Apportionment of 2011 Opex Costs**

	1	2	3	A	B	C	D
	T2 Opex €m,2009	T1 & Common Opex €m,2009	Total Opex €m,2009	T2 €m,2009	T1[R] €m,2009	T1 €m,2009	Common €m,2009
Staff costs							
Dublin Airport							
Airfield Services & Facilities		3.88	3.88				3.88
Terminals	2.62	7.79	10.41	2.62	3.11	4.67	.00
Airport Police Fire Service	5.81	27.96	33.77	5.81	5.81	8.72	13.43
Maintenance	2.92	11.22	14.13	2.92	2.92	4.38	3.92
Cleaning	4.74	9.59	14.33	4.74	3.84	5.75	.00
Airport Management	.82	5.27	6.09	.82	.82	1.23	3.22
Car Parks	.00	2.38	2.38				2.38
Commercial	.00	2.87	2.87				2.87
Retail	3.41	11.48	14.89	3.41	3.41	5.12	2.94
Support Services	.00	1.26	1.26				1.26
Headoffice retail		1.15	1.15				1.15
Head Office Support Services		12.00	12.00				12.00
	20.33	96.85	117.17	20.33	19.91	29.87	47.06
Non-payroll costs							
Repairs and Maintenance Costs	4.33	9.86	14.20	4.33	3.95	5.92	.00
Rents and Rates	4.85	13.48	18.32	4.85	4.85	7.27	1.35
Energy Costs	2.65	5.59	8.23	2.65	2.23	3.35	.00
Technology Operating Costs	1.70	2.09	3.79	1.70		2.09	.00
Insurance	3.90	3.95	7.84	3.90	1.58	2.37	.00
Cleaning Contracts & Materials	1.01	1.98	2.99	1.01	.79	1.19	.00
CUTE Operating Lease Costs	.51	.75	1.25	.51		.75	
Fees and Professional Services	.57	4.32	4.89	.57	.57	.85	2.91
Marketing & Promotional Costs	.14	2.65	2.78	.14	.14	.20	2.31
Aviation Customer Support		.30	.30				.30
Telephone Print and Stationery	.13	.47	.59	.13	.13	.19	.15
Employee Related Overheads	.40	1.86	2.26	.40	.40	.60	.86
Other Overheads (excl PRM)	.30	1.67	1.97	.30	.30	.45	.92
PRM	1.40	2.28	3.67	1.40		2.10	.18
Travel & Subsistence	.05	.22	.27	.05	.05	.08	.09
Car Park Direct Overheads		3.34	3.34				3.34
CAR Costs	.74	2.59	3.33	.74		1.10	1.49
Headoffice Non Staff Costs		8.10	8.10				8.10
	22.66	65.48	88.14	22.66	14.98	28.50	22.00
Total Opex	42.99	162.33	205.31	42.99	34.89	58.37	69.06

Summary of Opex Costs for Diff Price Calculation

	€m,2009	€m,2009	€m,2009	€m,2009	€m,2009
T2 Opex Costs	77.88	42.99	34.9		
T1 Opex Costs	58.37	.00	.00	58.37	.00
Common Areas Opex Costs	69.06	.00	.00	.00	69.06

Opex Costs for Diff Price Cap Calculation

205.31	42.99	34.89	58.37	69.06
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ANNEX 1 – Assessment and apportionment of Opex Costs

- a. Apportionment of total Opex costs between T2, the redundant part of T1, the part of T1 that remains in use and Common Areas requires divisional break out of allowed Opex into each of the separate areas which require the Opex to be incurred as set out on Table 1 overleaf.
- b. Table 1 uses the Opex data for 2011 as set out in the CAR's ready reckoner. Column 1 lists the allowed Opex for T2 and column 2 lists the allowed Opex for Existing Non-T2 facilities. Column 3 totals Columns 1 & 2 to give a view of the total allowed Opex for the regulated entity.
- c. In Columns A, B, C and D, the total allowed Opex for the regulated entity is apportioned to T2, the redundant part of T1, the part of T1 that remains in use and Common Areas, on the basis of an assumption that the per passenger Opex in T1 (in use) should not exceed (and may in reality be lower, with a focus on low fares traffic) what has been allowed for T2 on the basis of an assumption that 40% of traffic will use T2 and 60% will remain in T1. Opex for the redundant part of T1 is assumed to be pro rata to that in the part of T1 that remains in use, assuming that 40% of the capacity of T1 is redundant. Remaining Opex is allocated to Common Areas.

ANNEX 2 - Assessment and Apportionment of Commercial Revenues

- a. Apportionment of total commercial revenues between T2, T1 and Common Areas also requires simple divisional break out into each of the separate areas in which the Commercial Revenues are earned. Table 2 sets out the Total Commercial Revenue data for 2011 as extracted from the CAR's ready reckoner with a simple apportionment of this total between terminals and common areas on the basis of location of revenue source and, for that portion sourced at terminals, between T2, T1 and on the basis of passenger throughput.

Table 2

Analysis and Apportionment of Commercial Revenues

	2011 Total (€m, 2009)	T2 (€m, 2009)	T1 (€m, 2009)	Common (€m, 2009)
Direct retail gross	65.68	26.27	39.41	.00
Cost of sales	-36.12	-14.45	-21.67	.00
Gross profit on direct retail	29.56	11.82	17.73	.00
Concession retail	22.43	8.97	13.46	.00
T1X	5.00		5.00	.00
Car parking	26.45			26.45
Property concessions	16.09			16.09
ATI	1.60	.64	.96	.00
Net property rental	13.79			13.79
Property advertising	3.82	1.53	2.29	.00
Other commercial operations	5.69			5.69
Hangar Capex exclusion off-set	-1.60		.00	-1.60
Total Commercial revenues	122.83	22.96	39.45	60.42
Drivers				
Passengers (million)	19.9	40%	60%	100%

ANNEX 3 Assessment and Apportionment of Capital Costs – without adjustment for unitisation

- a. Table 4 sets out the apportionment of Capital Costs between T2, the redundant part of T1, T1[R] and Common Areas based on the following assumptions
- b. Non T2 Depreciation and return as per the CAR's price cap calculations for 2011 are apportioned 50% to T1 and 50% to Common Areas. In the T1 apportionment 60% is allocated to T1 users and 40% to the redundant part of T1 on the basis that users will not be using these facilities in the period covered by CP4/2009. If traffic in T1 exceeds the current projections, charges will need to be adjusted at the next determination by reducing the share of Capex and Opex attributable to the redundant part of T1 and paid for by users of T2.
- c. T2 Revenues are the incremental revenues set out in the price cap calculators.

Table 3

Analysis and Apportionment of Capital Costs - 2011 - with no adjustment for unitisation						
	Avg Rab	Capital	T2	T1 [R]	T1	Common
	(€m,2009)	Costs	(€m,2009)	(€m,2009)	(€m,2009)	(€m,2009)
Non T2 Avg Rab 2011	795.46					
Depreciation		56.73		11.35	17.02	28.36
Return		53.80		10.76	16.14	26.90
T2 Box 1 Avg RAB 2011	698.58					
Depreciation		.00	.00			
Deferred Revenues/ Capitalised Financing Revenues		8.28	8.28			
Total	1494.0	118.8	8.3	22.1	33.2	55.3
Capital Costs for T2 Users		30.38	8.28	22.10		
Capital Coists re T1 Users		33.16			33.16	
Capital Costs common areas		55.26				55.26
Total Capital Costs		118.80				

ANNEX 4 Assessment and Apportionment of Capital Costs – with unitisation adjustment

- a. Significant differences arise as a result of T2 users having capital costs spread over the life of the building according to usage, while T1 users incur full depreciation costs on facilities used by them on the basis of a simple fixed time apportionment. These need to be addressed. The unitisation of T2 capital costs makes it necessary to consider how, for the purposes of considering differential pricing, the ‘true’ like for like capital costs of T2 and T1 can be easily established.
- b. It is clear from the price cap calculations and from the capital cost table set out above, that absent appropriate adjustment, the T2 capital costs collectible in 2011 would amount to €8.3m, whereas the capital costs collectible from T1 users would amount to €55.3m notwithstanding the significantly higher level of investment in T2 when compared to T1.
- c. One method of eliminating the mismatch in capital costs would be to unitise the capital costs associated with T1. Another, more straightforward method in the short term, would be to estimate what the capital costs of T2 would be on the basis of conventional straight line depreciation assuming a 40 year asset life consistent with the treatment of T1. T2 capital costs are set out on this basis in Table 4.

