# ACCESS FEES TO AIRPORT INSTALLATIONS (CP5/2004)

# COMMENTS OF AER LINGUS

We refer to the above in which the Commission has sought the views of interested parties on Aer Rianta's application for prospective approval of certain charges in respect of access to airport installations at Dublin, Shannon and Cork airports and related matters.

At the outset, we note with concern that Aer Rianta has informed the Commission of its intention to seek retrospective approval of certain charges in relation to check-in desks and that a supplemental application will be made at a future date. Aer Lingus objects strongly to any such application for retrospective approval of what was an unlawful increase in charges payable by groundhandlers. This would be contrary to the provisions of Section 14(3) of the Groundhandling Regulations which require Aer Rianta to seek approval in respect of fees from the Commission "in advance".

As is further outlined below, Aer Rianta has routinely ignored the provisions of the Groundhandling Regulations despite consistent demands by groundhandlers, including Aer Lingus, that all such fees should be submitted to the Commission for approval. The Commission should therefore not entertain any such application by Aer Rianta for retrospective approval. If the Commission nevertheless decides to consider such an application, it should again invite submissions from all interested parties.

The views of Aer Lingus on the application for prospective approval are set out below.

## 1. Check-in Desk Charges

### (a) Appropriate Methodology for Assessment of Charges

Aer Rianta has sought approval for an annual check-in desk rental at Dublin Airport of €16,718 and an hourly check-in desk rental of €20.90. It is claimed that these charges are significantly below cost, Aer Rianta having estimated that the full cost of recovery would require an annual rental charge of €64,751 per check-in desk. The Commission has indicated that the costings have been verified by an analysis of line-by-line information provided by Aer Rianta which indicates that relative to these costings, the proposed charges are below cost. Moreover the Commission has stated that even using more de minimis costings excluding a return on and of capital, the proposed charges are materially below cost.

Regardless of the accuracy of the costings submitted by Aer Rianta (which Aer Lingus is not in a position to challenge due to the lack of information contained in CP5/2004), the analysis carried out by both Aer Rianta and the Commission is seriously flawed. In particular, no consideration has been given to the extent to which the cost elements set

out in paragraphs 3.1.1 – 3.1.3 of CP5/2004 are already recovered by Aer Rianta through airport charges. In this regard, we would draw attention to the Commission's original determination on the maximum level of airport charges (see CP8/2001, Appendix 1), from which it is evident that all of Aer Rianta's assets have been included in the Commission's single till analysis. Any capital installation costs related to the check-in desks would have been accounted for in the RAB which was based on the indexed historical cost of Aer Rianta's net fixed assets as at 31 December 2000. In addition, there is a Weighted Average Cost of Capital allowed at 6% on an after-tax basis. Full depreciation and all operational expenditure have also been taken into account. It is therefore clear that all costs claimed by Aer Rianta to be associated with both the check-in desks and CUTE were taken into consideration by the Commission's methodology used in CP8/2001.

Against these costs, the Commission in CP8/2001, allowed gross commercial revenues based on the first 6 months of 2001. We presume that this commercial revenue calculation took account of the unlawfully increased check-in desk charge which came into effect on 1 January 2001. If this is correct, we would accept that the proposed charges should be approved by the Commission provided that the criteria of Section 14(3) of the Groundhandling Regulations are satisfied (and subject to an appropriate reduction being made to take account of lower CUTE costs – see further below). However, the net effect of the methodology used by the Commission in CP8/2001 is that account would have been taken of any possible under-recovery in the calculation of the maximum allowable revenue yield per passenger. The Commission should confirm that this is the case and make it clear that Aer Rianta cannot seek any further increase in check-in rentals on the basis of there being an under-recovery of costs.

Given that Aer Lingus and possibly other carriers were refusing to pay the increased check-in desk rentals during the first 6 months of 2001, it is possible that the commercial revenues provided by Aer Rianta to the Commission were based on rentals of a lower value. If this is the case, the Commission has already taken account any under-recovery and there would be no justification for approval of any rental in excess of the amounts included in the commercial revenues for that period.

It is therefore imperative that the Commission clarifies the extent to which desk rentals were included in the commercial revenues used for the purpose of its calculation for the maximum allowable revenue yield per passenger in CP8/2001. It would appear that Aer Rianta was also previously of the view that some costs which it now claims are directly linked to check-in desk rentals, were covered under airport charges. In this regard, we would draw attention to an extract from Aer Rianta's presentation dated 30th November 2001. Under Heading 3 ("Aer Rianta response on what services covered by each charge"), the elements covered under the Passenger Service Charge are set out. These include the passenger concourse, cleaning, baggage systems, water/heat/lighting and communications infrastructure. These services clearly overlap with the cost elements set out in paragraphs 3.1.1 – 3.1.3 of CP5 which Aer Rianta now claims that it is seeking to recover through the check-in desk rental.

Finally in view of the fact that Aer Rianta's costs in relation to the provision of CUTE have decreased since CP8/2001 as a result of the expiry of the original CUTE contract in May 2004 and its replacement by a lower cost contract extension, there should in fact be a reduction in the allowable desk rental from whatever level was included in the gross commercial revenues in CP8/2001. The reason for this reduction was that the original contract contained costs for initial CAPEX. The extended contract contains a significantly reduced CAPEX cost which should be reflected in a lower desk rental.

