Report on Determination On Maximum Levels of Airport Charges

Part 2

Commission Paper CP9/2001

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I REGULATORY FRAMEWORK

Aer Rianta

1. CAR should consider Aer Rianta's statutory obligations in respect of the operation and development of the airports, particularly under sections 16, 23 and 24 of the 1998 Act and should not take economic regulatory decisions that would "impinge or restrict" Aer Rianta in carrying out these obligations*.*

The Commission accepted this representation on the following terms, for the following reasons.

In making its determination, the Commission must have due regard to 10 specified factors. However, the Commission is also free to consider any other matter, for the purpose of it deciding how to give best effect to the statutory objective. As such, the Commission has considered Aer Rianta's statutory objectives, and it considers that there is no necessary conflict arising between that legislation and the Act. The determination allows for the development and operation of cost effective airports and in doing so takes full account of the on-going need for capital expenditure as well as the imperative of meeting the appropriate standards and requirements in respect of safety and compliance.

2. To be consistent with the statutory factor on minimum restrictions, CAR should only impose regulation where it has been demonstrated that Aer Rianta has market power. Hence, the test of economic efficiency should form the basis upon which regulation is applied. Aer Rianta believes that:

- Its scope for exercising market power is diluted by airlines being "powerful economic units" in their own right;
- It is subject to limited but sustained competition from UK, Irish regional and Belfast airports;
- It is highly inappropriate to impose a regulatory burden on an airport activity that is operating in a contestable market***.***

The Commission rejected this representation because in respect of airport charges, airlines although powerful economic units in their own right, do not, in this case, possess effective bargaining power, owing to the absence of comparable alternative airports, and as such are not in a position to substantially affect the level at which airport charges are set. Although there may be some competition from Belfast, for the moment this is weak. Furthermore, whether the market is

contestable is not at all clear. While there may be no legal barrier to entry by way of a statutory monopoly, there are very significant regulatory barriers. The Commission also notes that a necessary precondition for contestability is the absence of sunk costs, yet as Aer Rianta itself points out, the airport business is characterised by high fixed and sunk costs.

3. The regulatory approach "should allow Aer Rianta to continue its strategy of pursuing a commercial approach to the management of Dublin, Cork and Shannon airports."

The Commission accepted this representation on the following terms for the following reasons.

The Commission is facilitating the development of cost effective airports, which meets the requirements of users. The Commission believes that far from restricting Aer Rianta from pursuing a commercial approach, all of the regulatory incentives contained in the determination and, indeed, the statutory objective itself is designed to facilitate such an approach. This determination is not directly concerned with the internal management of Aer Rianta.

4. Defining users in the widest possible sense would be best achieved by extending the definition to include local communities because they are impacted by the development of airports in their region.

The Commission rejected this representation because the word 'users' is used in connection with the word 'airports'. As such, the statutory objective contained in Section 33 of the Act is specifically concerned with users of the airports, and not with local communities surrounding the airports. However, the Commission notes that to the extent that members of local communities are users of the airports, the Commission has based its determination on meeting their requirements, as well as those of other users.

5. <u>Incentive vs. Rate-of-Return Regulation</u>
There are a number of disadvantages associated with the operation of the rate of return model, which cause Aer Rianta to believe it to be an unsuitable choice for CAR, as follows:

- The risk is largely borne by the consumer with the operator enjoying a risk-free return;
- There is little incentive to pursue operational efficiencies or cost reductions as all profits are captured;
- It can give rise to overcapitalisation and overcapacity, by using capital-intensive technologies or advancing investment in advance of need – the Averch Johnson effect. There have been

allegations of gold-plating to boost the asset base, thereby boosting the absolute return;

- For businesses with a mix of regulated and unregulated activities, there are considerable problems associated with the allocation of costs and assets in order to determine the appropriate rate of return on the regulated activity;
- It proves costly, requiring a very detailed and accurate cost analysis of the company;
- It is characterised by an adversarial nature of interaction between the parties, resulting in a form of regulation which is confrontational and heavy-handed, which could be in conflict with having due regard to minimum restrictions;
- It was devised for US utilities and airports. The latter have completely different financing structures.

The Commission accepted this representation for the reasons outlined by Aer Rianta in points 1,2,3, and 7 and notes the following about the other points:
On point 4, difficulties with the allocation of costs between regulated and unregulated activities exist regardless of the framework that is chosen for the purposes of regulating airport charges.
On point 5, rate of return regulation is not the only framework that requires a very detailed and accurate cost analysis of the company
On point 6, the Commission would contend that the nature of interaction between a regulator and a regulated firm is not a function solely of the form of regulation that is chosen and is not, therefore, a reason not to choose rate of return regulation

6. Price cap regulation is superior to RoR because it:

- Is more forward-looking with an emphasis on productive efficiency;
- Is simpler and more cost effective to implement as it does not require such an extensive level of cost analysis;
- allows the benefits of greater efficiency to be shared with airport users when the cap is reviewed;
- allows the operator to plan on the basis of reasonably stable cashflows between reviews;
- provides certainty in planning to customers, through defining an inflation-adjusted average level of prices for a period of years.

The Commission accepted this representation and would emphasise the validity of the reasons provided by Aer Rianta in points 1 and 3. The Commission would also note the dynamic efficiency incentives of price cap regulation.

7. There are interesting developments in respect of airport regulation in Australia that should be taken into account when compiling the framework for the regulation of the Irish airports, whereby:

- More stringent regulatory arrangements are likely to be triggered in the case of airports that have a track record of abuse of market power, while the opportunity exists for less stringent measures if behaviour and performance merit them;
- A gain-sharing approach is applied through which regulated entities may be allowed to retain some of the benefits of efficiency gains for an extended timeframe beyond the five-year period of the cap.

The Commission rejected this representation because no arguments or information were supplied as to whether there was any coincidence between the relevant Australian legislation affecting airport charges and the Aviation Regulation Act, 2001. Based on the Commission's own knowledge, different considerations apply under the Australian legislation than do in Ireland. In any event, the Commission is satisfied that in Aer Rianta's case, some form of ex post facto regulation, to the extent that it would be possible under the Act, will not facilitate the development and operation of cost effective airports.

In relation to gain sharing the Commission has rejected this representation to the extent that, during the five-year period of the cap, the Commission does not propose the sharing of gains in order not to dilute Aer Rianta's incentives to out-perform the cap.

8. The Commission could use aspects of the New Zealand system as the template for its approach to regulation, although it may be premature to assess if this new regulatory approach is effective.

The Commission rejected this representation because economic regulation in New Zealand has been based on a form of competition and fair trading law, and not on sector specific legislation, as is the case in Ireland. That remains the case even if there is a coincidence between the purposes of both pieces of legislation. In any event, the Commission agrees that it is premature to assess the effectiveness of the New Zealand approach in any area of utility regulation.

9. The effective way to implement incentive regulation is to provide Aer Rianta with appropriate commercial incentives, through the adoption of standardised economic asset valuation processes, a RoR that is commensurate with risk and the implementation of appropriate processes to facilitate the sharing of out-performance.

The Commission accepted this representation on the following terms for the following reasons.

The Commission notes that its approach to setting the maximum levels of airport charges concurs with this statement. However, the Commission is also bound to ensure that the commercial incentives provided to Aer Rianta are consistent with meeting the requirements of users.

Bord Failte

10. Bord Failte is of the view that the Draft Determination, by being based on an interpretation of the economics of airport provision and services, without due consideration of the pivotal infrastructure role of airports to the wider economic life of the country fails to adequately take account of market conditions.

The Commission rejected this representation because the Commission has had due regard to the contribution of the airports to the regions in which they are located. However, the statutory objective is the development and operation of cost effective airports which meet the requirements of users. The objective is not concerned with the realization of other objectives. Further, to the extent that the reference to 'market conditions' refers to Ireland's peripherality as a tourist location, or the downturn in tourism as a result of Foot and Mouth Disease, the statutory objective cannot be reduced to an instrument of tourism policy, no matter how laudable, as is acknowledged, the objectives of those policies are.

11. It would appear that the determinations have been largely arrived at on the basis of the operational costs and revenue income streams of each of the three airports under review without reference to wider economic impacts and consequences.

The Commission rejected this representation because in order to achieve the statutory objective, the focus of the determination must be on cost and income streams. While it is true that either a rise or fall in the maximum levels of airport charges will affect certain activities, the maximum level of charges cannot be set by reference to this factor. In the long run, the economy will best benefit by the implementation of an economic framework in which productive, dynamic and allocative efficiency are achieved in respect of airports. This is precisely what Section 33 of the Act requires.

12. Bord Failte is concerned that the process and parameters of the Commission's role do not adequately allow for the addressing of the importance of regional airports, particularly in light of the trend towards shorter holidays where accessibility and time elements are coming to the fore.

The Commission rejected this representation because the Commission's role is defined by the Act. The processes adopted by the Commission accord with the requirements of the Act, and the applicable principles of fair procedures.

British Airways

13. The Commission should ensure that the economic welfare of all the users of the airports be given an equal priority as the economic welfare of the airports in any decisions reached by the Commission.

The Commission accepted this representation because under the Act, the Commission is concerned with the development of cost effective airports, but this is qualified by reference to those airports meeting the requirements of users. The Commission does not interpret its statutory objective as requiring that one interest be furthered over another.

14. Airlines, which operate in a competitive business environment, are the best proxies for the interests of passengers.

The Commission notes this view as to the coincidence of producer and consumer interests, and reserves its own position on this issue. It also notes that the Act is concerned not with the interests, but rather with the requirements of users. In terms of understanding the requirements of users, airlines are a useful source of information, both in relation to themselves and also their customers.

Cork/Southwest Consortium – Cork Chamber of Commerce

15. Due regard must be given to Ireland's essential need for air access as a small country on the periphery of Europe and given its size and population dispersal.

The Commission accepted this representation for the following reason.

The Commission has had due regard to this consideration, but has concluded that reliance thereon will not further the statutory objective.

Councillor Patricia McCarthy

16. The statutory objective of the CAR should be given a wider interpretation to include Government policy such as regional growth, balance and development.

The Act is concerned with facilitating the development and operation of cost effective airports, which meet the requirements of users. The statutory objective will not bear the interpretation being contended for. To accept this interpretation would be to rewrite Section 33 of the Act. This is so having regard to the Ministerial Direction of August, 2001.

17. Landing charges should be set to encourage use and development of the facility. Consequently, allowing charges that are lower in Dublin than in Shannon does not appear to make sense at a time when Dublin is operating near capacity. It is more logical to encourage greater utilisation of Shannon.

The Commission has accepted the first part of this representation insofar as it advocates landing charges being set to encourage the efficient use and development of airports, which is consistent with the statutory objective.

The Commission has rejected the remainder of this representation. Dublin Airport shows only preliminary signs of constraints on its ability to expand the capacity of the airport. Therefore there is no justification for setting charges according to the costs of congestion, if indeed there is such congestion in the existing facilities.

The Commission has determined the maximum revenue yield per passenger that can be earned through airport charges by taking account of all the costs of the airport operation.

Higher maximum revenue yields per passenger at Shannon or Cork than at Dublin could be attributed to several factors, including:

- ***differences in operational efficiencies***
- ***differences in passenger throughput leading to greater or lesser economics of density, scale and/or scope***
- ***differences in investment requirements***

If encouraging greater utilisation of Shannon is an appropriate business/economic strategy, the Commission agrees that it is a logical strategy and would note that Aer Rianta holds the discretion to pursue such a strategy through the setting of airport charges at Shannon.

18. Airport infrastructure is a vital component of access for an island nation, so is it logical that persons wishing to use the infrastructure for that purpose should have to pay for it*?*

The Commission rejected this representation on the following terms and for the following reasons.

The Commission interprets this as an argument that the State should underwrite all of the costs of developing and operating airports. In that regard, the Commission simply notes that the law allows Aer Rianta to recover airport charges, and required the Commission to set maximum levels of airport charges in accordance with the statutory objective.

IATA

19. Definition of user - It is generally accepted that while passengers and shippers are the ultimate customers, it is the airlines who are the primary and main users. The airlines are the prime users of the essential airport facilities and services, and pay for the bulk of these costs through their charges. They should therefore be considered as the prime users in the Commission's obligation to "aim to facilitate the development and operation of cost-effective airports which meet the requirements of users*".*

The Commission rejected this representation because the term user has been given its common sense meaning. The Commission sees no justification for dividing users into primary and secondary users. In any event, it could be considered that it is users in the sense of consumers, rather than the airlines themselves, who ultimately pay the costs of airport facilities.

