



Process for Determination of Airport Charges

Commission Paper CP1/2001
Process leading to a Determination on
Airport Charges

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1. Introduction

On February 27, 2001, the Minister for Public Enterprise established the Commission for Aviation Regulation ('the Commission') under Section 5 of the Aviation Regulation Act, 2001 ('the Act'). Under the Act, a principal function of the Commission is the making of a determination on maximum airport charges.

Under the Act, the Commission is required to make its determination not more than 6 months after its establishment. In setting maximum airport charges, the objective of the Commission is to facilitate the development and operation of cost effective airports which meet the requirements of users. In arriving at its determination, Section 33 of the Act requires the Commission to have due regard to ten specified factors.

Experience from other jurisdictions with analogous legal regimes indicates that the determination of airport charges is a complex regulatory task. Since, this task must be completed within 6 months, the available time must be utilised in the most efficient way possible, consistent with the statutory requirements. The purpose of this paper is to give notice of how the Commission intends to manage the process leading to its determination.

In administering the process, the Commission is eager to ensure the widest possible input into its deliberations, as well as the fullest possible access to information bearing on its determination. The attention of interested parties and the public is also drawn to the tight timetable that is required in order for a determination to be reached within the statutory period.

Finally, the Commission wishes to point out that the process proposed in this paper is unique to airport charges. Different processes may be required for other activities falling within its remit.

William Prasifka
Commissioner

2. Executive Summary

The Act requires that the Commission make a determination on airport charges no later than 6 months from its establishment. It also requires that during that time period, the Commission must give notice of its determination and allow interested parties and the public an opportunity to make representations. However, the Act does not specify when that period should take place, nor the form of notice, save for requirements as to publicity.

Given the nature of economic regulation, and having regard to the objective of the Commission in making a determination, as well as the other requirements of the Act, the Commission has decided that consultation with interested parties and the public needs to be as complete as possible. Accordingly, the Commission has decided to supplement and amplify the requirements in relation to consultation contained in the Act as follows.

To begin the process, the Commission has published CP2/2001, a Consultation Paper on economic regulation of airport charges in Ireland. Interested parties and the public will be given a period of one month to make comments. They will also have the opportunity of seeing and making comments on each other's submissions. Having considered these submissions, the Commission will, on or about 26 June 2001, publish notice of its determination. That notice will be by way of draft determination and an explanatory memorandum. This will commence the period of statutory consultation specified in the Act. Interested parties and the public then have one month to make representations, which will then be considered by the Commission. The Commission will then make its determination and report.

Connected with this process, the Commission has specified the means by which it will obtain and share information with interested parties and the public.

3. Statutory Context

3.1 Statutory Function

Under the Act, the Commission is responsible for making a determination in respect of the maximum charges which the airport authority, in this case, Aer Rianta, may levy at each of the regulated airports, namely, Dublin, Shannon and Cork. Under the Act, the definition of airport charges is that contained in the Air Navigation and Transport (Amendment) Act, 1998. Section 2 of that Act defines airport charges as;

- (a) charges levied in respect of the landing, parking or taking off of aircraft at an aerodrome including charges for air-bridge 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 at 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.*

These are the categories of charges that the Commission is obliged to regulate under Section 32 of the Act. In doing so, it must aim to facilitate the development and operation of cost effective airports which meet the requirements of users, having due regard to all of the factors specified in Section 33 of the Act.

3.2 Statutory Procedures

The Act requires the Commission to issue a determination in respect of airport charges not more than 6 months after its establishment. Notice is to be given specifying the Commission's intention to make a determination, and in doing so, the Commission must provide for a minimum period of one

month during which interested parties may make representations. A report must also be made giving an account of the Commission's reasons for making the determination, together with a statement of reasons for accepting or rejecting representations. That report must then be furnished to the Minister, as well as to interested parties and the public.

3.3 *Statutory Powers*

Section 32(13) and Part 4 of the Act set out the powers available to the Commission in the discharge of its statutory functions. Included within those powers is an entitlement to request information or to require that information be prepared or retained in a certain form.

4. Devising a Process

In adopting a process for the determination of airport charges, the Commission has had regard to a number of factors, specifically, the nature of economic regulation, the procedures specified in the Act, and procedural matters which fall to be determined by the Commission. The Commission has attempted to devise a process that complies not just with the statutory requirements, but also with the need for procedural fairness in what is a complex area of economic regulation.

4.1 *The Nature of Economic Regulation*

This is a crucial consideration in adopting any regulatory process. Based on experience from other jurisdictions, with analogous legal regimes, it is clear that the calculation of maximum airport charges is a complex matter. This is not surprising given the sophistication of modern airports, and the corresponding number of difficult issues that regulation must tackle. In Ireland's case, that complexity is exemplified by the breadth of factors specified in Section 33, to which the Commission is required to have due regard.