The above analysis also applies to Aer Rianta's application in respect of check-in desk rentals at Shannon and Cork airports.

**(b) Section 14(3) Criteria**

Aer Lingus is not in a position to provide a view on the costings put forward by Aer Rianta or the de minimis analysis carried out by the Commission due to the absence of any information in this regard. As such, we do not believe that Aer Rianta has satisfied the requirement of transparency. Moreover, the lack of information prevents us from challenging the relevance and objectivity of the charges. We would point out, however, that the nominal post-tax return of 10.5% seems very high. In comparison, BAA's return on capital employed was 5.79%.

## 2. CUTE

We recognise the inconsistency between the manner in which CUTE is treated at Dublin Airport compared to Shannon Airport. However, in view of Aer Rianta's policy of not allowing handlers to rent dedicated check-in desks, we believe that Aer Rianta is justified in bundling the CUTE charge into the desk rental charge at Dublin Airport as it is an intrinsic cost of the check-in desk.

In relation to Shannon Airport where Aer Rianta has sought a separate fee in respect of CUTE, it is implied by Aer Rianta that this was agreed to by the users. While there was consultation and a preferred pricing model selected at local level, the charge was rejected by Aer Lingus when it was presented to Head Office for a number of reasons including the fact that such a charge required the approval of the Commission.

Based on the analysis set out in 1(a) above, we believe that the service at Shannon Airport has already been recovered by Aer Rianta either through the check-in desk rental or in the airport charges. We therefore reject the application by Aer Rianta for a separate charge for CUTE at Shannon Airport.

## 3. Scope of Section 14 of the Groundhandling Regulations

There are many charges currently levied by Aer Rianta which constitute a fee in respect of access to installations within the meaning of Section 14(3) of the Groundhandling Regulations. Despite repeated requests by groundhandlers, increases in these charges have not been submitted by Aer Rianta to the Commission in advance for approval as is required. Moroeover, these charges have not been determined in accordance with relevant, objective, transparent and non-disciminatory criteria. In particular, we would draw attention to the following charges:

(i) Fee levied on catering suppliers which is based on a percentage of turnover generated by caterers.

(ii) Airfield fee royalty charge to aviation fuellers which is based on a fixed amount per litre. We believe that this fee does not relate to the usage by fuellers of airport installations but is instead a fee in consideration for the grant of a commercial opportunity which was held to be unlawful by the European Court of Justice in Flughafen Hannover-Langenhagen GmbH v Deutsche Lufthansa.

(iii) The miscellaneous fees and charges imposed by Aer Rianta such as charges for ID permits, vehicle permits, groundhanding administration, fixed electrical groundpower, aircraft sewage disposal, communications and cabling and immigration and naturalisation services. These fees were increased significantly in 2003 and again in 2004 and new charges were introduced. None of these charges have been submitted to the Commission for approval despite the fact that Aer Lingus stated in writing to Aer Rianta that this was required under the Groundhandling Regulations.

We will make further submissions on these various charges once it is confirmed by the Commission that these charges require approval under the terms of Section 14(3) of the Groundhandling Regulations.

In addition to the requirements of Section 14(3) of the Groundhandling Regulations, it should be noted that Section 14(1) provides that where any conditions are placed on access to airport installations, such conditions should be relevant, objective, transparent and non-discriminatory. The Commission should be informed in writing of all conditions prior to their imposition. Once again, Aer Rianta has consistently ignored these provisions. For instance, Aer Rianta has attempted to impose its Code of Conduct, which contains many unreasonable provisions, on groundhandlers without any proper consultation and despite objections to its provisions. Aer Rianta has also failed to comply with this requirement in relation the imposition of new airport bye-laws (e.g the Check-in Bye-Law, SI 323/2002). The Commission should take this opportunity to confirm that all such measures fall within the scope of Section 14(1) of the Groundhandling Regulations, and clearly state that it should be informed in advance of their imposition. Interested parties should then be given an opportunity to comment on all such measures.

## 4. Process for Approval of Charges and Role of Airport Users Committee

Many of the difficulties which have arisen in relation to access fees for airport installations are due to Aer Rianta's persistent failure to engage in genuine consultation with users. We believe that this should be the first stage in any approval process should be meaningful consultation between Aer Rianta and users. This should involve the provision by Aer Rianta of sufficiently detailed cost information so that users can assess whether the criteria of Section 14(3) of the Groundhandling Regulations are being satisfied. We do not believe that the Airport Users Committee is the relevant body for such consultation as this primarily deals with operational matters at a local level and is not equipped to engage in a detailed review of costings. In the case of Aer Lingus, this would be done at head office level. Consequently, we believe that each groundhandler should nominate an appropriate point of contact for such consultation.

After consulting with groundhandlers, Aer Rianta should submit its proposed charges to the Commission for approval. The Commission should then invite comments from all interested parties. Provided that a genuine consultation process has first taken place between Aer Rianta and groundhandlers, we believe that this approval process can be completed relatively quickly. However if Aer Rianta persists in refusing to provide the relevant cost information, the Commission should require that it does so. This information should then be made available to all users to enable a proper assessment to be carried out under Section 14(3).