Table 4

Analysis and apportionment of Capital Costs - 2011 with adjustment for unitisation						
	Avg Rab	Capital Costs	T2	T1 [R]	T1	Common
	(€m,2009)	(€m,2009)	(€m,2009)	(€m,2009)	(€m,2009)	(€m,2009)
Non T2 Avg Rab 2011	795.46					
Depreciation		56.73		11.35	17.02	28.36
Return		53.80		10.76	16.14	26.90
T2 Box 1 Avg RAB 2011	698.58					
Depreciation		15.87	15.87			
Capitalised Financing		38.97	38.97			
Revenues		8.28	8.28			
Total	1494.04	173.64	63.12	22.10	33.16	55.26
Capital Costs for T2 Users		85.22	63.12	22.10		
Capital Coists re T1 Users		33.16			33.16	
Capital Costs common areas		55.26				55.26
Total Capital Costs		173.64				

ANNEX 5 - Alternative Simplified Differential Pricing Assessment

- a. This Annex note sets out an alternative simple estimate of the differential prices which should be charged to T1 and T2 users at Dublin Airport from the assumed opening of the terminal in November 2010, based on the price caps set by the CAR in the Determination CP4/2009.
- b. The calculation is based on the premise that T1 users should not be required to subsidise users of T2 as T1 users will gain no benefit from the opening of T2, due to current levels of excess capacity, and that the prices for users of the two terminals should be set on a consistent, non-discriminatory basis, i.e. users of T1 and T2 should both benefit from the decision taken by the CAR that the recovery by DAA of the costs of T2 should be on a unitised basis per passenger rather than in terms of the annual depreciation charges and a return on the value of the asset.
- c. Price caps have been taken from the Determination. On the basis that DAA will not seek to recover any of the costs associated with T2 before November, the price cap for the last two months of the year has been assumed as the 2010 without T2 cap plus the €2.33 per passenger recoverable from when T2 opens, i.e. €11.26.
- d. The required revenues have been calculated as the price cap multiplied by the CAR's forecast of passenger numbers. The revenues have been apportioned according to the value of assets in the RAB (taken from Table 8.1 of the Determination). The Existing Airport price each year has been calculated as share of revenues due to cover the costs of the Existing Airport divided by the total forecast number of passengers. The Incremental T2 price has been calculated as the share of revenues due to cover the cost of T2 divided by the 40% of total airport passengers projected to use T2 in each year.

€m	2010 (from Nov)	2011	2012	2013	2014	Average from Nov 2010
Determination						
Price Cap with T2	€11.26	€10.44	€10.23	€10.03	€9.83	
Passengers (mppa)	3.3	19.9	20.5	21.3	22.4	
Required Revenues at cap	€36.60	€207.76	€209.72	€213.64	€220.19	
		%				
<i>Total RAB (Table 8.1)</i>	€1,470.10					
Existing Airport Infrastructure	€835.50	56.8%				
T2	€634.60	43.2%				
<i>Apportioned Revenue Requirement</i>						
Existing Airport Required Revenue	€20.80	€118.07	€119.19	€121.42	€125.14	
T2 Required Incremental Revenue	€15.80	€89.68	€90.53	€92.22	€95.05	
Existing Airport Price	€6.40	€5.93	€5.81	€5.70	€5.59	€5.78
T2 Incremental Price (40% of pax)	€12.15	€11.27	€11.04	€10.82	€10.61	€10.97
T2 Total Price (Existing Airport + T2 Increment)	€18.55	€17.20	€16.85	€16.52	€16.19	€16.75

The average per passenger price for T1 users from T2 opening to the end of 2014 is **€5.78**.
The average per passenger price for T2 users from T2 opening to the end of 2014 is **€16.75**.

ANNEX 6

Comparison of CAR and DAA outturn figures both based on CPI assumptions set out in Draft Determination CP3/2009

CIP Code	Description	Outturn	Outturn	Difference
		CAR	DAA	
		CP3/2009	Submission	
		€(Draft 2009)	€(Draft 2009)	€(Draft 2009)
CIP1.001	Additional works to Harristown Car Park	-	-	-
CIP1.002	Car Parking Equipment	3.24	3.24	-
CIP1.003	Convert Site Compound to Staff Car Park	0.65	0.65	-
CIP1.007	Passenger Links (travelator to Atrium)	1.30	1.30	-
CIP1.008	MSCP Upgrade Phase 1	0.76	0.76	-
CIP1.009	Upgde Eastlands to Planning Compliance	-	-	-
CIP1.010	Staff Car Park Relocations	-	-	-
CIP1.011	Upgde Eastlands to Permanene Status	4.76	4.76	-
CIP1.012	3000 Additional Spaces Harristown Ph 1	4.11	4.11	-
CIP1.013	2500 Additional Spaces Harristown Ph 2	2.27	2.27	-
CIP2.006	Car Hire Facilities Eastlands (was Dardistown)	26.05	25.95	(0.10)
CIP2.007	Office Accommodation	0.86	0.86	-
CIP2.010	Refurbish West end Cloghran Hse	0.22	0.22	-
CIP2.011	South Apron Village	4.00	4.00	-
CIP3.005	Bus Park Entrance & Exit Road	2.59	2.59	-
CIP3.012	New Taxi Holding Area	0.32	0.32	-
CIP3.014	Remaining Perimeter Fence	0.43	0.43	-
CIP3.015	External Roads	1.30	1.30	-
CIP3.022	Upgrade Castlemoate House Phase 1	0.22	0.22	-
CIP3.028	Waste Recycling Units	-	-	-
CIP3.032	Temporary Passenger Waiting Area	-	-	-
CIP4.003	Baggage Reclaim Carousels	1.08	1.08	-
CIP4.006	Escalator 6	0.22	0.22	-
CIP4.007	New Chiller BOI Departures Flr.	0.11	0.11	-
CIP4.008	Rapid Intervention Fire Tender (RIFT)	0.54	0.54	-
CIP4.010	Refurbishment A Complex Lifts	0.32	0.32	-
CIP4.011	Refurbish & Replace PT 14&15 Lifts	0.43	0.43	-
CIP4.013	Repl Air-Handling Syst Pier b	0.32	0.32	-
CIP4.015	Replacement 2 Lifts PT17 PT18	0.11	0.11	-
CIP4.016	Replacement of Standby Generator at Main Term	-	-	-
CIP4.021	TBG upgrade	0.43	0.54	0.11
CIP5.001	Landside Restaurant	1.62	1.62	-
CIP5.002	CCTV Commercial	-	-	-
CIP5.005	Landlord Providion to Book Stores	0.11	0.11	-
CIP5.008	Pier A Breakroom	-	-	-
CIP5.009	Pier A New Bar	-	-	-
CIP5.012	Pier B Travel Value Refurbishment	1.62	1.62	-
CIP5.013	Retail Refurbishments	6.16	6.38	0.22
CIP5.015	Holiday Shop Revamp	0.11	0.11	-
CIP5.017	Vehicles Warehouse Centre	-	-	-
CIP5.018	Street Intersection	1.51	1.51	-
CIP5.025	Perfumery Revamp	0.32	0.32	-
CIP5.034	Retail - Local Projects	0.65	0.65	-
CIP5.035	Mezz Catering Dublin	-	-	-
CIP5.036	External Retail Delivery Facility - Excludes Sortati	-	-	-
CIP6.004	Airfield Equipment Upgrade	0.22	0.22	-
CIP6.005	Airfield Lighting Control System	0.76	0.76	-
CIP6.006	Apron Recon Nth Side Pier A	4.54	4.65	0.11
CIP6.009	Engine Run up Area	-	0.22	0.22
CIP6.012	Air Monitoring System	0.22	0.22	-
CIP6.017	Overlay Runway 10/28	0.32	0.32	-
CIP6.018	Parallel Runway Fees	4.76	4.86	0.10
CIP6.025	Repl Centrlne Lights 10/28	-	-	-
CIP6.026	South Apron Infill Phase 5B	10.70	10.70	-
CIP6.028	Refurbishment Taxiway H2	1.41	1.41	-
CIP6.029	Taxiway Centreline Lighting	-	-	-
CIP6.030	Taxiway P2 bypass for Phase 6 - MIKE 2	11.35	11.24	(0.11)
CIP6.032	Upgrade Approach Lights R W 34	-	-	-
	Sub Total	103.02	103.57	0.55