20. We have some concerns regarding the intention to impose the minimum restrictions possible, and would like a clearer definition of the level and implications. Economic regulation is applied as a substitute for the absence of competition, and should be designed to protect the interest of the users. In our view, as previously mentioned, the airlines are the primary users. We would therefore like confirmation that the level of regulation will be consistent with the Commission's statutory objective "to facilitate the development and operation of cost-effective airports which meet the requirements of the users". We would also like justification for the proposal of a possible "sub-cap" at Dublin, together with assurances against any possible discrimination or anti-competitiveness as a result.

The Commission rejected this representation because the Commission believes that regulation in the form specified by the determination, to the extent that it seeks to minimise restrictions on Aer Rianta, is consistent with the achievement of the statutory objective. The economic justification for the sub-cap is based on the fact that the runway system is congested at peak periods, and an off-peak maximum charge will incentivise Aer Rianta to introduce peak pricing thereby encouraging **the efficient use of that system and achieving allocative and dynamic efficiency**.

21. It is on record that we have some significant concerns regarding the last Aer Rianta charges structure proposals. Consultation on the proposed charges structure is considered just as important to the users as the levels. Additionally, in our increasingly competitive industry any changes to charges structure inevitably also creates "winners and losers". In these circumstances it is even more imperative that there must be meaningful consultation. The Regulator is the competent authority to monitor and ensure this transparency and process takes place. In the event of disagreement the users should also have access to the Regulator for arbitration and appeal.

The Commission rejected this representation on the following terms for the following reasons.

The Commission, in making its determination notes Aer Rianta's stated intention to adopt a charge structure in the form disclosed by Aer Rianta in its submission to the Commission of 27 March 2001.

The Commission has no legal power to arbitrate or sit as a form of appeal body in respect of airport charges. The Commission determines the maximum levels of airport charges, and gives specific approval for fees for access to airport installations as it is required to do under the Groundhandling regulations.

Impact

22. The determination tries to apply a literal meaning to terms which have not been defined, and which focus only on costs.

The Commission rejected this representation because terms contained in the Act have been interpreted using standard principles of statutory interpretation.

23. In section three of the determination, it states that users are not defined. Likewise nowhere is the term cost effective defined in the Act. The Commission give a common sense meaning to these terms, bearing in mind user requirements, viz, best value in terms of use of resources by the airport authority. Applying the spirit if not the letter in these definitions we believe is proven to be in the better economic welfare of the users**.**

The Commission rejected this representation for the following reasons. Terms contained in the Act have been interpreted using standard principles of statutory interpretation. Absent any contra-indicators, terms are to be given their common sense meaning.

Irish Association of International Express Carriers

24. IAIEC members are experiencing unexpectedly acute declines in their business due to economic downturn and, therefore, CAR should:
Determine that it is commensurate with its responsibilities and fully within its powers (especially under section 33(d), (g) and (h) when read together) to use the allowable CAPEX and rate of return to direct Aer Rianta towards user requirements for their own strategic enhanced competitiveness and to cut costs;

The Commission accepted this representation on the following terms and for the following reasons.

The substance of this representation is consistent with the statutory objective of facilitating the level and operation of cost effective exports, which meet the requirements of users and the Commission, must give effect to the statutory regime irrespective of the prevailing economic circumstance.
The Commission, in its determination has carefully assessed and incorporated its assessment of the appropriate level of CAPEX, as well as the scope for improvements in operational efficiency. This has been done so as to give effect to user requirements.

25. Describe what it believes the impact of its first determination will be on cargo cost-effectiveness;

The Commission rejected this representation because it is not the function of the Commission to speculate on this matter. It sets the maximum levels of charges. In doing so, it has had due regard to cost-effectiveness of regulated airports

26. Recognise the urgent need to quickly respond to the rapidly changing economic climate by re-defining the efficient and effective use of all resources as requiring a vigorous, targeted and thorough programme of cost reduction to be immediately launched by Aer Rianta along with the elimination of unnecessary and wasteful overheads.

The Commission has accepted this representation and has set the maximum airport yields on the basis of a 3.5% per annum efficiency improvement at Dublin Airport and a 4% efficiency improvement at Shannon Airport.

27. The statutory factors that CAR must adhere to should be considered subsidiary to the overarching statutory objective of meeting the requirements of users.

The Commission accepted this representation because the statutory objective is, as a matter of law, pre-eminent. The Commission must have due regard to the 10 statutory factors. It has done so.

28. CAR is asked to address the IAIEC's concern that it is common sense to include customers of IAIEC members as airport users and that dramatic price increases do not meet their requirements in the current economic climate. In that context, individual maxima for the three airports could seriously disadvantage goods producers outside of Dublin.

The Commission rejected this representation on the following terms for the following reasons.

The Commission has given the term users an expansive interpretation consistent with its common-sense meaning. To the extent that the customers of IAIEC members are users of the airports, their requirements are taken into account. Whether or not price increases are unwelcome, welcome or tolerated is of no assistance to the Commission in making its determination having regard to the statutory objective. Legally, the Commission cannot be per se concerned with whether prices rise or fall, but rather it is concerned with setting maximum levels of airport charges consistent with the Act.

29. CAR has given more weight to statutory factor (i) (minimum restrictions) than either the legislation obliges or the reality of what users require.

The Commission rejected this representation because the Commission has only relied on this factor to the extent that the Commission regards it as furthering the statutory objective.

The Commissions view on this matter is informed by the following:

- ***Aer Rianta will always have a superior understanding of its business to any third party, including the Commission. For example it has immediate access to information concerning changes in demand characteristics as well as user requirements. Accordingly, subject to the stipulated caps, Aer Rianta is best positioned and should be free to set individual charges.***

- ***While the Commission is satisfied that the efficiency gains which derive from the sub-caps on cargo charges and on off peak runway use will outweigh the costs in intervention, this is not apparent in respect of all of the other heads of charge capable of falling within the definition of airport charges contained in Section 2 of the Air Transport and Transport (Amendment) Act 1998.***

- ***In addition to the operation of competition rules, fees for access to airport installation, require specific approval from the Commission. Therefore, Aer Rianta is currently operating in an environment where it faces significant controls over aspects of its charging.***

Irish Exporter's Association

30. IEA recommends that any element of airport charges to be determined under EC Directive 96/67/EC on access to Groundhandling be considered as a fractional charge already included in the maximum airfreight (cargo) permitted revenue per workload unit.

The Commission accepted this representation on the following terms for the following reason.

Airport Charges are defined in Section 2 of the Air Navigation and Transport (Amendment) Act, 1998. Airport charges include charges in relation to the transportation by air of cargo to or from the airports. The Commission must set maximum levels for those charges. The Commission need not set individual charges, but it has decided that the statutory objective is best effected by doing so in respect of off-peak utilisation of Dublin Airports runway system and by getting a cap in relation to cargo.

Separately, under the Groundhandling Regulations, where access to airport installations gives rise to the collection of a

fee, that fee must be specifically approved by the Commission. Accordingly, there may be a partial overlap between the separate regimes in that a fee requiring specific approval under the Groundhandling Regulation may also fall within the definition of airport charges. In such a case, the revenue arising from such a fee will be taken into consideration in terms of the operation of the regulatory till.

Irish Hotels Federation

31. A safe, reliable and competitive transport service must ensure the following: adequate capacity at airports to cater for existing and projected passenger traffic; competitive user charges to reflect the fact that Ireland is a peripheral location in an extremely competitive market, which is highly dependant on air services for access to Irish markets; efficient low cost air access option to regions throughout the country.

The Commission accepted this representation on the following terms for the following reasons.

The Commission's determination is based on a robust traffic forecast. This is necessary to ensure the development of airports consistent with the requirements of users. However, maximum levels of charges are not set by reference to Ireland's peripheral location but rather by reference to what is needed to ensure the development of the airports taking into account the scope for improvements in operational efficiency.

Limerick Chamber of Commerce

32. CAR's definition of airport user, where it puts the passenger first, is welcomed. Businesses in the whole west of Ireland should be considered users of Shannon airport.

The Commission accepted this representation on the following terms for the following reasons.

The Commission has given the term users an expansive interpretation consistent with its common-sense meaning. To the extent that businesses in the west of Ireland are users of the airports, their requirements are taken into account.

33. The objective, from the point of view of economic development and regional development, should be to maximise passenger throughput at the lowest possible cost, consummate with running a viable self-sufficient national airport network. Therefore, efficiency is favoured and it is believed that Shannon should aim to be an outstanding low cost provider of airport services, driven by efficiency**.**

The Commission rejected this representation on the following terms, for the following reasons.

The Commission is concerned with the statutory objective and with setting maximum airport charges such that this objective is furthered. It doing so, it has had due regard to the contribution of the airports to the regions in which they are located, in accordance with section 33(iv) of the Act. Aer Rianta has the discretion to set its airport charges such that at any of its airports passenger throughput is maximised at the lowest possible cost, consistent with maintaining viable self-sufficient national airport network.

34. A more liberal interpretation of the Act could be taken given that the regulator and the airport authority are still in public ownership**.**

The Commission rejected this representation for the following reasons

It is unclear what alternative interpretation is being suggested. The issue of State-ownership is per se irrelevant, having regard to the statutory objective.

Ryanair

35. Section 33 of the Aviation Regulation Act, 2001, (the "Act obliges the Commission to
"<u>facilitate the development and operation of cost effective airports</u> which <u>meet the requirements of users</u>**".**

There is unanimity amongst the users of the regulated airports that the facilities have consistently been over specified, are cost and operationally ineffective, and have been developed at excessive cost - which is in turn being recovered from users through excessive prices.

There is also unanimity among users that Aer Rianta has failed to consult with them and has failed to meet their requirements. Users have confirmed their requirements of

I. significantly lower costs;
II. significantly more efficient use of the existing facilities; and
III. unanimous opposition to the profligate and vastly over specified capital expenditure proposals put forward by Aer Rianta for Dublin, Cork and Shannon airports for the next ten years.

The Commission accepted part (i) of this representation.

The Commission estimated that scope exists for improvements in operational efficiency at Shannon and Dublin, and the X factor takes this into account. It is also of the view that the statutory objective of facilitating the development and operation of 'cost effective' airports is furthered by requiring improvements in operational efficiency in this manner.

The Commission accepted part (ii) of this representation.

- ***In relating to the level of charges the Commission has set the maximum levels of airport charges having regard to the need to improve the quality of user consultation, so as to include adequate cost benefit analyses. Part of any such cost benefit analysis would require an assessment of the use of existing facilities and evidence to suggest that more efficient use is not possible, therefore justifying the capacity expansion***

- ***In relation to the structure or level of charges, the Commission notes Aer Rianta's intention to adopt a charge structure in the form disclosed by Aer Rianta in its submission to the Commission of 27 March 2001. In addition the Commission has deemed it appropriate to set a sub-cap on off peak use of Dublin Airport's runway system because it believes that the benefits in terms encouraging more efficient use of that runway system, out weighting any costs associated with such an intervention. It has also got a Cap in respect of cargo.***

The Commission believes that it is appropriate to allow Aer Rianta develop its charging structure for all other services for the reasons set out in responses to previous questions.

The Commission has accepted the substance of part (iii) and has modified its Recoverable CAPEX Programme, because it considered that Aer Rianta's investment programme would not facilitate cost effective airports that meet the requirement of users.

36. The recent economic down turn in Ireland and abroad and the stagnation and decline in traffic growth in the past two years (due to Aer Rianta's doubling of charges) make the achievement of the regulatory objectives all the more crucial to the continued viability of the air transport sector and the Irish economy as a whole.

The Commission has rejected this representation because it considers that it must give effect to its statutory objective irrespective of wider economic conditions.

37. We and other users have called on the Commission to tightly regulate Aer Rianta in order to ensure the development and operation of cost effective airports which meet the requirements of users.

The Commission accepted this representation subject to the following and for the following reasons.

The Commission has been vested with a considerable amount of discretion in terms of the form of regulation to be adopted, and in this regard it has decided for a price cap system given its superior efficiency characteristics. As part of its calculation of the price cap, the maximum levels of charges are calculated by reference to a CAPEX Programme which meets the requirements of users, and to required improvements in operational efficiency going forward.

38. The Commission itself has recognised in CP6 that "the extent to which reliance on any one of the factors contributes to the achievement of the statutory objective is a matter for the Commission to determine." This is not entirely the case. The Commission is obliged to give the maximum due regard to those factors which (i) facilitate cost effective airports and (ii) meet the requirements of users.

The Commission accepted this representation on the following terms for the reasons.

The statutory objective is, as a matter of law, pre-eminent. The Commission must have due regard to the 10 statutory factors. It has done so. In doing so, the Commission has sought to maximise the degree of reliance on the factors that it considers are most likely to achieve the statutory objective. (See CP8/2001).

39. It contravenes the legislation that the Commission has in CP6 failed to rely on those factors that would achieve the regulatory objectives (i.e., meeting the requirements of users) but instead places an over-reliance on those that maximize the CAPEX of, the returns of, and the discretion given to, Aer Rianta.