It will not be sufficient for the Commission to decide on how the statutory objective should be achieved or the degree of regard to be had to each of the ten factors specified in Section 33, and to then issue guidance to Aer Rianta on how it should calculate maximum charges. The Act requires the Commission to approve maximum charges, and in so doing, it is empowered, among other things, to adopt a formula or series of formulae by which the charges may be calculated in respect of a particular period of time.

In order to make its determination, the Commission must first of all identify an approach which achieves the statutory objective, having due regard to the specified factors. That approach will then be used to arrive at a formula or

series of formulae, from which maximum charges may be derived. In order to arrive at actual figures, data will then be inserted.

4.2 Matters not prescribed by the Act

As discussed, the Act requires that the Commission give notice of its intention to make a determination, and that a period of one month be allowed for receipt of representations by interested parties and the public. The timing of this within the six-month period is not specified in the legislation. If it takes place too early in the process, this may mean that interested parties and the public may not be able to make useful and relevant submissions. Similarly, if the month takes place too late in the process, then the risk is that it may present logistical difficulties for the Commission in revising its methodology.

Equally, the Act does not stipulate what form notice of the Commission's determination should take. For example, it does not explicitly require that the Commission publish a draft determination. However, the Act does envisage that the Commission's approach to airport charges will evolve over the period of 6 months, and that a period of statutory consultation is essential once that thinking has evolved to a certain point, albeit not to a conclusion.

4.3 Supplementing the Statutory Consultation

Clearly, interested parties as well as the public may wish to make observations not just on the approach, but also on the Commission's use of that approach in arriving at a formula, or series of formulae, from which charges may be calculated. In addition, interested parties may wish to comment on the figures or other inputs, which will be used by the Commission to calculate maximum charges. Based on this analysis, the Commission is of the view that interested parties and the public should be consulted not only on the approach to be adopted by the Commission, but

also on the Commission's interpretation of the statutory requirements in order to arrive at a formula or series of formulae.

Therefore, while the Act only requires a single period of statutory consultation, it is proposed to supplement this by a month's more general consultation exercise at the beginning of the period of 6 months. This is not a substitute for the period of statutory consultation. However, it is to the advantage of interested parties as well as the public to make as comprehensive representations as possible at the beginning of the 6-month period, to ensure that the Commission is fully apprised when developing the approach for a determination.

4.4 Notice by way of draft Determination

The Act requires the Commission to receive and consider representations with respect to the proposed determination. It would be possible for the Commission to make an announcement, without more, of its intention to make a determination. However, the Commission is of the view that the representation process should be meaningful. Therefore it will publish a notice of its intention to make a determination that contains an appropriate level of detail. This will enable interested parties and the public to ascertain in general terms the impact or effect of the proposed determination. Otherwise, the rights of interested parties as well as the public to make representations could be rendered nugatory.

Accordingly, the Commission will publish a draft determination and explanatory memorandum.

5. Process

| Process Leading to a Determination on Airport Charges | | |
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| Stage | Activity Type | Date(s) |
| 1. | Publication of Consultation Paper | 27 February 2001 |
| 2. | Responses to Consultation Paper due | 27 March 2001 |
| 3. | Comments by interested parties and the public on Responses due | 16 April 2001 |
| 4. | Notice of Determination | 26 June 2001 |
| 5. | Statutory Representations due | 26 July 2001 |
| 6. | Making of Determination & Report | 24 August 2001 |

Table. 1.1

5.1 Process Timetable

Table 1.1 is a proposed schedule leading to the Commission's determination on airport charges. It identifies the major milestones leading to the determination, but it is not exhaustive as to the elements of the process. This timetable is indicative only of how the Commission proposes to approach the determination. It may be necessary to lengthen or shorten the periods, except of course, for periods prescribed by the Act.

5.2 *Elements of the Process*

5.2.1 Publication & Responses to Consultation Paper

The Commission believes that in order to best utilise the period of 6 months, immediate attention must be given to the broad statutory approach within which its determination on airport charges must be reached. Therefore, the Commission proposes that the period of 6 months will commence with publication of a Consultation Paper, which will discuss economic, regulatory and accounting issues connected with its determination on airport charges.

Included in this paper is a range of approaches to the economic regulation of airport charges, as well as preliminary discussion of the range of factors which the Commission must have due regard to under Section 33 of the Act in order to pursue the statutory objective. That Consultation Paper, CP2/2001 is posted on the Commission's website, www.aviationreg.ie, and includes an invitation to interested parties as well as the public, to respond in writing by 27 March 2001. The Commission would request that particular attention be given to responding to questions posed in the Consultation Paper.

In order to assist with relevant debate, the Commission intends posting all of the submissions it receives on its website. It is open to an interested party as well as to members of the public to request that certain information be treated as confidential. Such information should be included in a separate schedule. Further guidance on the treatment of confidential information is contained in Section 5.3.