ANNEX 6

Comparison of CAR and DAA outturn figures both based on
CPI assumptions set out in Draft Determination CP3/2009

CIP Code	Description	Outturn	Outturn	Difference
		CAR CP3/2009 €(Draft 2009)	DAA Submission €(Draft 2009)	
	Sub total	103.02	103.57	0.55
CIP6.033	Water Monitoring Equipment	0.54	0.54	-
CIP6.035	Aircraft Stands Phase 6A, B & C (GA)	35.68	35.68	-
CIP6.038	Central Apron Infill Phase 5 D	-	-	-
CIP6.039	North Apron Infill Phase 5 E	17.30	17.30	-
CIP6.040	Met Relocation	0.32	0.32	-
CIP6.041	MV Alteration	3.14	3.14	-
CIP6.043	Remedial Works and Diversion to support 6.035	-	-	-
CIP6.045	Cargo - Shortterm Solutions	-	-	-
CIP6.047	Apron 5A-65.000m2	0.32	0.32	-
CIP6.050	Apron Taxiway 6 Overlay	-	-	-
CIP7.001	Airbridge #2	0.22	0.22	-
CIP7.002	Terminal 1- Extension	53.84	54.70	0.86
CIP7.023	Executive Jet Terminal - West	-	-	-
CIP7.025	Central Immigration - Pier A&D	10.27	7.24	(3.03)
CIP7.028	Temporary Forward Lounge - P2	2.49	2.49	-
CIP7.034	Area 14	16.65	16.65	-
CIP7.035	T2 pair B Connectivity	-	-	-
CIP7.325	CHP Upgrade	1.62	1.73	0.11
CIP8.003	Airport Development	-	-	-
CIP8.004	M&E Maintenance	-	-	-
CIP8.005	Airside Operations	-	-	-
CIP8.006	Airport Police & Security	-	-	-
CIP8.007	Fire	-	-	-
CIP8.008	IT / AITT	55.89	55.89	-
CIP8.010	Programme Fees	17.51	17.72	0.21
CIP8.011	Consultancy Fees - 1 - 250k	0.22	0.22	-
CIP8.012	Consultancy Fees - 2 - 350k	0.32	0.32	-
CIP8.013	Section 48 & 49 Contributions	18.59	19.14	0.55
CIP9.001	Utilities Consultancy Services	0.11	0.11	-
CIP9.006	Gas Distribution System Enhancement	1.62	1.62	-
CIP9.007	Potable Water Storage & Service Pipe Upgrade	5.30	5.30	-
CIP9.008	Potable Water Distribution System Enhancement	1.41	1.41	-
CIP9.009	Non-potable Water Storage	-	-	-
CIP9.010	Fire Hydrant Distribution System	-	-	-
CIP9.011	Sprinklers Distribution System	-	-	-
CIP9.012	Foul Water Drainage System Enhancements	0.76	0.76	-
CIP9.013	Surface Water Drainage System Enhancements	-	-	-
CIP9.014	Surface Water Quality Attenuation System	8.97	9.08	0.11
CIP9.017	Fuel Hydrant System	0.43	0.43	-
CIP9.018	Boiler Hse Replacement / District Heating	5.08	5.08	-
CIP9.019	Cuckoo Culvert	0.22	0.22	-
commoff	Tenant Office Refurbs	1.41	1.51	0.10
CIP16.020	Blast Fence	0.22	0.22	-
		363.47	362.93	(0.54)

Grouped Figures

CIP7.012	Pier D	132.50	124.33	(8.17)
CIP7.020	Temporary Forward Lounge		6.49	6.49
CIP4.019	Pier D Tenant Fit Out Projects		1.41	1.41
		(7.60)	(7.60)	-
	Sub total	124.90	124.63	(0.27)
	Total for available data	488.37	487.56	(0.81)

RYANAIR LIMITED

- and -

DUBLIN AIRPORT AUTHORITY PUBLIC LIMITED COMPANY

BOOK OF INTER PARTES CORRESPONDENCE

**A&L Goodbody
Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1**

Index

A. Correspondence from A&L Goodbody to Dublin Airport Authority

1. Letter dated 29th January 2010 from A&L Goodbody to Declan Collier, Chief Executive of the Dublin Airport Authority.

B. Correspondence between A&L Goodbody and Arthur Cox

2. Letter dated 4th February 2010 from Arthur Cox to A&L Goodbody.
3. Fax dated 5th February 2010 from A&L Goodbody to Arthur Cox.
4. Letter dated 12th February from Arthur Cox to A&L Goodbody.
5. Letter dated 16th February 2010 from A&L Goodbody to Arthur Cox.
6. Letter dated 25th February 2010 from A&L Goodbody to Arthur Cox.
7. Letter dated 26th February 2010 from Arthur Cox to A&L Goodbody.
8. Letter dated 10th March 2010 from A&L Goodbody to Arthur Cox with attached figures re. differential pricing.
9. Letter dated 18th March 2010 from A&L Goodbody to Arthur Cox.
10. Letter dated 19th March 2010 from Arthur Cox to A&L Goodbody.
11. Fax dated 26th March 2010 from A&L Goodbody to Arthur Cox.
12. Letter dated 8th April 2010 from A&L Goodbody to Arthur Cox.
13. Letter dated 29th April 2010 from Arthur Cox to A&L Goodbody.

A&L Goodbody

our ref | JKF 01366965

your ref |

date | 29 January 2010



Declan Collier
Chief Executive
Dublin Airport Authority
Dublin Airport
County Dublin
By post & email: declan.collier@daa.ie

29 JAN 2010

URGENT

Ryanair Limited Abuse of Dominance – airport charges

Dear Sir

We act for Ryanair.

We refer to the recent determination of the Commission for Aviation Regulation ('CAR') (CP4/2009). This determination provides for exorbitant and unjustifiable 40% increases in Dublin Airport's charges from €7.39 per passenger to €10.44 over the coming 12 months. The DAA confirmed at last week's (20 Jan) User Consultation meeting your intention to "price as close as possible to this cap". This extraordinary increase in passenger charges is in marked contrast to current market trends where airport charges all over Europe are falling. A report just published by Airport Council International Europe (you are Vice President of this airport trade body) confirms that in 2009, 94% of 200 European airports have reduced or frozen their airport charges (see attached). These excessive and unjustified cost increases at Dublin will add further to the 13% traffic decline you presided over in 2009. Our client has requested the Minister of Transport to urgently establish an Appeal Panel to review this determination under S.40 of the Aviation Regulation Act, 2001.

