



ACCESS FEES TO AIRPORT INSTALLATIONS

DECISION ON THE IMPLEMENTATION OF THE REQUIREMENTS OF STATUTORY INSTRUMENT NO. 505 OF 1998 EUROPEAN COMMUNITIES (ACCESS TO THE GROUNDHANDLING MARKET AT COMMUNITY AIRPORTS) REGULATIONS 1998

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1. BACKGROUND

1.1. Council Directive 97/67/EC (the "Directive") on Access to the Groundhandling Market at Community Airports of 15th October 1996 was transposed into Irish law by Statutory Instrument 505 of 1998, European Communities (Access to the Groundhandling Market at Community Airports) Regulations 1998 (the "S.I.") which was made on 16 December 1998. Under section 9(2) of the Aviation Regulation Act 2001 (No. 1 of 2001), the functions vested in the then Minister for Public Enterprise in respect of this S.I. were transferred to the Commission for Aviation Regulation (the "Commission") on its establishment in February 2001. This transfer of responsibility made the Commission the competent authority in the State for all matters relating to the Directive as transposed. Section 14(3) of the S. I. provides that -

"where access to installations gives rise to the collection of a fee, the latter shall be determined by the managing body of the airport and approved by the Minister in advance in accordance with relevant, objective, transparent and non-discriminatory criteria."

1.2 The functions ascribed to the Minister in respect of the approval of fees therefore fall to be carried out by the Commission by virtue of the 2001 Act.

1.3 In July 2004, the Commission received a submission from Aer Rianta¹ seeking approval for the collection of access fees in respect of check-in desk rental at the three State airports and also in respect of a "per passenger fee" for the CUTE (Common User Terminal Equipment) facility at Shannon airport.

¹ As of 1st October 2004, Aer Rianta has been renamed the Dublin Airport Authority plc in accordance with the State Airports Act, 2004.

2. CONSULTATION

2.1 Comments with Industry

2.1.1 On 17 August 2004 the Commission issued CP5/2004, which initiated a consultation in relation to the application by Aer Rianta. A return date of 31 August 2004 was set for responses. The purpose of the consultation was to seek views from interested parties in relation to the requests for approval in the context of the provisions of the S.I. and in particular in relation to the application of the four statutory criteria. Views were also invited on the concept of an "airport installation", the role of the Airport Users Committee in the context of the S.I. and the relevant principles that ought to govern the Commission's approach to establishing whether the prescribed criteria have been met by the managing body of an airport.

2.1.2 A total of eight submissions were received in response to the consultation:- Aer Lingus, Aer Rianta, CityJet, the Federation of Aerospace Enterprises in Ireland, First Choice Airways, Irish Association of International Express Carriers, Ryanair and Mr David Algeo, a member of the public. These submissions were placed on the Commission's website in accordance with normal practice on consultations.

2.2 Summary of issues raised in Consultation

2.2.1 The Commission would like to point out that some comments received from interested parties, were not related per se to the subject of this particular consultation, but in so far as comments received relate to any potential or future issue under the heading of access fees, these have been duly noted.

2.2.2 One of the issues raised by the Commission in this Consultation was, what should constitute a proposed list of 'airport installations' in the context of Groundhandling activities and whether there are items of infrastructure or equipment which can/ought not be regarded as an airport installation. The Commission has noted the relevant

statements from the European Court of Justice (ECJ) Judgment (the 'Lufthansa' case)² on this issue where the reference to airport installations clearly relates to any item of airport equipment or infrastructure used or required by a groundhandler. If the airport authority introduces an access fee to such airport installations, the prior approval of the Commission would be deemed to be required. The wider issue of other charges relating to access to airport installations which are currently levied by the airport authority and which may require the approval of the Commission will be dealt with in due course by the Commission taking into account the above clarification arising from the ECJ Decision.

- **Comment**

One of the more general comments received from the airlines was that not only did Aer Rianta not supply at any stage any level of detail in relation to the fees in question but the Commission, in its Consultation Paper also did not provide sufficient detail on costs in order to allow any meaningful level of comment.