The Commission rejected this representation on the following terms for the following reason.

The Commission must consider the CAPEX requirements of the airport since part of the statutory objective is the development

of cost-effective airports. Arriving at a view as to the CAPEX Programme is a sine qua non of the determination, given the Commission's decision that price cap regulation gives best effect to the statutory objective. In formulating the allowable CAPEX Programme, the Commission has put the requirements of users to the fore.

In relation to a rate of return, the Commission regards this as inextricably linked to the 'development of cost effective airports'. As such, the calculation of a reasonable rate of return is also a sine qua non of the determination, given the Commission's decision that incentive regulation (in the form of a price cap) gives best effect to the statutory objective.

In relation to the regard, which the Commission has had to minimising restrictions on Aer Rianta, the Commission views have been set out in response to earlier representations.

40. The Commission's draft proposals set out in CP6/2001 therefore fails to *"meet the requirements of users"* and will also fail to *"facilitate the development and operation of cost effective airports.*

The Commission rejected this representation for the reasons stated in response to earlier presentations.

41. Aer Rianta have used the regulatory vacuum, namely the period taken up with the establishment of the Commission for Aviation Regulation, to overcharge people at the airport.

The Commission notes this opinion. However, it is not clear how this relates to the setting of maximum levels of charges going forward.

42. Dublin is more than 30% more inefficient than its peer airports. Although 30% more inefficient, by the Commission's own estimates, than its peers, Aer Rianta is still being given a price increase and an over-generous rate of return**.**

The Commission rejected this representation because CP6/2001 estimated the gap in unit costs between Dublin and its peers at 30% and the maximum levels of charges were proposed on the basis of efficiency improvement of half this amount. The Commission, on foot of other representations, which it has accepted, and as part of its more general reconsideration of all issues bearing on the determination, has revised those estimates, taking into account likely changes in productivity, technological changes, and the effect of changes in volume of traffic handled at the airports. However, simply

because operational efficiency must improve, charges may still need to increase, since the Commission must also allow for any necessary CAPEX.

43. The Commission, in its determination, should be trying to simulate what would be a competitive environment at Dublin airport, and to do so, should go beyond the spirit of the legislation, to replicate competition**.**

The Commission rejected this representation on the following terms for the following reasons.

It is not open to the Commission to exceed what the Act permits. However, to the extent that the purpose of the Act can be regarded as attempting to re-produce the competitive outcomes, given the emphasis on productive, dynamic and allocative efficiency, the Commission has attempted to further those goals, in particular by means of its selection of incentive regulation, based on a price-cap.

44. The draft determination fails: to encourage cost reduction; to increase efficiency, to limit capital expenditure, and fails to promote new route and traffic growth. However, traffic growth should not be the only concern of the final determination. Ryanair supports growth incentives in principle, but does not see any opportunity for it under the legislation per se.

The Commission rejects this representation on the following terms for the following reasons.

The draft determination did require improvements in operational efficiency, as well as limiting CAPEX. However, the Commission having considered and accepted representations on these issues has revised its approach. In relation to traffic growth, the statutory objective is concerned not with traffic growth per se, but rather with the development and operation of cost effective airports, which meet the requirements of users.

45. Traffic growth is self-financing because of declining unit costs

The Commission rejected this representation because no evidence was supplied to support this contention. In fact, where airports are concerned, there is evidence to suggest that in certain circumstances, as volumes increase unit costs do not continue to fall.

In every case positive charges are still required to cover these costs even if they are declining. To the extent that this is an argument for volume discounts it is open to users to negotiate such discounts with Aer Rianta.

46. Pier A users are subsidizing Pier C users and this should end, since it means that the most price sensitive consumers are overpaying for inferior facilities.

The Commission accepted this representation to the extent that it is the case that Pier A users are subsidising Pier C users. However, the Commission has received no evidence to suggest that it is the case with respect to Aer Rianta's current airport charges.

With respect to setting maximum airport charges going forward, the Commission notes that the value of Pier C has been written down to reflect the cost of a hypothetically efficient equivalent.

47. The Pier A discount should be reintroduced, even if it leads, as Ryanair accepts, to congestion because of airlines switching away from other piers.

The Commission rejected this representation for the following reason.

The difficulty of increased congestion means that this proposal is neither practical nor desirable. The Commission considers that consistent with the statutory objective of meeting user requirements, there is demand for a low specification additional pier. That requirement has been incorporated into the determination as part of the recoverable CAPEX.

48. Aer Rianta's assets should be valued at the written down historical costs, net of grants.

The Commission has rejected this representation because valuing assets at depreciated historical costs would not give the airport operation a return sufficient to continue the business and to replace assets as required.

49. The Maximum permitted WLU should be reduced by 30% for Dublin because of the Commission's own measurement of the gap in efficiency terms. This should be subject to an annual RPI – X adjustment, with X set at 7%. The maxima for Shannon and Cork should be cut, and halved to that of Dublin, so as to aid regional development.

The Commission rejected this representation because the maximum levels of airport charges proposed in the draft determination already incorporated an assessment, not just of what was possible by way of improvements in operational costs, but also what was feasible. That work has been revised on foot of other representations that have been accepted. In the interests of transparency, the Commission's determination explicitly identifies the X factor. In respect of the maxima for Dublin and Cork, the Commission notes that Aer Rianta is free to price below the price cap.

50. The passenger yield in terms of revenue per passenger should be of no concern to the Commission.

The Commission has rejected this representation to the extent that this is the metric by which it intends to regulate Aer Rianta's airport charges. In the alternative, to the extent that this representation argues that the Commission should not be concerned with current revenue per passenger on a comparative basis, the Commission accepts that representation since such comparisons provide no assistance in furthering the statutory objective.

51. It is not the function of the Commission to make the airports economic or profitable.

The Commission rejected this representation on the following terms for the following reasons.

The Commission is concerned with the development of cost-effective airports. As such, the Commission is not per se concerned with profitability, but rather with a reasonable rate of return so that the airport operator is given the necessary incentive to develop the airport consistent with the requirements of users. As such, the Commission is rightfully concerned with making the airports economic.

52. It is Ryanair's belief that the Commission for Aviation Regulation clearly has the power under the Aviation Regulation Act 2001, and in particular Section 33, to achieve the regulatory objective of giving the maximum regard to the requirements of the users of the regulated airports. Indeed, as the Commission itself recognises, it is obliged to *"facilitate the development and operation of cost effective airports which meet the requirements of users"*.

The Commission accepts this representation as a correct statement of the law

53. The Commission must also give maximum regard to the current uncompetitiveness at the regulated airports.

The Commission rejects this representation on the following terms.

The Commission interprets this representation as arguing for the Commission to place heavy reliance on a comparison of the levels of airport charges. In attempting to facilitate the statutory objective, the Commission is free to consider any relevant matter. While comparative pricing analysis of this nature may be an indicator of operational efficiency, the Commission has decided not to rely on it because of the short-comings of such comparison especially in relation to published versus actual charges, as well as differing regulatory environments.

54. The Commission must also give maximum regard to the failure of Aer Rianta in recent years to consult with its users or to facilitate or meet the requirements of those users.

The Commission has accepted this representation for the following reasons: The Commission must pay special attention to the requirements of uses, and the extent to which Aer Rianta has adequately consulted with users and in particular, the airlines. The Commission has reviewed a considerable body of information on Aer Rianta Capex Projects which have been completed, as well as projects which are planned. Serious deficiencies in the quality of consultation have emerged. Accordingly, the Commission takes the view that many of the projects planned by Aer Rianta have not been objectively justified in terms of business cases and cost benefit analyses. As such, this means that any consultantory which has taken in respect of them is necessarily deficient. In the circumstances, the Commission has adopted a Recoverable Capex Programme based on the advice of IMG consultants.

55. The Commission has the power to return Ireland to a favourable access cost regime and indeed the Act obliges the Commission to do so. Moreover, it is only by doing so that the Commission can comply with its obligations to meet the regulatory objectives as specified by the Oireachtas in Section 33 of the Act, i.e., *"by facilitating the development and operation of cost effective airports which meet the requirements of users."*

The Commission has accepted this representation to the extent that the objective of facilitating the development and operation

of cost effective airports through the regulation of airport charges is consistent with the provision of a competitive airport access regime. However, the Commission is not obliged to "return Ireland to a favourable access cost regime".

Servisair

56. Servisair requires regulatory certainty that (i) the charges proposed by Aer Rianta are within the definition of airport charges as defined by the Air Navigation and Transport (Amendment) Act, 1998 and therefore are regulated by the Commission and (ii) the charges are reasonable and not excessive.

The Commission acknowledges that all airport charges recovered by Aer Rianta must fall within the definition contained in Section 2 of the Air Navigation and Transport (Amendment) Act, 1998. In deciding to regulate the maximum levels of charges based on a revenue per passenger yield, the Commission has decided to adopt a single till approach. In the operation of that till, all of the revenues, which Aer Rianta earns from airport charges as defined will be identified. The Commission will review annual compliance with the price Cap.

In relation to charges being reasonable and not excessive, the Commission notes the following:

Aer Rianta has also stated its intention with respect to a new charging structure, as well as the principles that will inform that structure, namely that it will:

- ***Be objective, cost reflective, non-discriminatory between users and transparent***
- ***Encourage users to make efficient use of assets and signal clearly the consequences of such use (eg they should reflect the costs of increasing capacity of particular facilities***)
- ***Be as simple as possible to administer, consistent with the above criteria***

Finally, certain of the airport charges to be introduced by Aer Rianta may also fall under the Groundhandling Regulations, and as fees for access to airport installations, which, as a matter of law, must be non-discriminatory. This is separate to any other obligations that apply to Aer Rianta in adopting charges, including those arising under either domestic or EU competition law.

57. Servisair considers that CP6/2001 does not go far enough in ensuring that the requirements of users are met.

CP6/2001 fails to address the unreasonableness and excessiveness of Aer Rianta's current and proposed charges. Many of the charges imposed by Aer Rianta are arbitrary and stand in no correlation to the level of services provided in return. As a result, the Commission has failed to take into account the requirements of users.

The Commission rejected this representation on the following terms for the following reasons.

The Commission has revised its approach from that proposed in CP6/2001. It has adopted a specific cap in relation to cargo. In formulating the Recoverable CAPEX Programme the Commission has had special regard to the requirements of users and the inadequate nature of previous consultation.

Shannon Development

58. Shannon needs lower maximum charges in order to attract more traffic and exploit economies of scale in order to achieve the 25% efficiency improvement that CAR referred to in its draft determination. Concerned that CAR is ignoring the impact of charges on traffic growth and setting charges simply to cover costs.

The Commission has rejected this representation to the extent that there is no explicit link between the maximum airport charges set by the Commission in accordance with the Aviation Regulation Act and, the attraction of traffic to Shannon. Aer Rianta holds the discretion to set Shannon Airport's charges at levels that will have the effect of attracting traffic. The Commission would also note that in setting the maximum airport charges it has done so in order to provide the incentive to Aer Rianta to achieve an improvement in operational efficiency above and beyond the economics of scale that the Commission has predicted will result from increased traffic at Shannon.

In doing so the Commission has set maximum airport charges in order to further the statutory objective of facilitating the development and operation of cost effective airports which meet the requirement of users, not such that Aer Rianta can simply cover its costs

II PROCESS AND PROCEDURE

The Commission received a number of representations relating to the process and procedure adopted by the Commission in formulating its draft Determination (CP6/2001). A significant portion of these representations consisted of criticisms of the lack of detail and the consequent lack of transparency of the draft Determination and how this impacted on the ability of interested parties to ascertain the impact or effect of the draft Determination.

The Commission believes that the publication of CP6/2001 complied with and exceeded its obligation to give notice of its proposal to make a Determination to any person concerned, in accordance with s.32(7)(a) of the Act. In addition, the period of consultation which the Commission held in advance of the publication of CP6/2001 enhanced the process prescribed by the Act for the making of a Determination in respect of the maximum levels of airport charges. For these reasons the Commission rejects those representations which submitted that CP6/2001 did not enable interested parties to ascertain, in general terms, the impact or effect of its draft Determination. Notwithstanding this, the approach adopted by the Commission in respect of the provision of information in this Determination and the appendixes attached hereto addresses the concerns expressed by interested parties in relation to their ability to ascertain the impact of the Determination. In particular, the Commission has

- Decided not to set maximum levels of airport charges by reference to a workload unit related formula given the uncertainty and lack of precedent in relation to the use of such a formula.
- Provided detailed information in relation to the projects which are included in the Recoverable CAPEX Programme
- Provided detailed information in relation to the methodology for calculating the cost of capital of Aer Rianta.

- Published details of the traffic forecasts it has used, namely the Centreline Traffic Forecast.

- Published a value for the X factor in the CPI-X formula together with details of the application of this annual adjustment.