The CAR makes it clear in their determination that it is open to the DAA to either charge passengers less than this max price cap and/or to charge passengers on a differential basis for the different facilities they might or might not want to use.

Dublin Belfast London Boston New York

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P.J. Carroll	J.G. Grennan	B. McDermott	K.A. Feeney	C. Rogers	J. Given	J.F. Whelan	B. Walsh	N. Coyne	P.M. Murray
J.H. Hickson	J. Coman	C. Duffy	M. Sherlock	G. O'Toole	D. Widger	D.R. Conlon	A.M. Curran	C. McCourt	

Consultants: J.R. Osborne T.V. O'Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan M.T. Beresford J.A. O'Farrell I.B. Moore

copy



Article 10 of the EU airport charges directive (2009/12) of 11 March, 2009 provides: *“Member States shall take the necessary measures to allow the airport managing body to vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim of providing tailored services or a dedicated terminal or part of a terminal. The level of airport charges may be differentiated according to the quality and scope of such services and their costs or any other objective and transparent justification. Without prejudice to Article 3, airport managing bodies shall remain free to set any such differentiated airport charges.”* Article 3 of the Directive states that *“Member States shall ensure that airport charges do not discriminate among airport users”*.

You are not entitled to exercise your discretion to fix airport charges in a manner which abuses your monopolistic and dominant position in controlling airport charges. For the reasons set out below, to refuse to impose differential airport charges at Dublin airport would clearly be an abuse of dominance contrary to section 5 of the Competition Act, 2002 and article 102 of the Treaty on the Functioning of the European Union (‘TFEU’) as it would:

- discriminate against price sensitive airport users who do not want to use T2;
- force our client and its customers (plus other price sensitive airport users who do not wish to avail of T2’s facilities) to cross-subsidise high fare, price insensitive passengers and airlines using the T2 facility.

A refusal to impose differential pricing would also amount to the imposition of an unfair trading condition on consumers/our client contrary to section 5 of the Competition Act, 2002 and article 102 TFEU.

The prevailing circumstances at Dublin airport clearly call for the development of differentiated airport charges by you. Neither our client nor its customers (nor the majority of passengers travelling through Dublin airport) need, want or will ever use your new T2 facility. These consumers’ principal objective is to travel from Dublin to another destination as cost-efficiently as possible. As you are aware this T2 facility was originally forecast by the DAA to cost between €170m to €200m, but its size and scale was considerably increased by the DAA, so that the final cost of this terminal and its associated facilities amounts to some €1bn. It also uses an IATA level C standard which was identified to you at all times as inappropriate given the user and customer requirements. In fact, as you are aware, this formed part of our client’s planning objection to T2.

It is an inevitable consequence of a regulated monopoly that the regulated body recovers a guaranteed sum on all expenditure incurred. It is therefore in the financial interests of the regulated body (in this instance you) to spend as much as possible. This is commonly known as Regulatory Gaming. In fact the very system in operation has been the subject matter of report by the

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Competition Commission in the UK entitled "BAA Airport Markets Investigation - A report on the supply of airport services by BAA in the UK." As can be seen from this the UK equivalent to the DAA has been found to have effectively been involved in Regulatory Gaming. In the above context the extraordinary inflation of cost and enhancement of size has at all times, it would appear, clearly been driven not by consumer and customer needs (the passenger and airlines respectively) but by a desire to spend as much as possible to generate a regulated return.



Of course if the DAA wishes to have a grossly oversized and over-specified T2 it is entirely a matter for itself provided that in using its monopoly and dominant position it does not force customers and users to avail of a service they do not want and strenuously objected to. There now exists a situation where structurally and logistically differential pricing for differential service levels is available. The cost of Terminal 1 has already been incorporated in the existing RAB. In fact when it was initially adopted into the RAB at the commencement of the regulated system a value was placed thereon which has over the subsequent years been returned by way of payment of a rate of return of capital in addition to the rate calculated for incorporation for the return on capital. There has of course been additional structural expenditure by way of the incorporation of Pier D (again over-specified and unnecessary in the context of the substantial expenditure on the walkway as identified by our client), the demolition of (the 10 year old) Pier C to make way for T2, and T1X (again objected to by our client on the basis that it only added shopping space and no additional check-in facilities). Suffice to say, we respectfully submit that in accordance with its obligations the DAA is obligated to provide for a low cost terminal. It has the facilities so to do in T1 which accords with its obligations under the Directive.

You will of course recognize and accept that this has been consistently Ryanair's position from 2005.

Excessive pricing is an established form of exploitative abuse of dominance in EU law. Article 102(a) TFEU refers to an abuse occurring where a dominant undertaking is "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions." The relevant jurisprudence on excessive pricing clearly demonstrates that a dominant airport operator such as the DAA cannot impose airport charges which are unfair and that is precisely what the DAA is seeking to do in this case. It is also clear from this jurisprudence that the imposition by you of undifferentiated airport charges which forces consumers who wish to use the low cost Terminal 1 to pay charges which are unreasonably high and not cost-related in order to cross-subsidise those who wish to use the new expensive T2 facility would amount to excessive pricing as prohibited by article 102(a) TFEU and section 5 of the Competition Act, 2002.

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Please confirm within seven days from the date of this letter that you will apply differentiated airport charges, which reflect the different cost of different facilities, for consumers using T1 and its associated facilities from those who use T2 and its associated facilities, failing which we have been instructed to issue proceedings against you without further notice. This letter will be used to fix you with the costs of these proceedings.



Yours faithfully

M-8276901-1

File copy

ARTHUR COX

EARLSFORT CENTRE, EARLSFORT TERRACE, DUBLIN 2
TEL +353 1 618 0000 FAX +353 1 618 0618 Dx 27 DUBLIN
mail@arthurcox.com www.arthurcox.com

BELFAST
CAPITAL HOUSE, 3 UPPER QUEEN STREET
BELFAST BT1 6PU
TELEPHONE +44 28 9023 0007
FAX +44 28 9023 3464

LONDON
12 GOUGH SQUARE
LONDON EC4A 3DW
TELEPHONE +44 20 7832 0200
FAX +44 20 7832 0201

NEW YORK
300 PARK AVENUE, 17TH FLOOR
NEW YORK, NY 10022
TELEPHONE +1 212 705 4288
FAX +1 212 572 6499

OUR REFERENCE

YOUR REFERENCE

CMcD/POB/JAOC/LB382230.1
Direct Dial : 618 0460

JFK 01366965

4 February 2010

BY E-MAIL AND POST

FAO: Jack Sheehy
A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

**Re: Our client : Dublin Airport Authority plc ("DAA")
Your client : Ryanair Limited ("Ryanair")**

Dear Sirs

We act for DAA which has consulted us in relation to your letter of 29 January 2010. We are taking our client's instructions in relation to the matters raised in the letter and will respond in early course. In the meantime, we note that your complaints arise out of the recent Determination of the Commission for Aviation Regulation (CP4/2009) and that you have requested the Minister for Transport to establish urgently an Appeal Panel to review the Determination. We further note in this regard that it was also open to your clients, if they had an issue as to the lawfulness of the Determination, to challenge the Determination by way of judicial review.

In light of the Determination and our client's position as a regulated entity, we consider that the allegations of potential abuse of a dominant position set out in your letter are without foundation.

As a result, please note that our client's rights as to whether your client is entitled, or should be permitted, to pursue these issues through the threatened proceedings are strictly reserved.