- ❖ **Commission Response**

The Commission wishes to point out that it had no prior involvement in relation to the availability to the users of detailed costings however with regard to the level of detail available in its own consultation process, the Commission wishes to state that in its view, it did provide a critical breakdown of the major components of the costs relating to the infrastructure at issue and in that context confirmed that the fees have been found to be below a reasoned approach as to cost.

- **Comment**

The Ryanair submission argued that the ART costings for annual check-in desk rental were excessive, on the basis that they equate to

² Flughafen Hannover-Langenhagen GmbH v. Deutsche Lufthansa AG, Case C-363/01

a “full cost” per desk of €1.6 million if one assumes a depreciable life of 25 years.

❖ **Commission Response**

It is the Commission’s view that Ryanair’s arbitrarily chosen depreciable asset life does not provide the basis for a meaningful comparison. On the contrary, over time, and without significant asset replacement in this area, the full-cost annual rental should in fact fall.

• **Comment**

The Ryanair submission further argued that annual inflationary increase sought by Aer Rianta was excessive and should be rejected.

❖ **Commission Response**

It is reasonable to include an inflationary element in the cost base of aviation infrastructure and this approach was also adopted by the Commission in the Financial Models designed for the airport charges price cap process.

• **Comment**

Ryanair and Aer Lingus both argued that the rate for cost of capital applied by Aer Rianta (10.5%) was excessive.

❖ **Commission Response**

In calculating the average annual cost of check-in desk rental, Aer Rianta applied a nominal post-tax rate of return of 10.5% to the historic net book value of the relevant assets. The equivalent nominal pre-tax rate of return is likely to be approximately 11.5%. Ryanair’s submission that the equivalent pre-tax rate-of-return is 14% has no basis that is known to the Commission. However, because the proposed fees are significantly below cost, the point put forward by the airlines is in fact moot.

- **Comment**

Aer Lingus stated that the Commission's approach to an analysis of cost of check-in desks was "seriously flawed" as it did not take into account the cost already incorporated in the 2001 price cap.

- ❖ **Commission Response**

The essential issue here is approval of an access fee according to the criteria set out in S.I. 505 and those criteria do not per se have a correlation with the methodology of the 2001 price cap. Furthermore, the 2001 price cap took the form of an overall yield calculation and did not set individual charges. Accordingly, the Commission does not consider that the methodology used to calculate the 2001 price cap is relevant to the issue of approval of access fees here. However the Commission wishes to confirm that any issue linking to the projections used in the calculation of the 2001 price cap can be resolved at the time of a review of the price cap or the making of a new determination.

- **Comment**

Several parties made reference to the fact that CUTE was bundled into the fee for the use of check-in desks in Dublin and that not all users at Dublin avail of CUTE.

- ❖ **Commission Response**

The Commission found this to be the case. The provision of CUTE is extraneous to access to check-in desks and is not required by certain users of check-in desks. Accordingly, a bundling of costs in relation to CUTE into fees for check-in desks users who were not users of CUTE cannot be said to meet the criterion of non-discrimination. Accordingly, Aer Rianta has at the Commission's instigation, revised its position and clarified in a letter to the Commission that it does not currently impose a separate fee for the use of CUTE in Dublin and that such a fee for CUTE is not part of its application here. However as the rental charge did include CUTE - related costs Aer Rianta has

sent the Commission revised costings³ (on a full cost basis) in respect of the provision of access to check-in desks which excludes any allowance for CUTE. This re-submission did not result in a reduction in the amount of the annual (below cost) figure for which approval was sought by Aer Rianta.

³ The revised (full-recovering) costing for annual check-in desk rental at Dublin Airport is €54,951, down from €64,751 as reported in CP5/2004.

3. REQUIREMENTS IMPOSED BY THE EU DIRECTIVE

As advised in CP5/2004, the Commission must, prior to approving a fee for access to installations, determine that the proposed fee meets the four criteria set out in the Directive. In CP5, the Commission set out its understanding of the standard to be applied in relation to each of these requirements. These criteria are treated in turn below: -

3.1 Relevant

The standard applied here was “is the fee directly connected to the subject matter to which it is applied and is not inclusive of extraneous items or costs which cannot be regarded as being reasonably related to that item of infrastructure or equipment or to the activity in question.” Following an examination of the costs which were submitted as being related to the infrastructure in question, the Commission found the fees to be less than actual costs, even if actual cost was calculated according to a de minimis approach to the assets and operating costs involved (i.e. excluding the return on capital and return of capital (depreciation), allocations in respect of terminal assets deemed by Aer Rianta, as relevant to the check in section.)