- Published detailed formulae in respect of the methodology for calculating the maximum average yield per passenger.

III CAPEX

Aer Lingus

59. Allowed capital expenditure should be set at zero for all investment categories except the necessary alterations to the terminal building at Cork and some other minor items.

The Commission has accepted the substance of this representation. Its reasons for doing so are the lack of an adequate demonstration to the Commission by Aer Rianta of the cost-effectiveness of Aer Rianta's very large proposed CAPEX programme; the trenchant opposition to that programme of carriers, both passenger and cargo, and of ground-handlers; and the inadequate consultation by Aer Rianta with airport users. The Commission considers that the absence of adequate financial justification together with the absence of a broadly supportive user consensus on the investment programme, means that for the Commission to have included Aer Rianta's investment plan in the calculation of maximum airport charges would conflict with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users. Therefore, the Commission's revised Recoverable Capex Programme excludes, for the purpose of calculating maximum airport charges, the entire Aer Rianta proposed Capex plan other than the new terminal building at Cork Airport, the new Pier at Dublin Airport and investments relating to capacity, maintenance, safety and compliance and commercial ventures with relevance to increasing capacity safety and compliance. The latter projects have been included because the Commission obtained independent justification for these projects from its consultants, IMG.

60. Access/Egress/Roads at Dublin: we do not require this development and therefore require that it be rejected.

The Commission has accepted this representation except insofar as this development has safety and capacity implications. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

61. Terminal building at Dublin: we do not require this development and therefore require that it be rejected. We do not have any information on what benefits for users this investment will produce and therefore reject the projected expenditure.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

62. North Terminal at Dublin: we do not require this development and therefore require that it be rejected.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

63. New Piers at Dublin: we would support a cost effective and efficient programme for Pier D. Bearing in mind the gold-plating and inefficiency identified and disallowed by the Commission in relation to Pier C, we need further information before we can give any support to specific capital expenditure projections for this item. We reject any expenditure relating to other projects, since we have received no information about them and we do not require them.

The Commission has accepted this representation and has included in the revised Recoverable Capex Programme the funds for the building of a fourth pier, at Dublin Airport. The Commission has accepted this representation because it obtained independent justification of the need for an additional Pier from its consultants, IMG, and because this project had the general support of airline airport users.

64. Cargo at Dublin: we do not require this development and therefore require that it be rejected.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

65. Stands and airfield at Dublin: we do not require and object to being expected to fund a new runway at Dublin within the period covered by the Commission's projections. We cannot support any expenditure on any other items without being provided with information on what is proposed. Accordingly, we reject all capital expenditure in this category until proper consultation has been carried out. We therefore require that the Commission allow no investment in this category until after a review in two years time.

The need for a second runway fall's outside the 2001/02-2005/06 regulatory period and hence outside the relevant CAPEX programme, other than planning and design costs. In regard to airfield projects, the Commission has accepted this

representation, except for the building of a Rapid Exit Taxiway (RET). The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation. The Commission has included an RET in the Recoverable Capex Programme because the Commission obtained independent justification of its need from its consultants, IMG. The Commission rejects the final part of the final sentence of this representation. Only in two year's time could it be established whether there exist, as would be required by law, substantial grounds for such a review. The Commission makes no prejudgement of the matter at this time.

66. Rail at Dublin: we do not require this development and therefore require that it be rejected.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

67. We are not prepared to pay for any internal rail system or connection to the national rail system through airport charges. If passengers are prepared to pay for the system through fares, any expenditure should be met through that mechanism. If social objectives, such as reducing road congestion, are considered important, such expenditure should be met through central Government grants. Either way, any such system should be outside the regulatory till. We reject the idea of paying additional airport charges for a system that we do not require.

The Commission has rejected this representation insofar, though only insofar, as it has excluded Aer Rianta's proposed internal rail project from the Recoverable Capex Programme for the reasons given in the Commission's response to first Aer Lingus representation.

68. Shannon: we do not require this development and therefore require that it be rejected.

The Commission has accepted this representation except insofar as it relates to investment for maintenance and repair, commercial projects related to increase in capacity and projects for safety and compliance purposes. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

69. We do not have any information on what benefits for users any of the investments allowed for Shannon will produce and therefore reject the projected expenditure.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

70. We are surprised that the Commission is proposing to allow over £21 million of additional capital expenditure for a terminal at Shannon that the Commission itself has recognised to be gold-plated, having disallowed £7 million past expenditure as inefficient and unnecessary.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

71. Access/Egress/Roads at Cork: we do not require this development and therefore require that it be rejected.

The Commission has accepted this representation, except insofar as it relates to investment related to increases in capacity. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

72. Terminal building at Cork: some capital expenditure should be allowed for a new terminal at Cork over the next two years because Aer Rianta is engaging in consultation. However, the Commission should be prepared to assess the efficiency of any such investment if, as we require, it carries out a more detailed review in order to revise its determination in two years time. If elements of the project are excessively specified or inefficient, they should not be passed into airport charges (just as the Commission disallowed inefficient asset costs at Shannon).

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation. Regarding a possible review of the Determination in two year's time, it could only be established in the future whether there exist, as required by law, substantial grounds for such a review. The Commission makes no prejudgement of the matter at this time.

73. Stands and airfield at Cork: we do not have any information on what benefits for users this investment will produce and therefore require that it be rejected.

The Commission has accepted this representation except insofar as it relates to investment related to increases in capacity. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

Aer Rianta

74. Section 33 of the Act must be applied in the context of the business and industry parameters in which the airports operate, ie. the 1998 Act and EU, ICAO etc. rules.

The Commission has rejected this representation. The Aviation Regulation Act, 2001, sets the statutory framework for the Commission.

75. It is important to distinguish between the role of the Commission in reviewing the cost associated with an appropriate capital investment programme (for inclusion in the base for calculation of airport charges) and a more active role as an evaluator of the capital investment programme presented by Aer Rianta (to assess whether it is matching the needs of users). The former is a necessary and reasonable function of CAR, while the latter would not be appropriate as:

- Aer Rianta's statutory responsibility under the 1998 Act would be compromised;
- CAR would be attempting to second-guess airport management decisions that would be contrary to the requirements under section 33(i) of the Act;
- Imposing a formal monitoring structure could reduce flexibility to adjust capital spend to react to new information on technology, costs and user demand;
- CAR would be second-guessing a complex investment programme, which is underpinned by significant expert advice on master planning and development, consultation with users, local and regulatory authorities and other statutory bodies and is grounded in the regulation and standards governing delivery of infrastructure and facilities at airports;
- The accountability of airports for investment planned and undertaken and for service levels will be diluted.

The role of CAR should be to undertake detailed comparisons of the differences between planned and actual CAPEX at the end of each review period, incorporating significant differences into setting the subsequent price cap within the context of a profit-sharing mechanism. This would maintain the integrity of incentive-based regulation.

The Commission has rejected this representation because of the inconsistency of its substance with the Aviation Regulation Act. Section 33 of that Act requires the Commission to facilitate the development and operation of cost-effective airports, which meet the requirements of users. Aer Rianta was unable to provide the Commission with adequate demonstration of the cost-effectiveness of its CAPEX plan. Users expressed trenchantly critical views of that CAPEX programme. In these

circumstances, the Commission took the view that to meet its statutory mandate it should, in calculating maximum airport charges, exclude projects other than those for which the Commission had independent justification of their need from its consultants, IMG, and/or where these projects had the general support of airport users.

76. Aer Rianta does not accept CAR's suggestion that it has not adequately justified its planned capital investment programme.

The Commission has rejected this representation. In its first statutory request for information, sent to Aer Rianta on 2nd March, 2001, the Commission sought information regarding Aer Rianta's proposed investments for the next five to seven years. In particular, the Commission asked for the financial analysis performed to justify that investment. In its reply, dated 23rd March, 2001, Aer Rianta responded: "Not in existence". Subsequently, the Commission again sought cost-benefit or other financial justifications for Aer Rianta's investment programme. No adequate justification was provided.

77. There is no suggestion that the Commission actually believes that this investment is not required, but rather that Aer Rianta has simply not provided sufficient justification.

The Commission has rejected this representation as it considers itself to be statutorily bound to exclude, for the purposes of calculating the maximum airport charges, those CAPEX projects that lack sufficient justification. Moreover, the Commission has insufficient justification and evidence of consensus among users to draw a conclusion as to whether it believes that the majority of Aer Rianta's CAPEX programme is required or not.

78. The extent of industry consultation over CAPEX is extensive and involves many diverse groups, including airlines, groundhandlers and other providers, cargo operators and other users of the airport site, Fingal county council, local community groups, local chambers and business interests, National Roads Authority, Dublin Transportation Office, tourism bodies and groups, regional development groups, IAA, DPE, Dept of Environment, staff and trade unions.

For all major projects, general consultation is carried out and specific working groups are set up to input into planning and design.

Aer Rianta is in extensive consultation with many interested parties on master plans for the airports.

The Commission has rejected these three representations because of the evidence provided in other statutory representations (including those of airlines, cargo handlers and ground handlers) of a failure on Aer Rianta's part to consult adequately with airport users. (These statutory representations are available in full on the Commissions' website, www.aviationreg.ie and are extracted in this Report.) In addition, the Commission has rejected these representations as the result of a review of documentation supplied to it by Aer Rianta and various airport users in response to requests for information on consultation by the Commission. The Commission has reviewed all of this documentation. The documentation provides no evidence of Aer Rianta engaging in a meaningful consultation process with users, particularly as to the cost of proposed Capex projects. The Commission also notes that, at all times, Aer Rianta has provided such information as was given to the Commission concerning its CAPEX programme on the basis of strict confidentiality. While this is not necessarily in conflict with the claim of full consultation, the Commission notes that airport operators in other jurisdictions have published extensive descriptions of their future investment plans including, for example, detailed project-by-project costings and descriptions.

79. In response to the Commission's question in CP2/2001 as regards whether one airport charge should be earmarked for investment spending, Aer Rianta believes this to be inappropriate, for the sake of cost-reflective charges and sending appropriate economic signals in relation to each of its areas of activity.

The Commission has accepted this representation because it considers that maximum airport charges should be expressed in the form of a per-passenger yield, which inter alia minimises regulatory restrictions and affords Aer Rianta the flexibility to develop efficient charging structures.

80. Assets in the course of construction should be counted as part of the RAB to maintain price continuity, reduce the risk of asset stranding and consequent cost of capital increases, and to ensure investment is made at the appropriate time.

The Commission has accepted this representation and has included in the RAB the capitalised value of assets in the course of construction (AICC) in order to ensure that Aer Rianta has sufficient funds with which to fund the capital costs associated with the construction of such assets (that is, the cost of equity or of debt), thereby facilitating the sustainability of its airport operations, to maintain price continuity, to reduce the risk of

asset stranding and consequent cost of capital increases and to ensure investment is made at the appropriate time*.*

81. It is difficult to clarify whether CAR's recoverable CAPEX retains the ability to meet Aer Rianta's statutory and regulatory objectives and the requirements of current and prospective users.

The Commission has rejected this representation because it is satisfied that the Commission's revised Recoverable Capex Programme meets the statutory objectives of the Aviation Regulation Act.

82. It is essential to have a robust method to determine whether lower than expected CAPEX is the result of efficient delivery of investment or simply under-investment. If CAPEX is higher than expected, the regulator must be able to distinguish between simple inefficiency in carrying out the investment and the case where additional investment has been carried out to meet user needs and changing business requirements.

The Commission has accepted this representation and is satisfied that it has applied robust methods to measure Capex requirements.

83. It is essential that CAR provides clarification of how it intends to deal with CAPEX at the next price review, in particular, how it will deal with the situation where Aer Rianta needs to carry out some or all of the disallowed projects, in order to meet the current and prospective needs of users:

The Commission has conditionally rejected this representation. Regarding a possible review of the Determination in two year's time, it could only be established in the future whether there exists as required by law, substantial grounds for such a review. The Commission makes no prejudgement of the matter at this time.

84. The only real option available to CAR is to state that, at the next price review, the RAB will be rolled forward on the basis of Aer Rianta's actual (rather than expected) CAPEX

The Commission has rejected this representation because it proposes that the Commission should abdicate its statutory discretion in regard to the treatment of the RAB*.*

85. The Commission could require Aer Rianta to carry out more extensive consultation with users and could attend such a forum itself.

The Commission has accepted this representation because its statutory objective is to facilitate the development and operation of cost effective airports that meet the requirements of users. However, the Commission notes the view of many airport users that, had the Commission provided Aer Rianta with funding for its initial proposed CAPEX through higher airport charges, Aer Rianta might have had little further financial incentive to consult with airport users over its CAPEX programme. The Commission also notes the apparent contradiction between this representation and an earlier representation in which Aer Rianta claims to have already extensively consulted with airport users.