Yours faithfully


ARTHUR COX

EUGENE McCAGUE DONOCH CROWLEY JOHN S. WALSH MICHAEL MEGHEN WILLIAM JOHNSTON NICHOLAS G. MOORE DECLAN HAYES DAVID O'DONOHUE COLM DUGGAN CARL O'SULLIVAN ISABEL FOLEY JOHN MEADE
CONOR McDONNELL PATRICK MCGOVERN GRAINNE HENNESSY SEAMUS GIVEN COLIN BYRNE CAROLINE DEVLIN CIARAN BOLGER GREGORY GLYNN DAVID FOLEY STEPHEN HEGARTY DECLAN DRISLANE SARAH CUNNIFF
KATHLEEN GARRETT PADRAIG O RIORDAIN ELIZABETH BOTHWELL WILLIAM DAY ANDREW LENNY JOHN MENTON PATRICK O'BRIEN ORLA O'CONNOR BRIAN O'GORMAN MARK SAUNDERS MARK BARR JOHN MATSON
DEBORAH SPENCE KEVIN MURPHY CORMAC KISSANE LIAM CARNEY RAYMOND HURLEY KEVIN LANGFORD EVE MULCONRY SIONA RAFFERTY PHILIP SMITH KENNETH EGAN BRYAN J. STRALIAN CONOR HURLEY ALEX McLEAN
GLENN BUTT NIAV O'HIGGINS FINTAN CLANCY ROB CORBET RACHEL FARRELL SIOBHAN HAYES PEARSE RYAN UEDAN SHANNON DR. THOMAS B. COURTNEY ORLA KEANE KEVIN O'CONNOR AARON BOYLE RACHEL HUSSEY
COLIN KAVANAGH KEVIN LYNCH GARRETT MONAGHAN GEOFF MOORE FIONA MCKEEVER CHRIS McLAUGHLIN MAURA McLAUGHLIN JOANELLE O'CLEIRIGH PAUL ROBINSON RICHARD WILLIS RICHARD AMBERY
TIM KINNEY DEIRDRE BARRETT CIAN BEECHER AILISH FINNERTY LOUISE GALLAGHER CONOR O'DWYER JENNY FISHER

CONSULTANTS: JAMES O'DWYER DANIEL E. O'CONNOR JOHN V. O'DWYER ROMAN WALSH JOHN GLACKIN HUGH O'DONNELL DR. MARY REDMOND DR. YVONNE SCANNELL
DR. ROBERT CLARK

A&L Goodbody

our ref | JKF 01366965

your ref | CMcD/POB

date | 5 February 2010



Arthur Cox
Solicitors
By fax: 6180618

Ryanair Limited
Dublin Airport Authority – Abuse of Dominance

Dear Sirs

We refer to your letter of 4 February.

Our client has 'an issue' with both the lawfulness and fairness of the recent determination by the Commission for Aviation Regulation. Our client has instigated both the Appeal Panel process and judicial review proceedings in this regard.

Our client has an entirely separate issue with your client. Regulated entities such as your client are no more entitled to breach competition laws than any other entity. For the reasons set out in our letter of 29 January, any failure by your client to apply differentiated airport charges would clearly be an abuse of dominance by your client.

We note that you are taking instructions on this issue and we have no difficulty allowing your client a further week to confirm that it will apply differentiated airport charges, failing which we have instructions to issue proceedings.

Finally, we also note that we have not received any response from your client to our second letter of 29 January re the Temporary Boarding Gate issue. We attach another copy of this letter. We will also extend the deadline for response to this letter by one week.

Yours faithfully

A & L GOODBODY

M-8317762-1

Dublin Belfast London Boston New York

S.C. Hamilton	M.F. O'Gorman	P.D. White	E.M. Brady	E.P. Conlon	J.N. Kelly	C. Christle	J.B. Somerville	P.D. Walker	R.M. Moore
R.B. Buckley	C.E. Gill	V.J. Power	P.V. Maher	E. MacNeill	N. O'Sullivan	S. Ó Cróinín	M.F. Barr	A. Roberts	D. Main
P.M. Law	E.M. FitzGerald	L.A. Kennedy	S. O'Riordan	K.P. Allen	M.J. Ward	D.R. Baxter	A.J. Quinn	C. Widger	J. Cahir
S.W. Haughey	B.M. Cotter	S.M. Doggett	M.P. McKenna	E.A. Roberts	A.C. Burke	A. McCarthy	M.L. Stack	M. Dale	M. Traynor
P.J. Carroll	J.G. Grennan	B. McDermott	K.A. Feeney	C. Rogers	J. Given	J.F. Whelan	B. Walsh	N. Coyne	P.M. Murray
J.H. Hickson	J. Coman	C. Duffy	M. Sherlock	G. O'Toole	D. Widger	D.R. Conlon	A.M. Curran	C. McCourt	

Consultants: J.R. Osborne T.V. O'Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan M.T. Beresford J.A. O'Farrell I.B. Moore

ARTHUR COX

EARLSFORT CENTRE, EARLSFORT TERRACE, DUBLIN 2
TEL +353 1 618 0000 FAX +353 1 618 0618 DX 27 DUBLIN
mail@arthurcox.com www.arthurcox.com

BELFAST
CAPITAL HOUSE, 3 UPPER QUEEN STREET
BELFAST BT1 6PU
TELEPHONE +44 28 9023 0007
FAX +44 28 9023 3464

LONDON
12 GOUGH SQUARE
LONDON EC4A 3DW
TELEPHONE +44 20 7832 0200
FAX +44 20 7832 0201

NEW YORK
300 PARK AVENUE, 17TH FLOOR
NEW YORK, NY 10022
TELEPHONE +1 212 705 4288
FAX +1 212 572 6499

OUR REFERENCE

YOUR REFERENCE

CMcD/JAOC/LB383001.1
Direct Dial: 618 0460

JKF01366238

12 February 2010

BY E-MAIL & POST

FAO: Kenan Furlong
A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

Re: Our client - Dublin Airport Authority plc ("DAA")
Your client - Ryanair Limited ("Ryanair")
- Airport Charges

Dear Sirs

We refer to previous correspondence.

Your letter of 29 January 2010 contains various assertions in relation to the level of airport charges recently determined by the Commission for Aviation Regulation ("CAR") in Determination CP4/2009 ("the Determination"). In particular, we note your client's assertion that the non-imposition of "differential airport charges" at Dublin Airport, would constitute an abuse of dominance by our client contrary to Irish and European competition law.

We further note that your client has issued Judicial Review proceedings against CAR (to which the DAA is a Notice Party) challenging the Determination. We have received a copy of those proceedings, which were served on DAA, and note that your client seeks a number of Declarations and Orders as a result of its contentions concerning the treatment of differential pricing in the Determination.

The charging of airport charges by DAA is regulated by CAR. Our client denies that it is in a dominant position but even if it were, in applying airport charges which have been calculated and applied in accordance with the Determination, our client is acting lawfully and it is not abusing any position of dominance as alleged by your client or at all.

We note your client's request that our client confirm that it will apply "differential airport charges" between T1 and T2. You do not, however, set out what your client means by "differential airport charges" or how it maintains such "differential airport charges" should be

properly calculated or applied within the context of the Determination and perhaps it would do so.

We look forward to hearing from you.

Yours faithfully


ARTHUR COX

A&L Goodbody

our ref |JKF 01366965 your ref |CMcD/JAOC/LB383001.1 date |16 February 2010

By fax: 6180618

Arthur Cox
Solicitors
Earlsfort Centre
Earlsfort Terrace
Dublin 2



Ryanair Limited
Dublin Airport Authority – Abuse of Dominance

Dear Sirs

We refer to your letter of 12 February.

Your claim that *“the charging of airport charges by DAA is regulated by CAR”* is not accurate. As you will doubtless be aware the CAR’s only role is to determine the maximum level of revenue per passenger. The actual level of charges imposed on airlines by the DAA monopoly is entirely a matter for the DAA and not the CAR. Your denial that the DAA is in a dominant position is equally bizarre since it is the monopoly provider of airport services.