3.2 Objective

The standard applicable here was “has the fee been set in a fair and balanced way” without any motivation on the part of the airport other than that expected of a commercial entity having statutory responsibilities to: meet its financial obligations, conduct its affairs in a cost-effective manner and make a reasonable profit. As the fees set have been found by the Commission to be below actual cost, the Commission finds that this criterion has in effect been met.

3.3 Transparent

The standard applied under this heading was “is the basis on which the fee derived clear and evident to all, will it bear scrutiny in all its elements and can be understood by the payees of the fees and any interested parties”.

In relation to this element, it has to be said that although the fees have been in place for several years, no level of detail was made available by Aer Rianta previously to the users who were simply invoiced for the required amount. However it also has to be pointed out that this is the first time that Aer Rianta have made an application for approval of fees and so the pertinent question is whether the detail *now* available and supplied to the Commission meets the standard of transparency.

Having carried out an analysis of the Aer Rianta costings, the Commission is satisfied that the basis for the check in desk rental and the CUTE facility is sufficiently transparent. However, it has been noted that, unlike other charges, no information in relation to the charges applicable to check-in desks was provided in any fashion in the Booklet of Miscellaneous Charges introduced by Aer Rianta back in 2000. Therefore no potential user could ascertain what the relevant fees might be.

It is the Commission's view that the requirement of transparency is one which is of most interest and value to the users who pay the fees in question and therefore a condition will be placed on the Aer Rianta approval that (i) the fees approved by the Commission in relation to check –in desk rental and CUTE be promulgated in any publication relating to the charges imposed by Aer Rianta and (ii) that any user paying the check- in desk charges be facilitated in any reasonable request made in relation to a breakdown of the components constituting the charge.

3.4 Non-discrimination

The standard applied here was “are the charges applied in an equitable manner to all and are identical or comparable situations treated the same.” Apart from the issue of the bundling of CUTE costs into the check-in desk rental, the Commission found no reason to suggest that any element of discrimination applied to the charging of either of the two types of fees in question.

4. COMMISSION DECISION

Having completed its analysis therefore in the context of the requirements of the S.I. 505 of 1998, the Commission hereby approves the charges set out below from the date of this decision. Approval is also granted, in respect of check-in desk rental charges at Cork and Shannon airports, for an annual adjustment for inflation to be implemented on July 1st each year, adjusting for changes in the Consumer Price Index during the previous calendar year.

	Dublin	Shannon	Cork
Annual Check-In Desk Rental	€16,718	€8,000	€7,846
Hourly Check-In Desk Rental	€20.90	€20	€20
CUTE		€0.23	

5. FUTURE APPROACH TO BE ADOPTED, AIRPORT INSTALLATIONS AND THE ROLE OF THE AIRPORT USERS COMMITTEE

The Commission considers that consultation by the airport authority with relevant parties should be a precursor to any request for approval of access fees and evidence of dialogue with users or user's representatives will form an integral part of the Commission's approach going forward. Such an approach is, in our view, consistent with both Directive 97/67 and principles of good regulation.

Accordingly, the Commission wishes to advise that prior to considering any application for approval of access fees by the airport authority in the future, the Commission will require substantive engagement by the airport authority with the Airport Users Committee or other relevant grouping on the particular fees in question. If this is the approach adopted, the Commission hopes that the relevant parties should be fully briefed on the background to any request for a fee approval prior to the application of a request for the same – thereby obviating the need for a cumbersome Commission process.

With regard to the concept of "airport installations" the Commission wishes to advise that in line with the findings of the ECJ in the Lufthansa case it is minded in general to regard as an installation, items of airport equipment, machinery or infrastructure which are used or required by a groundhandler for the purposes of carrying out a groundhandling function. If the airport authority impose fees for access to these items or areas, then the interpretation of the S.I. dictates that the Commission's approval is required.