22nd September 2008

DAA Response to Commission Notice CN2/2008

DAA welcomes the opportunity to respond to the Commission notice CN2/2008 which discusses the interaction between the regulations governing access to installation fees at the airport and the price cap on airport charges at Dublin Airport.

Under the Aviation Regulation Act, 2001, the Commission regulates the maximum level of airport charges levied at Dublin Airport on the basis of an average revenue per passenger price cap. Charges levied at Dublin Cork or Shannon airport which are defined as Access to Installation charges are subject to Article 14 of S.I. 505 of 1998, which requires that these fees be approved by the Commission in advance in accordance with relevant, objective, transparent and non-discriminatory criteria. Therefore, there are currently separate regulations governing airport charges levied at Dublin Airport and access to installation fees collected at all three airports.

DAA Response to Commission Proposals

Each of the measures proposed by the Commission in its notice CN2/2008 would impact on the current system of price cap regulation and would have resulting implications for the regulated company DAA.

All of the proposals would add increased complexity and imbalance to the regulation of airport charges. The introduction of such new measures could also add considerably to the regulatory burden experienced by DAA. These proposed options would signal a more interventionist approach to regulation resulting in increased micromanagement of Dublin Airport by the Commission contrary to the its statutory requirement to have due regard to imposing minimum restrictions on DAA. The introduction of these new measures would potentially lead to the dual regulation of ATI charges under the Aviation Regulation Act, 2001 and S.I. 505 of 1998 at Dublin Airport. DAA continues to believe that given the scale of the revenues associated with ATI charges (less than 1% of company turnover in 2007) that this is highly inappropriate and completely unwarranted.

DAA is also concerned that the proposed changes to the framework regulating ATI charges would reduce the company's flexibility in relation to its check-in desk charging policy. Price flexibility is essential in the efficient management of the Dublin Airport as it allows the company to respond where unexpected developments occur requiring action on the part of the airport company. For example, the company may need to modify check-in desk rental charges to deal with changes in the role and nature of check-in desks and the airlines' demand for check-in desk facilities. A number of critical behavioural changes are currently taking place in this area where airlines are promoting alternatives to traditional check-in desks such as online check-in or the use of self-service machines and check-in desks are increasingly being used for wider purposes such as dealing with baggage and priority boarding passes. The period since the 2005 determination has witnessed a transformation in the check-in process, with significant increases in the level of online check-in by all airlines and notably the introduction of check-in and baggage charges by airlines[1],

[1] Introduced in 2006 by Ryanair and 2007 by Aer Lingus

with a number of subsequent increases in the charges levied. It is worthwhile noting that while concerns have been raised regarding an increase in the check-in desk fees over the level assumed in the price determination, the main airlines have introduced new passenger charges at many multiples of this amount in the same period. These developments would not have been anticipated by DAA or by the Commission at the time that the airport charges for 2006-09 were being determined. If the Commission decides to introduce the proposed changes this would severely restrict the company's pricing policy options in the event of similar change.

DAA does not believe that the ongoing focus both by airlines and handlers and the Commission itself on the level of check–in desk charges levied at Dublin Airport is warranted. Charges relating to the rental of check-in desks at Dublin Airport have been defined as Access to Installation fees and as such have been subject to prior approval by the Commission under Section 14(3) of S.I. 505 of 1998. The scale, duration and detailed nature of this approval process continues to be highly burdensome, onerous and costly given the scale of the revenue stream which check-in desk charges represent at the three DAA airports.

Given that DAA's check-in desk charges are fully approved and have met the legislative criteria of relevant, transparent, objective and non- discriminatory, the company does not see any justification for the introduction of further measures to protect users from increases in access to installation fees after the setting of the price cap.

The stated objective of these proposed measures is to better align the charges regimes relating to airport charges and access to installation fees. However in the case of Dublin Airport, under the existing regulatory system, airport charges and access to installation fess are currently aligned as access to installation fees form part of the net groundhandling revenues which are included in the single till and which are deducted from DAA's capital and operating costs to determine regulated aeronautical revenues.

The DAA would point out that the Commission's suggestion that in relation to check-in desks, "the DAA is the sole provider of what is an essential facility" takes no account of the current technological developments whereby Self Service Kiosks and web and phone check in facilities are now used as alternatives to standard check facilities. This is evidenced where some airlines have already suggested that they wish to reduce the number of check-in desks which they will rent in future due to the introduction of SSKs. Thus the level of intervention suggested by the Commission is inappropriate and ignores the current market dynamics.