We note your query as to what our client means by *“differential airport charges”* or how our client maintains such *“differential airport charges”* should be properly calculated or applied within the context of the determination and current Irish and European laws and regulations. We would be happy to meet with you on a without prejudice basis to discuss these issues with you and your client. We would be more than willing to engage on these issues if your client is genuinely interested in understanding how such differential airport charges should be applied within the context of the current determination and legislation.

Please contact us should you wish to arrange such a meeting.

Yours faithfully

A & L GOODBODY

M-8372606-1

Dublin Belfast London Boston New York

S.C. Hamilton	M.F. O’Gorman	P.D. White	E.M. Brady	E.P. Conlon	J.N. Kelly	C. Christle	J.B. Somerville	P.D. Walker	R.M. Moore
R.B. Buckley	C.E. Gill	V.J. Power	P.V. Maher	E. MacNeill	N. O’Sullivan	Sj Ó Cróinín	M.F. Barr	A. Roberts	D. Main
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Consultants: J.R. Osborne T.V. O’Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan M.T. Beresford J.A. O’Farrell I.B. Moore

A&L Goodbody

our ref IJKF 01366965 your ref ICMCD/JAOC/LB383001.1 date 25 February 2010

By fax: 6180618

Arthur Cox
Solicitors
Earlsfort Centre
Earlsfort Terrace
Dublin 2



Ryanair Limited
Dublin Airport Authority – Abuse of Dominance

Dear Sirs

We refer to our letter of 16 February where we offered a without prejudice meeting to discuss your client's queries re how differential airport charges should be properly calculated or applied within the context of the determination (CP4/2009) and current Irish and European law.

It is extraordinary that you have not yet responded to either our letter or our offer. The offer of a meeting with your clients will be withdrawn if you do not respond positively before the weekend.

Yours faithfully

A 2 L 000200Y

M-8414392-1

Dublin Belfast London Boston New York

S.C. Hamilton	M.F. O'Gorman	P.D. White	E.M. Brady	E.P. Conlon	J.N. Kelly	C. Christle	J.B. Somerville	P.D. Walker	R.M. Moore
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ARTHUR COX

EARLSFORT CENTRE, EARLSFORT TERRACE, DUBLIN 2
TEL +353 1 618 0000 FAX +353 1 618 0618 DX 27 DUBLIN
mail@arthurcox.com www.arthurcox.com

BELFAST
CAPITAL HOUSE, 3 UPPER QUEEN STREET
BELFAST BT1 6PU
TELEPHONE +44 28 9023 0007
FAX +44 28 9023 3464

LONDON
12 GOUGH SQUARE
LONDON EC4A 3DW
TELEPHONE +44 20 7832 0200
FAX +44 20 7832 0201

NEW YORK
300 PARK AVENUE, 17TH FLOOR
NEW YORK, NY 10022
TELEPHONE +1 212 705 4288
FAX +1 212 572 6499

OUR REFERENCE

YOUR REFERENCE

CMcD/JAOC/LB384470.1
Direct Dial: 618 0460

JKF01366238

26 February 2010

BY EMAIL & POST

FAO: *Kenan Furlong*
A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

Re: **Ryanair Limited**
Dublin Airport Authority plc – Abuse of dominance

Dear Sirs

We refer to your letters of 29 January 2010, 16 February 2010 and 25 February 2010.

On 29 January 2010 you wrote a letter on behalf of your client making serious allegations of an abuse of a dominant position against DAA. Those allegations are denied.

At the end of that letter you asked for confirmation from our client that it would

“apply differentiated airport charges, which reflect the cost of different facilities, for consumers using T1 and its associated facilities from those who use T2 and its associated facilities.”

In the absence of such confirmation you stated that you had instructions to issue proceedings without further notice.

We take it that you would not have written your letter of 29 January 2010 threatening proceedings without further notice if you and/or your client were not in a position to set out exactly the basis of the claim and what was meant by the confirmation being sought. We have asked you for this information and it has not been forthcoming. You must be in a position to provide the information requested and we would ask again that you respond fully to our letter.

Our client is prepared to consider meeting with your client but our client requires that you first provide the information requested in our letter of 12 February 2010. We do not believe that it is appropriate that your client would only reveal the basis of its claim during a “without prejudice” meeting.

EUGENE McCAGUE DONOGH CROWLEY JOHN S. WALSH MICHAEL MEGHLEN WILLIAM JOHNSTON NICHOLAS G. MOORE DECLAN HAYES DAVID O'DONOHUE COLM DUGGAN CARL O'SULLIVAN ISABEL FOLEY JOHN MEADE
CONOR McDONNELL PATRICK MCGOVERN GRAINNE HENNESSY SEAMUS GIVEN COLIN BYRNE CAROLINE DEVLIN CIARAN BOLGER GREGORY GLYNN DAVID FOLEY STEPHEN HEGARTY DECLAN DRISLANE SARAH CUNNIFF
KATHLEEN GARRETT PADRAIG O RIORDAIN ELIZABETH BOTHWELL WILLIAM DAY ANDREW LENNY JOHN MENTON PATRICK O'BRIEN ORLA O'CONNOR BRIAN O'GORMAN MARK SAUNDERS MARK BARR JOHN MATSON
DEBORAH SPENCE KEVIN MURPHY CORMAC KISSANE LIAM CARNEY RAYMOND HURLEY KEVIN LANGFORD EVE MULCONRY SIONA RAFFERTY PHILIP SMITH KENNETH EGAN BRYAN J. STRAHAN CONOR HURLEY ALEX McLEAN
GLENN BUTT NIAV O'HIGGINS FINTAN CLANCY ROB CORBET RACHEL FARRELL SIOBHAN HAYES PEARSE RYAN ULIAN SHANNON DR. THOMAS B. COURTNEY ORLA KEANE KEVIN O'CONNOR AARON BOYLE RACHEL HUSSEY
COLIN KAVANAGH KEVIN LYNCH GARRETT MONAGHAN GEOFF MOORE FIONA MCKEEVER CHRIS McLAUGHLIN MAURA McLAUGHLIN JOANELLE O'CLEIRIGH PAUL ROBINSON RICHARD WILLIS RICHARD AMBERY
TIM KINNEY DEIRDRE BARRETT CLAN BRECHER AILISH FINNERTY LOUISE GALLAGHER CONOR O'DWYER JENNY FISHER

CONSULTANTS: JAMES O'DWYER DANIEL E. O'CONNOR JOHN V. O'DWYER RONAN WALSH JOHN GLACKIN HUGH O'DONNELL DR. MARY REDMOND DR. YVONNE SCANNELL
DR. ROBERT CLARK

We look forward to hearing from you.

Yours faithfully


ARTHUR COX

A&L Goodbody

our ref |JKF 01366965 your ref |CMcD/JAOC/LB383001.1 date |10 March, 2010

By fax: 6180618

Arthur Cox
Solicitors
Earlsfort Centre
Earlsfort Terrace
Dublin 2



Ryanair Limited
Dublin Airport Authority – Abuse of Dominance

Dear Sirs

We refer to your letter of 26 February in which you make it a precondition to any meeting between Ryanair and the DAA that Ryanair set out its position in relation to differential pricing.

We have discussed this matter with Ryanair who have confirmed that they are prepared to furnish your clients with the information requested without prejudice to their right to make further argument in relation to their entitlements and in order to satisfy your request. This information is attached.