5.2.2 Invitation to Comment on Responses

Given that the Commission proposes to publish submissions which it receives, on its website, the Commission also proposes that any person should be free to comment in writing on any or all of the written submissions received in response to the Consultation Paper CP2/2001. A period of at least 14 days will be allowed for making comments. Any person may make a written comment, irrespective of whether or not they have responded to the Consultation Paper. These written comments will be published on the Commission's website. Again, interested parties are referred to Section 5.3 of this paper in relation to treatment of confidential information.

5.2.3 Publication of Notice

For the reasons mentioned in Section 4.4, by way of notice, the Commission will publish a draft determination as well as an explanatory memorandum. Collectively, both documents will be such as to allow an interested party to estimate the likely financial effects, in general terms, of the regime, which the Commission intends to adopt by way of a determination.

5.2.4 Receipt and consideration of Representations

The Commission will allow a period of one month in order to receive representations from interested parties as well as the public.

5.2.5 Determination and Report

The Commission will make its determination and report available in accordance with the Act.

5.3 Conditions of Process

5.3.1 Timing

The timetable is based on what the Commission considers to be the likely chain of events leading up to its determination. As such, it is a statement of intention on the part of the Commission. The Commission reserves the right to adopt or amend elements of the consultation process (including their timing) in the light of changes in circumstances, unforeseen developments in the process, or so as to ensure the integrity of the consultation process.

5.3.2 Deadlines

Given the 6-month period for making a determination, the Commission wishes to emphasise the importance of making submissions and representations in good time. Where a date is expressly or impliedly stipulated, then the closing time for receipt of submissions by the Commission will be 5.00 pm on the day in question.

5.3.3 Delivery of Documents

All correspondence, in response to requests for views must be received in electronic format. In all cases the sender shall have an obligation to ensure that the information is actually received by the Commission on or before the specified deadline.

5.3.4 Information

The Commission is eager to ensure that the process leading to its determination is administered in an open, accessible manner. This is reinforced by the requirements contained in Section 5(4) of the Act that the Commission ensure that its determinations and requests be objectively

justified, non-discriminatory, proportionate and transparent. To that end, details of all statutory requests for information by the Commission will be posted on its website.

Aer Rianta will be the source of much of the information that will be needed by the Commission to make a determination. It is vital that all interested parties as well as the public, have sight of all relevant information relied upon by the Commission for the purpose of its determination, otherwise their ability to fully participate in both the initial consultation as well as the statutory consultation could be impeded.

While parties are free to designate part or all of their submissions as confidential (and should do so clearly, given that it is their obligation to do so) this may create difficulties for the Commission. If the Commission is to make available the record leading to its determination, then all of the information that it relies for the purpose of its determination should, as a general rule, be put into the public domain. As a result, the Commission proposes the following to counteract the information asymmetry, which may otherwise arise.

5.3.5 Confidential Information

The Commission acknowledges that circumstances may arise where the disclosure of highly sensitive confidential information may cause damage to the party supplying the information. Clearly, the Commission will have access to and will analyse all information, but it is also desirable that interested parties as well as the public can see information that is relied upon by the Commission for the purpose of its determination. The Commission has a statutory obligation to give reasons for its determination. Consequently, as a general rule, unless the Commission is able to put all of the information that it is relying on into the public domain, it will be reluctant to rely on that information for the purpose of making its determination. Nonetheless, the

Commission is of the view that even where information is regarded as highly sensitive by the disclosing party, it may be possible, whether by means of aggregation or otherwise, to disclose the information in a modified manner. Where justified, the process of aggregation or restatement will be performed by the disclosing party in consultation with the Commission, after the Commission has seen all of the information in original form.

5.3.6 Use of the Commission's website

As indicated, the Commission proposes to place all of the submissions and representations that it receives in response to requests, on its website. Ordinarily, the Commission will not be editing this material. As a result, the content of any submission is solely a matter for the submitting party, and in that regard, interested parties are referred to the legal notice and indemnity concerning use of the Commission's website which is contained in Annex I to this paper.

Annex I

LEGAL NOTICE

While the Commission for Aviation Regulation (“the Commission”) at all times uses its best endeavours to ensure that all of the information on its website is up to date and accurate, the Commission accepts no responsibility in relation to and expressly excludes any warranty or representations as to the accuracy or completeness of the contents of its website.

INDEMNITY

Any party submitting information to the Commission for Aviation or Regulation (“the Commission”) in response to a document inviting submissions acknowledges that the Commission intends to publish that information on the website of the Commission, in reports of the Commission and elsewhere as required or appropriate. Parties submitting such information to the Commission consent to such publication. Any party submitting information to the Commission shall have sole responsibility for the contents of such information and shall indemnify the Commission in relation to any loss or damage of whatsoever nature and howsoever arising suffered by the Commission as a result of publication or dissemination of such information either on its website, in its reports or elsewhere.