The Commission has neither provided an adequate justification or rationale for the introduction of the proposed new measures nor has it demonstrated the need for identifying individual charges such as ATI fees for additional alignment with the airport charges price cap.

Proposed Options re Access to Installation Fees and Airport Charges

In its notice CN2/2008, the Commission puts forward the following proposals for consideration by interested parties

- A redefinition by the Department of Transport of 'airport charges' as defined in the Air Transport and Navigation Act 1998 to include airport installations

- Prior to each determination for the DAA to commit to a price path for all access to installation fees to last for the duration of the price–cap period and for this commitment to be used when making commercial revenue forecast

- Assume full cost recovery for the relevant class of airport installation when making commercial revenue forecasts

- Revise the price cap formula to allow for an adjustment in the cap when an access to installation fee is introduced or increased

Each of the above proposals would increase the linkage between regulated airport charges and ATI charges levied at Dublin Airport. They would also raise potential issues for Cork and Shannon airports, where airport charges are not subject to regulation. DAA would like to comment on the desirability and feasibility of each of the options proposed.

A redefinition by the Department of Transport of 'airport charges' as defined in the Air Transport and Navigation Act, 1998 to include airport installations

Under current legislation airports charges are given a specific definition where the term "airport charges" means

(a) charges levied in respect of the landing, parking or taking off of aircraft at an aerodrome including charges for airbridge usage but excluding charges in respect of air navigation and aeronautical communications services levied under section 43 of the Act of 1993

(b) charges levied in respect of the arrival or departure from an airport by air of passengers, or

(c) charges levied in respect of the transportation by air of cargo, to or from an airport

DAA is concerned that the Commission is considering a serious measure such as a change in primary legislation in response to airline grievances regarding check-in desk rental charges and in particular charges that do not even recoup the current level of costs associated with them. It also should be noted

that the charges levied by DAA are only a tiny fraction of the charges imposed by the major airlines on passengers for the use of check–in desk facilities.

If a decision was taken to alter the current definition of airport charges to include charges relating to airport installations this would dilute the meaning of the term airport charges as it would then include levies relating to both aeronautical and indirectly related activities. It would also have a serious impact on the statutory basis of the regulatory framework given that it is currently focused exclusively on regulating airport charges.

The inclusion of ATI charges within the definition of airport charges would also create a charging inconsistency as currently airport charges are defined in terms of passenger and aircraft movements while in contrast ATI charges are indirect charges relating to rental of facilities.

The process of introducing ATI charges into the price cap definition would be made even more unwieldy due to the fact that there is no current legal definition as to the set of charges constituting ATI charges.

DAA believes that there would be no additional economic gain from having such an all encompassing charge. On the contrary, separate charges allow for greater cost accountability and transparency to the benefit of airport users, and are more consistent with the principles of relevance of objectivity of charges.

Prior to each determination for the DAA to commit to a price path for all access to installation fees to last for the duration of the price–cap period and for this commitment to be used when making commercial revenue forecast

Under the current regulatory regime at Dublin Airport, DAA provides the Commission with the company's best estimate of its likely commercial revenues for the forthcoming regulatory period during each regulatory review. This commercial revenue forecast contains estimates of usage and likely revenues arising from groundhandling charges including ATI fees. These forecasts are used by the Commission in setting its assumptions which underpin its regulatory price cap for Dublin Airport. Therefore under the existing regulatory structure, assumptions regarding future revenues from ATI charges are built into the commercial revenue assumption within the existing regulatory model.

However, to require DAA to commit to a definite price path would prove highly burdensome for the company in the context of the materiality of the revenues involved. It would require that the company would be able to provide accurate forecasts for future ATI revenues which in turn would require assumptions in relation to variables such as the airlines likely usage of facilities and their elasticities of demand. It would be inconsistent for the Commission to require DAA to commit to a definite price path, while not requiring check-in desk users to provide any form of commitment on usage at that confirmed price level.

This proposal would also interfere in the efficient management of the Dublin Airport by restricting the ability of the company to react where unexpected developments occur requiring action on the part of the airport company.

In effect a mandatory commitment to a structured price path for ATI charges would result in a sub cap on this particular category of charges. This proposed measure would therefore spread the ambit of airport regulation beyond that of airport charges and would allow for regulation of ATI fees under both the Aviation Regulation Act and S.I. 505 of 1998. It is noteworthy that SI 505 and its EC analogue were not intended to apply a price cap to such ATI charges, and indeed that in all jurisdictions other than Ireland where it currently applies there is no requirement to obtain prior approval of such charges.