Our clients are furnishing this information on the understanding that the proposed meeting and discussion between our respective clients now takes place without any further delay. It is not being furnished for the purposes of your client embarking upon a trail of correspondence or inquiry or request and counter request. If your clients again refuse to proceed to a meeting with what is the largest customer at Dublin Airport and what has been a recurring theme in relation to excessive charges, then so be it. Ryanair has consistently pointed out the excessive size and expenditure on Terminal 2, the inevitability of the over-specification, over-cost and overspend, and the DAA's reliance upon unsustainable and unjustified traffic projections. The assertions of Ryanair have in the main proved to be accurate and correct in relation to how traffic need and requirement has unfolded.

Ryanair, as Dublin's largest low cost carrier, has always required and requested low cost facilities. This was reflected in Ryanair's move to the temporary forward lounge area (TFL), despite the failure of the DAA to provide a low cost charge to reflect the lower cost and inferior nature of these facilities. As you will be aware, the DAA has an obligation to meet the reasonable requirements for airport users and is not entitled to abuse its dominant position by failing to provide differential pricing in accordance with competition law and the EU airport charges directive (2009/12) of 11 March, 2009. We trust that when this suggested meeting occurs there will be meaningful engagement by your clients with Ryanair.

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Consultants: J.R. Osborne T.V. O'Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan M.T. Beresford J.A. O'Farrell I.B. Moore

However should further correspondence emanate seeking to impose further preconditions or conditionality on the meeting, then we can confirm that we will not waste any further time with this correspondence and will take the appropriate action. Please now confirm that your clients will proceed with the meeting to discuss the issue of differential pricing without further delay.



Yours faithfully

A&L GOODRDAY

M-8477687-2

Note on Differential Pricing

This note sets out an estimate of the differential prices which should be charged to T1 and T2 users at Dublin Airport from the assumed opening of the terminal in November 2010, based on the price caps set by the CAR in the Determination CP4/2009.

The calculation is based on the premise that T1 users should not be required to subsidise users of T2 as T1 users will gain no benefit from the opening of T2, due to current levels of excess terminal capacity in T1, and that the prices for users of the two terminals should be set on a consistent, non-discriminatory basis, i.e. users of T1 and T2 should both benefit from the decision taken by the CAR that the recovery by DAA of the costs of T2 should be on a unitised basis per passenger rather than in terms of the annual depreciation charges and a return on the value of the asset.

Price caps have been taken from the Determination. On the basis that DAA will not seek to recover any of the costs associated with T2 before November, the price cap for the last two months of the year has been assumed as the 2010 without T2 cap plus the £2.33 per passenger recoverable from when T2 opens, i.e. €11.26.

The required revenues have been calculated as the price cap multiplied by the CAR's forecast of passenger numbers. The revenues have been apportioned according to the value of assets in the RAB (taken from Table 8.1 of the Determination). The Existing Airport price each year has been calculated as share of revenues due to cover the costs of the Existing Airport divided by the total forecast number of passengers. The Incremental T2 price has been calculated as the share of revenues due to cover the cost of T2 divided by the 40% of total airport passengers projected to use T2 in each year.

€m	2010 (from Nov)	2011	2012	2013	2014	Average from Nov 2010
Determination						
Price Cap with T2	€11.26	€10.44	€10.23	€10.03	€9.83	
Passengers (mppa)	3.3	19.9	20.5	21.3	22.4	
Required Revenues at cap	€36.60	€207.76	€209.72	€213.64	€220.19	
		%				
<i>Total RAB (Table 8.1)</i>	€1,470.10					
Existing Airport Infrastructure	€835.50	56.8%				
T2	€634.60	43.2%				
<i>Apportioned Revenue Requirement</i>						
Existing Airport Required Revenue	€20.80	€118.07	€119.19	€121.42	€125.14	
T2 Required Incremental Revenue	€15.80	€89.68	€90.53	€92.22	€95.05	
Existing Airport Price	€6.40	€5.93	€5.81	€5.70	€5.59	€5.78
T2 Incremental Price (40% of pax)	€12.15	€11.27	€11.04	€10.82	€10.61	€10.97
T2 Total Price (Existing Airport + T2 Increment)	€18.55	€17.20	€16.85	€16.52	€16.19	€16.75

The average per passenger price for T1 users from T2 opening to the end of 2014 is €5.78.
The average per passenger price for T2 users from T2 opening to the end of 2014 is €16.75.

A&L Goodbody

our ref |JKF 01366965 your ref |CMcD/JAOC/LB383001.1 date |18 March, 2010

By fax: 6180618

Arthur Cox
Solicitors
Earlsfort Centre
Earlsfort Terrace
Dublin 2



Ryanair Limited
Dublin Airport Authority – Abuse of Dominance

Dear Sirs

We refer to our letter of 10 March to which we have received no reply.

Please confirm by return that your clients will proceed with the meeting to discuss the issue of differential pricing. Please also suggest suitable times and a venue for this meeting.

Yours faithfully

A & L GOODBODY

M-8477687-3

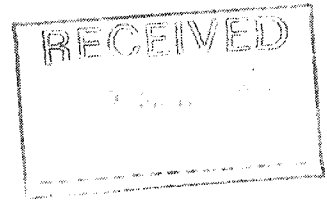
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ARTHUR COX

EARLSFORT CENTRE, EARLSFORT TERRACE, DUBLIN 2
TEL +353 1 618 0000 FAX +353 1 618 0618 DX 27 DUBLIN
mail@arthurcox.com www.arthurcox.com



BELFAST
CAPITAL HOUSE, 3 UPPER QUEEN STREET
BELFAST BT1 6PU
TELEPHONE +44 28 9023 0007
FAX +44 28 9023 3464

LONDON
12 GOUGH SQUARE
LONDON EC4A 3DW
TELEPHONE +44 20 7832 0200
FAX +44 20 7832 0201

NEW YORK
300 PARK AVENUE, 17TH FLOOR
NEW YORK, NY 10022
TELEPHONE +1 212 705 4288
FAX +1 212 572 6499

OUR REFERENCE

YOUR REFERENCE

CMcD/JAOC/LB386037.1
Direct Dial : 618 0460

JFK 01366965

19 March 2010

BY E-MAIL AND POST

FAO: Kenan Furlong
A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

**Re: Our client : Dublin Airport Authority plc ("DAA")
Your client : Ryanair Limited ("Ryanair")
Abuse of Dominance Claim**

Dear Sirs

We refer to your letters of 10 and 18 March 2010 and the proposed meeting with your client to discuss the issue of differential pricing.

We are considering the matters raised with our client. We note that differential pricing is also an issue in your client's judicial review application which is currently before the Commercial Court. We will revert in relation to your correspondence in early course.

Yours faithfully

Arthur Cox
ARTHUR COX

A&L Goodbody

our ref |JKF 01366965 your ref |CMcD/JAOC/LB383001.1 date | 26 March, 2010



By fax: 6180618

Arthur Cox
Solicitors
Earlsfort Centre
Earlsfort Terrace
Dublin 2

Ryanair Limited
Dublin Airport Authority – Abuse of Dominance

Dear Sirs

We refer to your letter of 19 March 2010 and note you were to consider the matter with your client.

Five weeks have now passed since our client's initial offer of a meeting to discuss the issue of differential pricing was made on 16 February 2010. Our clients are anxious to hear from you as a matter of urgency confirming that your clients will proceed with this meeting. Please also suggest suitable times and a venue for this meeting.

Yours faithfully

A&L Goodbody

M-8562068-1

Dublin Belfast London Boston New York

S.C. Hamilton	M.F. O'Gorman	P.D. White	E.M. Brady	E.P. Conlon	J.N. Kelly	C. Christle	J.B. Somerville	P.D. Walker	R.M. Moore
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Consultants: J.R. Osborne T.V. O'Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan M.T. Beresford J.A. O'Farrell I.B. Moore

A&L Goodbody

our ref |JKF 01366965 your ref |CMcD/JAOC/LB383001.1 date | 8 April, 2010



Arthur Cox
Solicitors
Earlsfort Centre
Earlsfort Terrace
Dublin 2
By email & dx

Ryanair Limited Dublin Airport Authority – Abuse of Dominance

Dear Sirs

We refer to our letter of 26 March.