86. If it is demonstrated that Aer Rianta does need to carry out the disallowed projects, it should be able to earn a reasonable return on this investment, at least after the next price review.

The Commission has conditionally rejected this representation. Regarding a possible review of the Determination in two year's time, it could only be established in the future whether there exists as required by law, substantial grounds for such a review. The Commission makes no prejudgement of the matter at this time

87. In addition, it would be necessary that the financing cost of the investment during the current price control period should be added to the RAB, to compensate for the impact of that investment (and associated depreciation) being excluded from CAR's projections for the current price review.

The Commission has rejected this representation since it would amount to setting maximum charges on the basis of Aer Rianta's CAPEX rather than the Commission's revised Recoverable CAPEX Programme. The Commission revised Aer Rianta's CAPEX plan because of the lack of an adequate demonstration to the Commission by Aer Rianta of the cost-effectiveness of Aer Rianta's proposed CAPEX programme; the trenchant opposition to that programme of carriers, both passenger and cargo, and of ground-handlers; and the inadequate consultation by Aer Rianta with airport users. The Commission considered that the absence of adequate financial justification together with the absence of a broadly supportive user consensus on the investment programme, meant that for the Commission to have included Aer Rianta's investment plan in the calculation of maximum airport charges would have been in conflict with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users.

88. The Commission has not carried out the detailed work required to analyse Aer Rianta's investment proposals and come up with an agreed investment programme based on specifically identified projects and deliverables. There is not time to implement this approach within the remaining time.

The Commission has rejected this representation because the detailed review of Aer Rianta's CAPEX plans, which it commissioned from its consultants, IMG, provided a more detailed assessment of the investment needs of Aer Rianta's airports than any information provided by Aer Rianta to the Commission. Aer Rianta's CAPEX plans were notably lacking in a precise statement of well-defined projects with deliverable outputs.

89. If CAR were to decide that the RAB is to be rolled forward on the basis of Aer Rianta's projected (rather than actual) CAPEX:

It would have damaging effects on Aer Rianta's investment incentives:

The Commission has conditionally rejected this representation. Regarding a possible review of the Determination in two year's time, it could only be established in the future whether there exists as required by law, substantial grounds for such a review. The Commission makes no prejudgement of the matter at this time

90. Aer Rianta might be unable to raise finance for new investments, because of the apparently arbitrary basis on which it was denied a reasonable return.

The Commission has rejected this representation on the basis that the detailed review of Aer Rianta's CAPEX plans, which it commissioned from IMG, provides a more detailed and less arbitrary assessment of the investment needs of Aer Rianta's airports than any information provided by Aer Rianta to the Commission. The Commission has published IMG's report on Aer Rianta's investment plans to support the determination.

91. Aer Rianta would have strong incentives to undertake as little investment as possible during the price review period and, wherever possible, delay investment in the hope that it will be included in the allowed investment programme for the subsequent price review period.

The Commission has rejected this representation as the Commission, has provided Aer Rianta with incentives to make

investments, which are consistent with the requirements of the Act*.*

Antoin Daltún

92. It is not clear what future projects will be paid for by present customers

The Commission has published IMG's report which contains a description of the revised Recoverable CAPEX Programme.

bmi

93. It is vitally important that the Commission's Recoverable CAPEX Programme is now made the subject of a detailed consultation process with users to arrive at an agreed community position. Otherwise, a price cap is set based on a programme that may not materialise.[1]

The Commission has accepted this representation. Without full consultation over Aer Rianta's investment plans with airport users, inclusion by the Commission of Aer Rianta's proposed CAPEX programme in setting maximum airport charges would not have furthered the Commission's statutory objective.

Bord Failte

94. While the reduction of proposed CAPEX is recognized, it is the view of Bord Failte that future plans and cost options should be dealt in a comprehensive and transparent manner involving discussion and responsiveness to the needs of key user operators in so far as it is practical and appropriate.

The Commission has accepted this representation. Without full consultation over Aer Rianta's investment plans with airport users, inclusion by the Commission of Aer Rianta's proposed CAPEX in setting maximum airport charges would not have furthered the Commission's statutory objective.

British Airways

95. The Commission should ensure that the users have played a full and transparent part in any consultation process to determine the CAPEX needs and that the investment planned by the airport is such that it

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[1] Bmi notes that the Commission's Recoverable CAPEX programme detailed in the draft determination is the first sight for bmi of a CAPEX programme for Dublin Airport.

will meet the current and prospective needs of the users who pay the charges.

The Commission has accepted this representation. Without full consultation over Aer Rianta's investment plans with airport users (together with the absence of adequate financial justification), inclusion by the Commission of Aer Rianta's proposed CAPEX in setting maximum airport charges would not have furthered the Commission's statutory objective.

96. The Commission should also ensure that the airports are measured against providing the level and type of investment agreed at the time of setting the price cap with a reduction in airport charges if the CAPEX is not being provided as planned.

The Commission has accepted this representation insofar as the Commission proposes at each five-yearly review of maximum airport charges to closely compare the announced with the delivered investment programme at each airport and to take any significant discrepancies into account in setting future maximum airport charges.

97. The fairest way of funding the development of infrastructure from a monopolist supplier, and the manner which most closely replicates the construction industry, would be for users to only pay for a facility once users are able to occupy it and engage in the operational activities for which it was intended.

The Commission has rejected this representation and proposes to include in the RAB the capitalised value of assets in the course of construction (AICC). The reason for rejecting this representation is to ensure that Aer Rianta has sufficient funds with which to fund the capital costs associated with the construction of such assets, thereby facilitating the sustainability of its airport operations, to maintain price continuity and to ensure investment is made at the appropriate time.

98. British Airways considers that each airport within any group of airports should fund investments from revenues specific to that airport. The Commission should ensure that the CAPEX plans of each airport within the group provide the clarity needed by users to identify and track investments at each airport.

The Commission has accepted this representation on the grounds that funding one airport's activities (current or capital) from another's income would constitute an inefficient cross-subsidy which would be in conflict with the Commission's

statutory objective of furthering the development and operation of cost-effective airports which meet the requirements of users.

British Regional Airlines Group Plc

99. More detail is sought on the "Recoverable CAPEX Programme" (in particular, the proposal of £100m to be spend on rail at Dublin airport).

The Commission has accepted this representation because of its statutory objective to facilitate the development and operation of cost effective airports that meet the requirements of users. The Capex Report Programme prepared by IMG for the Commission is published to accompany the Determination.

100. Concerned that CAR is proposing that CAPEX be pre-funded by current airline users. This is discriminatory on the basis of intertemporal subsidisation.

The Commission has rejected this representation. It has not been asked for, nor has it agreed to, any pre-funding of CAPEX except insofar as it has included in the RAB the capitalised value of AICC, in order to ensure that Aer Rianta has sufficient funds with which to fund the capital costs associated with the construction of such assets (that is, the cost of equity of debt), thereby facilitating the sustainability of its airport operations.

101. Does not believe it is appropriate to simply accept the costing of projects associated with the maintenance and improvement of safety because of the potential for regulatory gaming (ie. passing costs associated with inefficient facilities onto users or loading unrelated costs onto safety projects) that it introduces.

The Commission has accepted this representation on the basis that it is acutely conscious of the problem of 'gaming' by regulated entities. However, the Commission has obtained the expert advice of its consultants, IMG, and is satisfied that projects associated with safety that have been included in its revised Recoverable CAPEX Programme are required to meet safety considerations.

CityJet

102. Full consultation (and consensus) with the users at Dublin Airport has not taken place with regard to the proposed capital investment programme planned over the next ten years.

The Commission has accepted this representation. Without full consultation over Aer Rianta's investment plans with airport users, inclusion by the Commission of Aer Rianta's proposed CAPEX programme in setting maximum airport charges would not have furthered the Commission's statutory objective.

103. We totally reject the internal rail project allocation, as there is no apparent plan available at this stage. Aer Rianta planners are unable to provide us with any information on this project.

The Commission has accepted the substance of this representation.

104. Access/Egress/Roads should not be borne by Aer Rianta and their users. The development of a rail connection to the terminal building as soon as possible is critical and would reduce the level of car parking required as well as road congestion on the approach roads.

The Commission has accepted this representation except insofar as this development has safety and capacity implications. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

105. With regard to the terminal building, new piers and stands at Dublin Airport the consultation process is far from concluded at this stage. The majority of airport users are of the view that the most critical issue in the short term is to increase the number of contact stands at the lowest possible cost without hindering the medium / long term development of the airport. Possible regulatory constraints also need to be overcome if a cost effective development plan is to come to fruition.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Aer Lingus representation.

106. The construction of the proposed second runway is opposed as unnecessary in view of the latest traffic development forecasts and the current under-utilisation of the existing facilities.

The Commission has accepted this representation. The need for a second runway fall's outside the 2001/02-2005/06 regulatory period and hence outside the relevant CAPEX programme, other than planning and design costs.

107. The downward adjustment in the capital value of Pier C is welcomed and as one of the major users of this facility we seek a reduction in the current level of operating costs associated with this facility.

The Commission has accepted this representation, insofar as the capital value of Pier C has been revised downwards The Commission, has, in addition, sought improvements in Aer Rianta's operating efficiency as part of its "X" factor adjustment.

Cork/Southwest Consortium – Cork Chamber of Commerce

108. Aer Rianta's current investment programme is largely catch-up investment and the fact that Aer Rianta needs to fund this investment will place Cork at a significant disadvantage.

The Commission has rejected the representation that Aer Rianta's current investment programme is largely catch-up in the absence of adequate justification.

The Commission rejects the representation that the requirement on Aer Rianta to fund this investment will place Cork at a significant disadvantage. Airport charges are inevitably related to the scale and appropriateness of an airport's CAPEX programme, which the Commission considers consistent with facilitating the development and operation of cost effective airports, which meet the requirements of users.

109. The absence of cargo investment at Cork is questioned.

The Commission's Recoverable CAPEX Programme has provided for investment in cargo related facilities in Cork.

Fingal County Council

110. COFAR (Common Options for Airport Regions) suggests that forecasted growth in traffic can be accommodated at current locations without increases in noise nuisance if airports and airlines are willing to invest in new technology. On that basis, the proposed reduction in the Aer Rianta CAPEX programme for Dublin should be re-examined in respect of its impact on Fingal and the Dublin region. This would also be true for Cork and Shannon.

The Commission has partly accepted this representation in that the revised Recoverable Capex Programme includes all investment projects relating to compliance with environmental standards.

Irish Association of International Express Carriers

111. The costs to be recovered by the maximum permitted WLU yield and evidence of the alignment to user needs should be published by the Commission and the maximum yield reduced until the proposed increases are objectively justified in terms of costs.

The Commission has published information on the costs which are being recovered. Separately, the Recoverable CAPEX Program is specified in detail.

112. There is insufficient transparency with regard to the requirement and objective justification for the allowable CAPEX for cargo, which should be disallowed until cargo users have agreed with Aer Rianta that its expenditures are required to enhance operational efficiencies and cost competitiveness.

The Commission rejects this representation on the following terms for the following reasons.

The Commission has published details of the Recoverable CAPEX Programme. That is based on what is proven to be strictly necessary for the development and operation of the airports. However, users cannot be given a veto over the development of the airport. Instead, the Commission views their entitlement in terms of full consultation, where a comprehensive CAPEX Programme with adequate business cases and cost benefit analyses are available. In that way, consultation will be meaningful.

IATA

113. The Commission notes that with the exception of projects justified by reason of safety, Aer Rianta has not adequately justified its planned Capex programme. We believe that we should only be paying through our charges for agreed facilities and services that we need and use. Meaningful consultation is necessary in relation to major airport developments, strategic planning, and its impact on costs and charges. This should be assisted by the provision of cost-benefit analysis or business cases as appropriate. Users have not yet had such detail or meaningful consultation. We find it difficult to understand how the proposed allowable yield can be defined without this essential detail and agreement.

The Commission has accepted the substance of this representation. Its reasons for doing so are the lack of an adequate demonstration to the Commission by Aer Rianta of the cost-effectiveness of Aer Rianta's very large proposed

CAPEX programme; the trenchant opposition to that programme of carriers, both passenger and cargo, and of ground-handlers; and the inadequate consultation by Aer Rianta with airport users. The Commission considers that the absence of adequate financial justification together with the absence of a broadly supportive user consensus on the investment programme, means that for the Commission to have included Aer Rianta's investment plan in the calculation of maximum airport charges would conflict with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users. Therefore, the Commission's revised Recoverable Capex Programme excludes, for the purpose of calculating maximum airport charges, the entire Aer Rianta proposed Capex plan other than the new terminal building at Cork Airport, the new Pier at Dublin Airport and investments relating to capacity, maintenance, safety and compliance and commercial ventures with relevance to increasing capacity safety and compliance. The latter projects have been included because the Commission obtained independent justification for these projects from its consultants, IMG.