The proposals advanced by the Commission would amount to a widening of the ambit of airport charges regulation, which is inconsistent with the obligation of the regulator to avoid inappropriate and disproportionate levels of regulation.

DAA believes that this potential dual regulation of ATI charges is unjustified and unwarranted. It would add significantly to the regulatory burden currently experienced by the company and it would also increase DAA's continued exposure to regulatory risk.

Assume full cost recovery for the relevant class of airport installation when making commercial revenue forecasts

Under the current regulatory regime at Dublin Airport, the Commission adopts an estimate of the likely commercial revenues yields for the future regulatory period in its price cap assumptions. While DAA has the stated intention of moving to full cost recovery for ATI charges over time, if the Commission were to impose the assumption of full cost recovery for ATI charges within the next commercial revenue estimate, this could have serious implications for DAA and its airline customers. In order for the company to achieve its regulated rate of return, it would be obliged to levy ATI charges based on full cost recovery regardless of market factors. It would again be inconsistent for the Commission to assume full cost recovery by DAA, while not requiring check-in desk users to provide any form of commitment on usage at that price level.

DAA is also concerned that the introduction of such a measure would signal an asymmetric approach to regulation at Dublin Airport where the Commission would assume a maximum upside when forecasting non regulated revenues while adopting a downside view when taking into account recoverable costs.

Revise the price cap formula to allow for an adjustment in the cap when an access to installation fee is introduced or increased

The inclusion of a new term in the price cap to adjust the maximum permitted level of airport charges where an ATI charge is either increased or introduced is potentially a highly significant measure as it would undoubtedly extend the parameter of price cap regulation beyond that of airport charges. It would

therefore increase the regulatory burden for DAA and potentially add to the company's regulatory risk.

The introduction of such a proposal would clearly signal that the Commission was becoming more engaged in the micromanagement of the airport.

The Commission does not suggest that this proposed new term in the price cap formula could also potentially adjust the price cap upwards to compensate for decreasing revenues from ATI charges or where the usage by airlines does not achieve the levels estimated in the commercial revenue forecast. This signals further the asymmetric approach to regulation which underpins such a proposal. This is particularly significant given the Commission's failure to adjust or compensate the company for its over-estimation of €90 million in relation to forecast commercial revenues for the period 2001-2004.

It is unclear as to why the Commission would consider the addition of such a term given that it would create an obvious imbalance in the price cap derivation by adjusting for increased revenues from an individual category of charges such as ATI fees where the materiality of price changes is likely to be modest.

DAA is concerned that the Commission would consider the potential introduction into the price cap of an adjustment for potential changes in ATI charges while failing to similarly adjust for any unanticipated increased or newly incurred costs over the course of a regulatory period.

DAA also notes that the Commission has not stated how it proposes to adjust the price cap to take account of the change in ATI revenues and whether or not it intends for overall revenue to remain unchanged. This is highly significant give the complexity involved in adjusting the price caps and in estimating likely market effects of different price changes.

DAA Recommendation re ATI Charges

Regulation of ATI charges in Ireland is already subject to more stringent regulation than in any other state in Europe. DAA believes that the key issue in relation to ATI charges is that Ireland is the only country within the European Union that, in transposing Council Directive 96/67/EC on Access to the Groundhandling Market at Community Airports, there is a requirement for the airport authority to have fees for access to installations (ATI) approved by a regulatory agency in advance. This is in marked contrast to the text of the European directive itself, in which the only requirement imposed by the Directive with regard to such fees is that they should be determined according to relevant, objective, transparent and non-discriminatory criteria.

DAA continues to believe that it is inappropriate that ATI charges should be subject to a heightened level of regulation as indicated by any of the options proposed by the Commission. Given the extent of consultation that takes place with users regarding charges and the Commission's admission and knowledge of the fact that the charges levied do not cover the costs associated with the provision of these facilities, such proposals are an

extreme and unwarranted attempt by the Commission to expand its powers at the expense of DAA's ability to efficiently manage its business. DAA will continue to call for an amendment to S.I. 505 to remove the unnecessary requirement for prior approval of ATI charges.

The type of proposal outlined by the Commission is an illustration of its interventionist approach to regulation. In the context of an already intensive regulatory regime, it is the view of the DAA that such over-regulation is contrary to the spirit and intention of EC 96/67 and is inappropriate.