Our client's initial offer of a meeting to discuss the issue of differential pricing at Dublin Airport was made (in response to your 12 February request for further clarity on this issue) on 16 February 2010. We have sent 4 separate reminders to you on this offer since (25 February, 10 March, 18 March and 26 March). Your client has now had over seven weeks to take up this offer of a meeting but has failed to do so. Our client has therefore instructed us to proceed with its abuse of dominance action against your client without further notice to you.

Yours faithfully

A & L GOODBODY

M-8614804-2

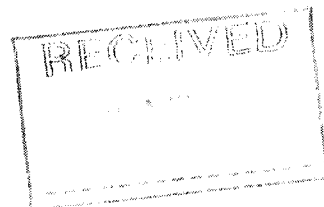
Dublin Belfast London Boston New York

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Consultants: J.R. Osborne T.V. O'Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan M.T. Beresford J.A. O'Farrell I.B. Moore

ARTHUR COX

EARLSFORT CENTRE, EARLSFORT TERRACE, DUBLIN 2
TEL +353 1 618 0000 FAX +353 1 618 0618 DX 27 DUBLIN
mail@arthurcox.com www.arthurcox.com



BELFAST
CAPITAL HOUSE, 3 UPPER QUEEN STREET
BELFAST BT1 6PU
TELEPHONE +44 28 9023 0007
FAX +44 28 9023 3464

LONDON
12 GOUGH SQUARE
LONDON EC4A 3DW
TELEPHONE +44 20 7832 0200
FAX +44 20 7832 0201

NEW YORK
300 PARK AVENUE, 17TH FLOOR
NEW YORK, NY 10022
TELEPHONE +1 212 705 4288
FAX +1 212 572 6499

OUR REFERENCE

YOUR REFERENCE

CMcD/JAOC/NB
Direct Dial: 618 0460

JFK 01366965

29 April 2010

BY E-MAIL AND POST

FAO: Kenan Furlong
A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

**Re: Our client : Dublin Airport Authority plc ("DAA")
Your client : Ryanair Limited ("Ryanair")
Abuse of Dominance Claim**

Dear Sirs

We refer to previous correspondence in relation to the above, in particular your letters of 29 January, 10 March and 8 April 2010.

DAA rejects your client's contention that undifferentiated airport charges for T1 and T2 could or does amount to an abuse of a dominant position. Even if DAA had a dominant position on a relevant market, which is denied, it is DAA's position that its airport charges are compliant with the competition rules, including section 5 of the Competition Act and Article 102 TFEU and, although the transposition deadline has not yet expired, the provisions of Directive No. 2009/12 of 11 March 2009.

It appears from your letter of 10 March that Ryanair's claim of an abuse of dominance, (which it maintains arises out of the undifferentiated charges for services provided in T1 and T2), is another manifestation of your client's well documented and previously aired campaign concerning the supposedly "excessive size" of T2 and over-specification. We note that the appropriate size, specification and cost of T2 are all matters which, as your client is well aware, have been subject to extensive public debate and regulatory scrutiny and reflect Government policy decisions. They have also been the subject of unsuccessful legal challenges by Ryanair. In this regard we note that Ryanair have alleged in proceedings (High Court 2010 NO. 107JR) that the failure to introduce differential pricing is a ground for judicial review of Determination CP4/2009 of the CAR. A decision of the High Court as to whether Ryanair will be granted leave to bring judicial review proceedings is awaited. We understand Ryanair has also raised the absence of differential pricing at Dublin Airport as part of its current appeal of the Determination to the Appeal Panel.

EUGENE McCAGUE DONOCH CROWLEY JOHN S. WALSH MICHAEL MEGHIN WILLIAM JOHNSTON NICHOLAS G. MOORE DECLAN HAYES DAVID O'DONOHUE COLM DUGGAN CARL O'SULLIVAN ISABEL FOLEY JOHN MEADE CONOR McDONNELL PATRICK MCGOVERN GRAINNE HENNESSY SEAMUS GIVEN COLIN BYRNE CAROLINE DEVLIN CIARÁN BOLGER GREGORY GLYNN DAVID FOLEY STEPHEN HEGARTY DECLAN DRISLANE SARAH CUNNIFF KATHLEEN GARRETT PÁDRAIG Ó RIORDÁIN ELIZABETH BOTHWELL WILLIAM DAY ANDREW LENNY JOHN MENTON PATRICK O'BRIEN ORLA O'CONNOR BRIAN O'GORMAN MARK SAUNDERS MARK BARR JOHN MATSON DEBORAH SPENCE KEVIN MURPHY CORMAC KISSANE LIAM CARNHEY RAYMOND HURLEY KEVIN LANGFORD EVE MULCONRY PHILIP SMITH KENNETH EGAN BRYAN J. STRAHAN CONOR HURLEY ALEX McLEAN GLENN BUTT NIAV O'HIGGINS FINTAN CLANCY ROB CORBET RACHEL FARRELL SIOBHÁN HAYES PEARSE RYAN ULIAN SHANNON DR. THOMAS B. COURTNEY ORLA KEANE AARON BOYLE RACHEL HUSSEY COLIN KAVANAGH KEVIN LYNCH GARRETT MONAGHAN GEOFF MOORE FIONA MCKEVEY CHRIS McLAUGHLIN MAURA McLAUGHLIN JOANELLE O'CLEIRIGH PAUL ROBINSON RICHARD WILLIS TIM KINNEY DEIRDRE BARRETT CIAN BEECHER AILISH FINNERTY LOUISE GALLAGHER CONOR O'DWYER JENNY FISHER ROBERT CAIN BRENDAN COONEY ALAN HEUSTON CONNOR MANNING GARY McSHARRY KEITH SMITH

CONSULTANTS: JAMES O'DWYER DANIEL E. O'CONNOR JOHN V. O'DWYER RONAN WALSH JOHN GLACKIN DR. MARY REDMOND DR. YVONNE SCANNELL
DR. ROBERT CLARK

Our client is not obliged under the competition rules to provide a low cost terminal. Also where T1 and T2 are designed to the same level of service standard, T1 could not in any way be considered to be a low cost terminal where access to facilities should be priced below T2's. Similarly, we note that in the circumstances where T1 and T2 have been designed to provide same level of service to users, Directive 2009/12/EC on Airport Charges does not, contrary to what you claim, require that differentiated charges are applied in the two terminals.

For a matter as complex as differentiated charges, our client considers that Ryanair's purported methodology for calculating differentiated prices between T1 and T2 users at Dublin airport as set out in your letter of 10 March 2010 and the "*Note on Differential Pricing*" is wholly inadequate. In particular Ryanair has failed to present any form of credible cost assessment or economic analysis to justify the introduction of a proposed differential of €10.97 between T1 and T2 users – with T2 users paying more than three times the charge paid by T1 users. Your client's 'back of an envelope' calculations have no proper economic foundation.

It is DAA's position that the undifferentiated airport charges now published by it for the period of 2010-2011 are entirely consistent with Determination CP4/2009 and the competition rules and they do not amount to any abuse of any position of dominance as alleged by your client or at all.

Having regard to all the circumstances, our client does not believe that there is any basis for meaningful engagement with Ryanair by way of a meeting. Our client will continue to keep the issue of pricing at Dublin Airport under review and will as usual engage with airport users, including Ryanair, as appropriate on issues arising.

We confirm that we have instructions to accept service of any proceedings that Ryanair may choose to issue.

Yours faithfully


ARTHUR COX