Irish Exporter's Association

114. IEA recommends to CAR that the system of allowing independent investment in cargo facilities with Aer Rianta playing its part in keeping cargo access charges competitive and reflective of its development and handling costs in this area be continued.

The Commission has rejected this representation on the basis that some investment in cargo facilities is most efficiently made by the airport authority.

115. Given the Commission's statutory objective, there is a need to test the economic welfare of Aer Rianta's CAPEX against the provision of facilities by users.

The Commission has accepted this representation as it considers that it meets the Commission's statutory objective to facilitate the development and operation of cost-effective airports, which meet the requirements of users.

116. The proposal to create a private rail system within the airport complex for £105 million (and, presumably, its inclusion in Aer Rianta's recoverable CAPEX programme) is seriously questioned. IEA recommends its exclusion.

The Commission has accepted this representation.

Irish Hotels Federation

117. The costs of capital expenditure should not be borne by the passenger through airport charges, but by the State.

The Commission has rejected this representation insofar as its statutory function is the setting of maximum airport charges in order to facilitate the development and operation of cost-effective airports that meet the requirements of users and decisions about state funding fall outside the powers of the Commission.

118. Capital expenditure plans should be subject to consultation with the Government, Regulator, airport operators and other industry and carrier representative organisations.

The Commission has accepted this representation in respect of, in particular, the airport operator and other industry and carrier representatives because consultation with airport users about capital investment is necessary to ensure that the development of cost-effective airports meets the requirements of users.

119. Given the importance of air transport to the Irish economy, particularly the tourism industry, efficient and competitive air access is essential, with charges to passengers determined by market forces only and not dependent on funding capital expenditure plans as advocated by the Commission.

The Commission has rejected the representation that charges to passengers should not include capital expenditure for the airport. This is inconsistent with the Aviation Regulation Act, 2001, which specifies that the Commission must make a determination specifying the maximum levels of airport charges in line with the objectives and factors as set out in the Act.

120. The IHF is particularly alarmed at the Commission's unjustified proposal that future capital expenditure of IR£700m should be included in the Recoverable Capex Programme and therefore, passed onto air transport users in the form of airport charges.

Until such views of users are obtained, embraced and evaluated, the Commission is not in a position to determine the needs of users and therefore, comply with its statutory obligation in making a determination *i.e.* to facilitate the development and operation of a cost-effective airport that meets the requirements of users.

The Commission has accepted the substance of this representation. Its reasons for doing so are the lack of an adequate demonstration to the Commission by Aer Rianta of the cost-effectiveness of Aer Rianta's very large proposed CAPEX programme; the trenchant opposition to that programme of carriers, both passenger and cargo, and of ground-handlers; and the inadequate consultation by Aer Rianta with airport users. The Commission considers that the absence of adequate financial justification together with the absence of a broadly supportive user consensus on the investment programme, means that for the Commission to have included Aer Rianta's investment plan in the calculation of maximum airport charges would conflict with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users. Therefore, the Commission's revised Recoverable Capex Programme excludes, for the purpose of calculating maximum airport charges, the entire Aer Rianta proposed Capex plan other than the new terminal building at Cork Airport, the new Pier at Dublin Airport and investments relating to capacity, maintenance, safety and compliance and commercial ventures with relevance to increasing capacity safety and compliance. The latter projects have been included because the Commission obtained independent justification for these projects from its consultants, IMG.

121. The IHF believes that the capital expenditure on airports, which are part of the essential infrastructure of a State, should not have as their objective the earning of a commercial return as would be appropriate in a commercial enterprise operating in a competitive environment.

Investment in Cork or Shannon airports cannot be viewed as anything but a national infrastructure investment to maintain and encourage the development of the regions in which these airports are situated. The tourism industry in the regions served by these airports is particularly dependent on their throughput. Once expended, the investment in these airports should be written off and not treated as an asset from which a rate of return on capital employed is expected.

The Commission has rejected these two representations because it is subject to a statutory requirement to have due regard to Aer Rianta's ability to earn a reasonable rate of return on its investments and the Commission is satisfied that allowing Aer Rianta to earn such a reasonable return is necessary in order to facilitate the development and operation of cost effective airports that meet the requirements of users.

Limerick Chamber of Commerce

122. Examination of CAPEX should not just be based on a business model, but should also take account of regional development in the context of the wider economy.

The Commission has rejected this representation insofar as it implies that one airport's activities should be funded from another's income. This would constitute an inefficient cross-subsidy, which would be in conflict with the Commission's statutory objective of furthering the development and operation of cost-effective airports which meet the requirements of users.

Ryanair

123. The Commission's proposals to allow Aer Rianta to spend almost £500 million at Dublin, £100 million at Cork and £84 million at Shannon (most of it in outright opposition from the users) are clearly in breach of Section 33 of the Act.

The Commission rejects the representation that it has acted, or is acting, in breach of the Aviation Regulation Act. The Commission has accepted the substance of this representation as it relates to the ART CAPEX Programme. Its reasons for doing so are the lack of an adequate demonstration to the Commission by Aer Rianta of the cost-effectiveness of Aer Rianta's very large proposed CAPEX programme; the trenchant opposition to that programme of carriers, both passenger and cargo, and of ground-handlers; and the inadequate consultation by Aer Rianta with airport users. The Commission considers that the absence of adequate financial justification together with the absence of a broadly supportive user consensus on the investment programme, means that for the Commission to have included Aer Rianta's investment plan in the calculation of maximum airport charges would conflict with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users. Therefore, the Commission's revised Recoverable CAPEX Programme excludes, for the purpose of calculating maximum airport charges, the entire Aer Rianta proposed CAPEX plan other than the new terminal building at Cork Airport, the new Pier at Dublin Airport and investments relating to capacity, maintenance, safety and compliance and commercial ventures with relevance to increasing capacity safety and compliance. The latter projects have been included because the Commission obtained

independent justification for these projects from its consultants, IMG.

124. As one of the main users of the three airports we, and indeed our passengers (who are also *"users"* under the Commission's own definition) require that the Commission disallow the entirety of this CAPEX programme until such time as it has been detailed to the defined airport users (airlines, passengers, cargo shippers and ground handlers) and an agreement has been obtained from all or a majority of these users that this programme actually meets their requirements.

The Commission has accepted this representation to the extent as explained in the answer to the previous representation.

125. The Commission is in breach of Section 33 of the Act because until the users are informed as to what is included in the recoverable CAPEX detailed in CP6/2001, we cannot reasonably be expected to inform or advise the Commission of our requirements.

The Commission has rejected this representation on the basis that it does not consider that it is now, or ever has been, in breach of the Aviation Regulation Act on the basis of the amount of information provided to the public in CP6/2001.

126. We wish to make the Commission aware of its requirements in relation to capital expenditure proposals at Dublin airport.

a) We require the Commission to disallow any recovery of the proposed £23 million for the category *"Access/Egress/Roads"*.

The Commission has accepted this representation except insofar as this development has safety and increase capacity implications. The reasons for acceptance have been given in the Commission's response to Ryanair's first representation.

b) We require that the Commission exclude the proposed £170 million Capex for *"terminal building"*.

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to the first Ryanair representation.

There are users, such as Ryanair (among others), who are willing to fund the development of a second terminal at no additional cost to Aer Rianta and therefore any further expenditure by Aer Rianta on a second terminal building is excessive and unnecessary Capex.

***The Commission has rejected this representation on the grounds that it has no role in deciding on what entity or entities should own infra structural facilities at Irish airports*.**

c) We require that the Commission exclude the £34 million allocated for *"New Piers"*.

The Commission has rejected this representation and has included in the revised Recoverable Capex Programme the funds for the building of a fourth pier, at Dublin Airport. The reasons for acceptance of the new Pier project are because the Commission obtained independent justification of the need for this pier from its consultants, IMG, and because this project had the general support of airline airport users.

Furthermore, Ryanair has offered to pay for its construction, and it will immediately add capacity of approximately 8 to 10 million passengers as compared to the current throughput of approximately 2.5 million in Pier C. Given that all of the users require more contact stands immediately (as confirmed in the recent SH&E report) and Pier D will provide 12 such stands within 11 months at a cost of only £15 million, the Commission must exclude the entire category of "new piers" in order to force Aer Rianta to meet the unanimously agreed requirements of the users.

The Commission has rejected this representation on the grounds that it has no role in deciding on what entity or entities should own infrastructure at Irish airports.

d) We require the Commission to exclude the proposed £152 million of CAPEX for *"Stands & Airfield*". The Commission's approval of this spending, despite the substantial under utilisation of existing runway capacity and despite the unanimous opposition of users, is a clear breach of the Commission's obligations under Sections 33 and 33(c).

Aer Rianta's investment plans for a second runway fall outside the 2001/02-2005/06 regulatory period (other than design and planning costs) and hence outside the relevant CAPEX programme. The Commission accepts the representation insofar as the absence of adequate financial justification together with the absence of a broadly supportive user consensus on the investment programme, means that for the Commission to have included Aer Rianta's investment plan in the calculation of maximum airport charges would have been in conflict with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users.

e) We require the Commission to exclude the ridiculous proposal to spend £102 million on *"Rail"* at Dublin Airport, as this cannot possibly be justified by the Commission "*as facilitating the development and operation of cost effective airports which meet the requirements of users*".

The Commission has accepted this representation. The reasons for acceptance have been given in the Commission's response to Ryanair's first representation.

f) We require the Commission to exclude the £84 million proposed CAPEX Shannon Airport. This does not meet the requirements of the users of Shannon and does not facilitate the development and operation of a cost effective airport at Shannon.

The Commission has accepted this representation to the extent explained in the Commission's response to Ryanair's first representation.

g) We require the Commission to exclude the proposed £100 million CAPEX at Cork Airport. This CAPEX has yet to be explained to users, we have no idea what is proposed and it therefore cannot possibly meet with our requirements, never mind facilitate the development and operation of a cost effective airport at Cork.

The Commission has rejected this representation. Its reasons for dong so are that the Commission has independent justification from its consultants, IMG, of the need for expanded terminal facilities at Cork Airport and this project has the support of at least some large users of Cork Airport.

Given the record of unnecessary and profligate CAPEX by Aer Rianta in recent years, the only way in which the Commission can aim to "*facilitate the development and operation of cost effective airports which meet the requirements of users"* in the short term is to exclude <u>any</u> further CAPEX from being added to the RAB and thereby require Aer Rianta to agree the requirement for and the cost of development of any proposed further CAPEX at the regulated airports with the users, prior to it being allowed by the Commission.

The Commission has accepted the substance of this representation to the extent stated in the Commission's response to the first Ryanair representation.

Users should also be provided the opportunities to finance or part finance such projects in order to promote capital cost efficiency and to avoid CAPEX being recovered from users in the form of higher charges.

The Commission has rejected this representation as it falls outside the powers of the Commission.

Servisair

127. Servisair does not consider that the recoverable CAPEX programme proposed by the Commission is reasonable. Servisair submits that the recoverable CAPEX programme should be sufficiently detailed to indicate precisely the nature and reasonableness of Aer Rianta's CAPEX.

The Commission has accepted the substance of this representation. Therefore, the Commission's revised Recoverable Capex Programme excludes, for the purpose of calculating maximum airport charges, the entire Aer Rianta proposed Capex plan other than the new terminal building at Cork Airport, the new Pier at Dublin Airport and investments relating to capacity, maintenance, safety and compliance and commercial ventures with relevance to increasing capacity safety and compliance. The latter projects have been included because the Commission obtained independent justification for these projects from its consultants, IMG.

128. Servisair requires that the recoverable CAPEX programme indicate exactly the amount of CAPEX that will be attributed to cargo infrastructure development.

The Commission's revised Recoverable Capex includes some investments as it relates to the needs of Cargo for capacity reasons.

Shannon Airport Marketing Consultative Committee

129. Aware that user groups are expressing dissatisfaction with lack of consultation on infra-structural developments that are often inappropriate to user needs. This requires examination and a consultation process needs to be guaranteed for the future.

The Commission has accepted the substance of this representation. Its reasons for doing so are the lack of an adequate demonstration to the Commission by Aer Rianta of the cost-effectiveness of Aer Rianta's very large proposed CAPEX programme; the trenchant opposition to that programme of carriers, both passenger and cargo, and of ground-handlers; and the inadequate consultation by Aer Rianta with airport users. The Commission considers that the

absence of adequate financial justification together with the absence of a broadly supportive user consensus on the investment programme, means that for the Commission to have included Aer Rianta's investment plan in the calculation of maximum airport charges would conflict with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users. Therefore, the Commission's revised Recoverable Capex Programme excludes, for the purpose of calculating maximum airport charges, the entire Aer Rianta proposed Capex plan other than the new terminal building at Cork Airport, the new Pier at Dublin Airport and investments relating to capacity, maintenance, safety and compliance and commercial ventures with relevance to increasing capacity safety and compliance. The latter projects have been included because the Commission obtained independent justification for these projects from its consultants, IMG.

Shannon Development

130. Airport users should be consulted as to the appropriateness of new investments.

The Commission has accepted this representation. Its reasons for doing so were given in the reply to the representation from the Shannon Airport Marketing Consultative Committee.

IV COST OF CAPITAL/RATE OF RETURN

Aer Lingus

131. We reject both the Commission's conclusion that Aer Rianta's cost of capital is between 8% and 9% and the decision to allow the company a return above this range.

The Commission accepted the substance of this representation. Its reasons for doing so are contained in the report of an expert consultant to the Commission, Dr. Colm Kearney, Professor of Finance at Dublin City University. Professor Kearney has estimated Aer Rianta's cost of capital at 6% (on a real, after-tax basis). The Commission's final Determination presents maximum per-passenger yields calculated to give Aer Rianta a return equal to Aer Rianta's cost of capital. The full consultancy study by Professor Kearney is published by the Commission to accompany its Determination.

132. The decisions of other Irish regulators appear to indicate that the cost of capital for a regulated business in Ireland is essentially identical to the cost of capital for a similar business in the UK. The Commission should consider BAA as a starting point when determining Aer Rianta's cost of capital.

The Commission accepted the substance of this representation. Its reasons for doing so are contained in the report of an expert consultant to the Commission, Dr. Colm Kearney, Professor of Finance at Dublin City University. Professor Kearney's estimate of Aer Rianta's cost of capital relies centrally on relevant characteristics of the BAA.

133. Aer Rianta's cost of capital should be set below both BAA's cost of capital, set at 7½% in the last review, and Manchester Airport's cost of capital, set at 7¾% in the last review. Aer Rianta's state ownership should result in a lower cost of debt and a wider distribution of equity risk. Ireland's membership of the Eurozone should result in a lower risk-free rate than in the UK. In addition, it was submitted that UK regulators have generally reduced their estimates of the cost of capital substantially since the mid-1990s, reflecting reduced estimates of the risk-free rate and the equity risk premium.

The Commission rejected the bulk of this representation because the decisions of UK regulators are not as such relevant to the operation of the Aviation Regulation Act, 2001. The Commission does not consider that Aer Rianta's current status

as a state-owned firm necessarily reduces its forward-looking cost of capital. The consultancy study from which the Commission's cost of capital estimate derives takes account of Ireland's membership of the Euro.

134. The approach taken by the Commission is out of line with UK regulatory practice. The cost of capital should be set in the range 3-4, reflecting a small premium on the cost of Government debt.

The Commission rejected this representation because the Commission does not consider that Aer Rianta's current status as a state-owned firm necessarily reduces its forward-looking cost of capital.

135. The Commission's proposal to allow a rate of return, slightly greater in the medium term to the cost of capital, is inconsistent with economic theory as well as regulatory practice because Aer Rianta would have an incentive to continue to invest excessively, it would reduce the incentive for unit cost efficiencies in the investment programme, and it would lead to customers being forced to pay charges that are higher than the costs of providing facilities and services.

The Commission accepted this representation for the reasons submitted and accordingly has set the rate or return allowed to Aer Rianta equal to its cost of capital.

136. Returns should exceed the cost of capital only when performance exceeds the expected level in terms of service delivery and cost reduction and, absent such out-performance, the return should only equal the cost of capital.

The Commission accepted this representation for the reasons given in the Commission's response to Aer Lingus's fifth representation.

Aer Rianta

137. The allowed RoR should be defined as the risk-adjusted return that suppliers of funds require the business to provide on those funds, given the risks imposed by the inherent nature of the regulated business sector and the regulatory process itself.

It should be measured with reference to the RoR that investors could expect to earn on investments of equivalent risk, i.e., the risk-adjusted rate of return or cost of capital.

Due regard to statutory factor (b) requires the allowed rate of return to be sufficient to attract new capital investment for future service obligations and to ensure that the regulated activities of Aer Rianta are financially viable.

The Commission accepted these representations because they propose standard treatments of the cost of capital.

138. The Cost of Capital is very important for airports as, in the circumstances of very lumpy capital spend; special attention must be given to the return required on investment and the implications for the financing of the capital programme.

The Commission accepted this representation because it believes that the return earned is important to all businesses but particularly to those with large investment programmes.

139. The allowed RoR can be defined on a pre-tax or post-tax basis. Returns on equity are taxed (which drives a wedge between pre- and post-tax WACC) and, because there is no simple scaling formula that can be used to convert a post-tax RoR to a pre-tax RoR that can adequately capture the complexities of the interaction between a (nominal) tax system and an RPI-linked regulatory system, it may be more appropriate to set revenues on the basis of a post-tax RoR with separate allowance for forecast tax costs determined through financial modelling.

The Commission accepted this representation for the reasons contained therein and has used an after-tax measure of Aer Rianta's cost of capital in combination with a direct estimate of Aer Rianta's tax liabilities.

140. The allowed RoR can be defined on a real or nominal basis. (They should, in principle, result in NPV-equivalent cashflows over the asset life, with only differences in the timing of returns.) A real RoR is usually favoured within a retail price-linked regulatory regime in the UK, with adjustments for actual inflation through an index-linked RAB.

The Commission accepted this representation. In its draft Determination, which used a nominal regulatory asset base (the historical cost net book value of Aer Rianta's airport assets) the Commission applied a nominal before-tax rate of return (equal to about 9%). In its final Determination the Commission has used an indexed regulatory asset base (the indexed historical cost net book value of Aer Rianta's airport assets) and directly estimated Aer Rianta's tax liabilities. Therefore, the rate of return was defined in real, after-tax terms. Dr. Colm Kearney, Professor of Finance at Dublin City University, estimated Aer Rianta's cost of capital on that basis at 6%. This has been adopted by the Commission.

141. There are a number of key issues to be taken into account in estimating an appropriate Cost of Capital for Aer Rianta:

Single/dual till: the risk profiles of the two businesses could be very different, both in respect of revenue risk and operational gearing;

The Commission accepted the substance of this representation but notes that Aer Rianta's submission to the Commission on its cost of capital concluded that "the non-aeronautical services [of Aer Rianta] will display only slightly higher systematic risk than the aeronautical services, and therefore the asset beta for a dual till operation will be very close to the asset beta for a single till business"[2].

142. *Aer Rianta's status:* it is appropriate to treat Aer Rianta as a private-sector enterprise and to treat it's regulated activities as if they were stand-alone, commercially-orientated and investor-owned. There is no sovereign guarantees extended to Aer Rianta's debt stock (reflected by the recent credit rating of S&P). There are no reasons to assume that the State as shareholder should be prepared to accept a lower return than the market as a whole. Aer Rianta disputes the view that, as a state-owned company, its Cost of Capital should be considered to be lower than that of an equivalent private business.

***The Commission accepted this representation for the reasons given therein and has estimated Aer Rianta's cost of capital accordingly*.**

143. CAPM is the most appropriate methodology, which was reflected by the majority of respondents to CP2/2001. Virtually all regulatory bodies use the CAPM.

The Commission accepted this representation because for the reasons given in the report of Professor Colm Kearney on Aer Rianta's Cost of Capital.

144. In Aer Rianta's case, the absence of a share price means that the CAPM must be applied using data from comparable companies. NERA's report sets out an appropriate procedure for doing this.

The Commission accepted the representation that the absence of a share price for Aer Rianta means that the CAPM must be applied using data from other comparable airports for the

[2] "Aer Rianta's Cost of Capital", NERA, June 2001, p32.

reasons given in Professor Colm Kearney's on Aer Rianta's Cost of Capital.
However, the Commission rejects the representation that NERA's report sets out a fully appropriate procedure for doing this for the reasons given in Professor Colm Kearney's paper reviewing the NERA study and publishes to accompany the Determination.

145. There is useful regulatory precedent to support NERA's choice of BAA as the appropriate benchmark and its view that other regulated industries do not provide an appropriate benchmark for Aer Rianta:

- MMC's review of Manchester (unquoted like Aer Rianta) used BAA as a benchmark and then adjusted for the perceived greater riskiness of Manchester's operations (on the basis of factors such as MA's greater dependence on charter traffic, the weaker demand of scheduled airlines and the lower profitability of scheduled operators);
- ACCC set Adelaide's according to four quoted benchmarks, Copenhagen, BAA, Vienna and Auckland and relative operating characteristics (such as its non-hub status) were considered.

There are two important conclusions from these approaches: 1) the comparator set is restrictive; and 2) adjustments are made on the basis of qualitative analysis of relative riskiness.

The Commission accepted this representation because of the relevance of BAA and has based its estimate of Aer Rianta's cost of capital on such an approach.

146. Aer Rianta is of the opinion that estimations of beta should use the longest possible estimation period for each of the comparator airport businesses because:

- Current beta estimates might be biased downwards and the decline is expected to be relatively short-lived;
- Longer-term estimates of comparable companies' betas are more efficient (have lower standard errors) and are, hence, more robust.

The Commission accepted this representation for the reasons given in Professor Colm Kearney's report on Aer Rianta's Cost of Capital. Dr. Kearney has estimated BAA's beta coefficient for the years [1987-2001].

147. In considering differentiating risk factors, it is appropriate to take into account differences in the composition of revenue, the traffic mix, and the cost structure between airports.

The Commission accepted this representation for the reasons given in Professor Colm Kearney's report on Aer Rianta's Cost of Capital.

148. A real pre-tax dual-till rate of return of 10.8% should be applied.

The Commission rejected this representation for the reasons set out in Dr. Colm Kearney's consultancy report on Aer Rianta's cost of capital.

149. There are several problems with placing primary importance on previous regulatory decisions:

- Both the market and a company's cost of capital change over time as a result of changes in market conditions, macroeconomic factors, changes in investor attitudes towards risk, and investment opportunities. WACC estimates are time-sensitive and their estimation should be based on latest financial data. An indication can be gauged by looking at changes in base interest rates;
- No two regulated companies are identical, with significant differences across different industry sectors (related to the product and business environment) and different regulatory regimes[3];
- If the cost of capital is mis-estimated for one company, its damaging effect will be greater if such decisions are used as precedents for future decisions;
- Introduces the possibility of biases and a degree of unnecessary arbitrariness that increases investor uncertainty.
- CAR should apply internal consistency tests and one is to check that financial ratios are consistent with an "optimal capital structure".[4] It is important to look at downside scenarios as well as central case scenarios. The possibility, e.g., that CAPEX may be substantially above central case projections may mean than an "optimal" capital structure will allow for unused borrowing capacity to increase debt in adverse circumstances.

The Commission accepts this representation for the reasons stated therein. However, the Commission would also note that, in its draft Determination, the Commission relied, for its (nominal, before-tax) estimate of Aer Rianta's cost of capital (of about 9%) on recent decisions (taken during 2000) of other Irish economic regulators and on recent decisions (taken during 2000) of airport regulators in other jurisdictions.

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[3] Aer Rianta refers to World Bank research, which suggests that companies operating under a price-cap regime rather than cost-plus have to pay about an extra percentage point for their capital to reflect their greater risk exposure.

[4] This exists where the proportion of debt and equity in a company is such that the post-tax WACC is minimised and, hence, the present value of a company's expected future cash flows is maximised.

***Consequently, the Commission took full account of the time-sensitivity of WACC estimates. The Commission has also taken account of differences between companies and of the optimal capital structure of a company in making its estimate of the WACC**.*

British Regional Airlines Group PLC

150. More detail is sought on the cost of capital estimates (because the CAA has estimate the WACC at between 6% and 9%).

The Commission accepted this representation and is publishing the full consultancy study on which the cost of capital estimate in its Determination is based.

151. Interested to know how CAR can reconcile granting a rate of return slightly higher than the cost of capital with the statement about rates of return consistently exceeding the cost of capital in a competitive market.

The Commission accepted this representation and accordingly has set the rate of return allowed to Aer Rianta equal to its cost of capital, for the reasons stated above.

152. Will there be a mechanism whereby returns greater than the cost of capital (supernormal profits) will be returned to airport users?

***The Commission proposes to give full consideration to the sharing of out-performance (manifested in supernormal profits) due to efficiency improvements at the time of the next review of the maximum levels of airport charges**.*

CityJet

153. With regard to the allowable rate of return, we think that in view of the existing shareholding and nature of the business anything above 6% is on the high side and should not be recoverable by users.

The Commission accepted the substance of this representation. Its reasons for doing so are contained in the report of an expert consultant to the Commission, Dr. Colm Kearney, Professor of Finance at Dublin City University. Professor Kearney has estimated Aer Rianta's cost of capital at 6% (on a real, after-tax basis). The Commission's final Determination presents maximum per-passenger yields calculated to give Aer Rianta a return equal to Aer Rianta's cost of capital. The full

consultancy study by Professor Kearney is published by the Commission to accompany its Determination.

Cork/Southwest Consortium – Cork Chamber of Commerce

154. It should be possible for Aer Rianta to borrow on terms comparable with the Government's own cost of borrowing, that is, at euro rates below the projected 8% (given that airports are relatively low-risk businesses and that state-owned companies are unlikely ever to default).

The Commission rejected this representation. Its reasons for doing so are contained in the report of an expert consultant to the Commission, Dr. Colm Kearney, Professor of Finance at Dublin City University. Professor Kearney has estimated Aer Rianta's cost of capital at 6% (on a real, after-tax basis).

IATA

155. Airports are recognised to be natural monopolies and low-risk business providers of essential services and facilities to users. As such, their ability to raise long-term cheaper finance, and alternative forms of financing, is significantly better than the average competitive and higher-risk businesses. Accordingly we believe that the proposed 9% allowable rate of return on capital employed could be considered excessive.

The Commission accepted the representation that the 9% rate of return proposed in its draft determination could be considered excessive. However, the Commission's reasons for accepting 6% are set out in the expert consultancy study prepared for the Commission by Dr. Colm Kearney, Professor of Finance at Dublin City University and do not necessarily coincide with the reasons stated above.

Irish Association of International Express Carriers

156. The rate of return of 9% is significantly higher than what would have been reasonably anticipated for a monopoly state-owned provider and should be reduced to a more appropriate level, such as 4-5%, which must be linked to specific investments where the real return of enhanced operational efficiency and cost competitiveness for users is proven.

The Commission accepted this representation in part. Its reasons for doing so are contained in the report of an expert consultant to the Commission, Dr. Colm Kearney, Professor of

Finance at Dublin City University. Professor Kearney has estimated Aer Rianta's cost of capital at 6% (on a real, after-tax basis), and the Commission thereby rejects the representation above that a more appropriate cost of capital for Aer Rianta is 4-5%. The Commission's final Determination presents maximum per-passenger yields calculated to give Aer Rianta a return equal to Aer Rianta's cost of capital. The full consultancy study by Professor Kearney is published by the Commission to accompany its Determination.

Irish Hotels Federation

157. The IHF submits that the Commission is not complying with the obligation placed on it by Section 33, "*to facilitate the development and operation of cost effective airports which meet the requirements of users*", as it is largely ignoring the requirements of users, the contributions of airports to the regions and the cost competitiveness and operational efficiency of airport services in its blind adoption of a reasonable rate of capital employed formula.

The Commission rejected this representation. Dr. Colm Kearney, Professor of Finance at Dublin City University, estimated the cost of capital of Aer Rianta on the basis of a careful consultancy study. The Commission is satisfied that its allowed rate of return and its overall determination is in accordance with the Commission's statutory objective and that it has had due regard to the ten statutory factors.

Ryanair

158. We require that Aer Rianta's allowable rate of return be fixed at 4% (slightly less than the market return on prime property investments in the Dublin market at present) per annum for each of the next five years. This reflects the favourable, monopoly status of Aer Rianta, its lower costs of funds due to its "AAA" (government quality) debt rating and the lack of any competitive alternative property development at the three regulated airports. It will incentivise Aer Rianta to reduce costs and enhance the efficiency of its existing facilities by setting a slightly lower than market rate of return. It will also incentivise Aer Rianta to promote and encourage traffic and cargo growth to improve its income and actual rate of return.

The Commission rejected this representation for the reasons set out in the expert consultancy study prepared for the Commission by Dr. Colm Kearney, Professor of Finance at Dublin City University, and for the reasons stated above.

159. The Commission is empowered to set a lower than market rate of return on capital under Section 32(6)(b), which permits the Commission to *"operate to restrict increases in any such charges, or to require reductions in them, whether by reference to any formula or otherwise"*. Setting the rate of return at a level that forces Aer Rianta to become more efficient in the development and operation of cost effective airports and in financing (or reducing) its CAPEX achieves the regulatory objectives.

The Commission has rejected this representation because while section 32(6)(b) of the Aviation Regulation Act permits the Commission to modify airport charges, the Commission is required, separately and independently, to have due regard to a 'reasonable' rate of return on airport investments, which may be above or below the market rate of return.

Servisair

160. The Commission has proposed an allowable rate of return on capital at approximately 9%. Servisair submits that this rate is too high in view of the Commission's own findings that Aer Rianta's operating expenses at Dublin airport are approximately 29% higher than the comparator airports considered by the Commission.

The Commission accepted the representation that an allowable rate of return of 9% is too high. Its reasons for doing so are contained in the report of an expert consultant to the Commission, Dr. Colm Kearney, Professor of Finance at Dublin City University.

Shannon Development

161. The regulator could have anticipated possible future ownership scenarios (Shannon Development notes that the proposals are based on the assumption that Aer Rianta airports will remain part of the same system in the future) by raising the issue of different returns on investment for Shannon and Cork. For example, Dublin would have a different rate of return because of economies of scale and the higher cost of land and construction projects.

The Commission rejected this representation because economies of scale and differing cost of land and construction projects are neither necessary nor sufficient to justify differing rates of return for different airports in the same country that are operated by the same company. Economies of scale result in declining unit costs and are more closely linked to the operational characteristics of the airport, while a higher cost of

***land and construction projects would be likely to translate into larger amounts of debt or equity, but not a higher cost of that debt or equity*.**

V REGULATORY ASSET BASE

Aer Rianta

162. Aer Rianta requests clarification of the criteria used for the adjustment of the RAB (pier C and Shannon terminal) other than stating that the proposed new valuations reflect the value of "hypothetically efficient equivalents". In particular, any revenue or future operating cost implications of the extractions and whether or not these have been incorporated.

The Commission accepted this representation because the Commission since its inception, has sought to operate in a transparent manner. The IMG study of Aer Rianta's CAPEX Programme sets out the criteria for adjusting the RAB in respect of Pier C at Dublin Airport and the new terminal building at Shannon Airport.

The Commission has not required reductions in pier C- or Shannon terminal-specific operating costs (independent of the requirements of the price cap) as a direct result of part of their value being excluded from the regulatory asset base and, hence, downwardly adjusted. The Commission does not consider it appropriate to deny Aer Rianta such operating costs because the entire facility will still require operational expenditures. In other words, it is inconsistent with meeting the requirements of users to disallow, for example, maintenance and cleaning for two-thirds of the facility, while allowing the other third to deteriorate because of the lack of available funds.

163. Aer Rianta disagrees with CAR's proposal to reduce the valuation of these facilities and believes it to be totally unwarranted in the context of equivalent efficient facilities and the sustainable operation of the airports because:

- Pier C was constructed in line with best practice, in accordance with the requirements of the regulatory authorities at the time and following extensive consultation with users;
- Costs were benchmarked against peers (construction cost of £2,262 per sq m compares well against prevailing market levels and similar airport developments in the UK) and development took place following competitive tendering procedures under EU public procurement requirements;
- The development was approved by the regulator at the time, the Minister for Transport, following recommendations from independent consultants engaged by the Department of Transport;

- The total cost was very cost effective and Aer Rianta would like CAR to provide details of what it considers to be an efficient equivalent facility meeting the regulatory, customs and immigration requirements (only pier at Dublin that now meets these requirements) and the cost parameters that it is using;
- The Shannon terminal was recommended by successive master planning documents because the original terminal was determined to be inappropriate to meet the demand of modern aviation;
- The then Minister for Transport also approved the investment, which took place under competitive tendering under EU public procurement rules;
- It is inconsistent and inequitable, in light of CAR agreeing that IATA standard B constitute the standards and regulations for delivery of facilities at the airport, to disallow a proportion of the cost or valuation of two projects that deliver this standard to current and prospective users. In the case of pier C, this difficulty is further compounded with pier capacity constraints at Dublin airport;
- Both projects were implemented on a commercial basis so that, over time, a full recovery of costs would be made. Any attempt by CAR to disallow already incurred costs would be a retrospective exercise, which would be questionable as the legislation does not expressly or unambiguously permit such a retrospective effect, which could, in turn, have negative consequences for future investment. Such regulatory risk would undermine Aer Rianta's ability to continue to put in place airport facilities *"in line with safety requirements and commercial operations in order to meet the current and prospective needs of users"*.

The Commission rejected this representation for the reasons set out in the IMG study of Aer Rianta's CAPEX Programme. Ministerial approval does not mean that the project was undertaken so as to meet the requirements of users. As implemented the project did not meet the requirements of users. Neither does adherence to procurement rules remedy the defect. The legislation is not being operated retrospectively.

164. Assets in the course of construction should be counted as part of the RAB to maintain price continuity, reduce the risk of asset stranding and consequent cost of capital increases, and to ensure investment is made at the appropriate time.

The Commission accepted this representation for the reasons contained therein and to ensure that Aer Rianta has sufficient funds with which to fund the capital costs associated with the construction of such assets, thereby facilitating the sustainability of its airport operations. The Commission has calculated the maximum yields accordingly.

165. The shareholder should be involved in the asset valuation decision due to its fundamental impact on the future valuation of the enterprise.

The Commission rejected this representation on the grounds that it is not provided for in the Aviation Regulation Act, 2001.

166. The elements of efficiency described in CP2/2001 tend to support the view that the value of assets should reflect some measure of their current cost.

The Commission accepted this representation and has valued the RAB using indexed historic costs, because in combining with a rate of return equal to the cost of capital, it allows the regulated firm to replace assets over time.

167. It is critical that the methodology adopted by CAR is consistent with the need to provide expanded capacity for airport users, in order that Aer Rianta can fund this expenditure and repay existing debt.

The Commission accepted this representation insofar as it is intended to refer to appropriate capacity expansions that are necessary because of the Commission's statutory objective that it facilitates the development and operation of cost-effective airports that meet the requirements of users.

168. Historic cost is reported in an organisation's annual accounts and, for this reason, is easily obtainable and verifiable. Thus, as an objective and practical approach to measuring the value of the RAB, HC scores highly.
However, Aer Rianta strongly disagrees with the use of historic cost net book value, as it has no economic justification. The application of a replacement cost methodology best fulfils the requirements of the Act.
Historic cost is not favoured because:

- In times of technological change, the historic value of assets will cease to bear much relationship to the cost of a new and efficiently constructed airport with the same capability as the existing facilities;
- Prices will not achieve an economically efficient allocation of resources. The resulting level of depreciation will understate the required level of investment to replace assets when they come to the end of their useful lives, as required for the sustainable operation of the business;
- It would not provide Aer Rianta with adequate cash flow to fund its capital programme going forward, making it contrary to the requirements under 33(a), (b) and (g) of the Act;

- A reasonable return requires the RAB to be valued at some measure of its current worth. If not, Aer Rianta will have insufficient incentive to plan for the long-term development of the airport, e.g., there would be no incentive to pursue land acquisition;
- It has been heavily criticised in the UK as understating the real economic amount of capital employed in a business, providing poor economic signals to users and airports, and being a poor base on which to make decisions or real allocations that depend on regulated prices. BAA and BT both revalued their assets on a replacement cost basis as a result of these criticisms.

The Commission accepted this representation in principle for the reasons set out immediately above. In addition a RAB valuation using historic costs would not, even with a rate of return equal to the cost of capital, allow for asset replacement over time.

169. Aer Rianta acknowledges that replacement cost may be difficult in practice where there is no direct functional equivalent and the use of modern equivalent assets (MEAs) is required, but is favoured because:

- Prices more accurately reflect the economic cost of the underlying assets and is thus consistent with the assessment criteria concerning allocative and dynamic efficiency and sends appropriate signals to the marketplace;
- It is the only one consistent with section 33 of the Act and the maximisation of economic welfare;
- A reasonable return requires the RAB to be valued at some measure of its current worth, and replacement cost provides the best estimate of this value;
- It will support Aer Rianta's profile on the capital markets, which will fund the cost-efficient funding of investment;
- It will ensure that assets can be replaced at the end of their useful lives and is thus consistent with CAR's assessment criteria in terms of dynamic efficiency;
- It is necessary for the sake of consistency with Aer Rianta's investment, for which a strong cash flow is required. Such consistency is in line with international precedent;
- It is well supported by Irish regulators and regulators in other jurisdictions.

The Commission accepted this representation in principle because of the superior efficiency characteristics of a replacement cost approach. However, the Commission was unable to adopt the report prepared by Arthur Andersen for Aer Rianta on replacement cost of its assets. This was because insufficient information was provided to justify the figures

arrived at, there was very little by way of independent verification, and a broad unsustainable assumption was made that all existing assets would require replacement.

170. On the issue of indexed historic cost:

- It is superior to historic net book value in terms of its ability to maximise economic welfare but not as accurate as replacement cost in determining the economic costs to society of the assets employed in airport operations;
- An inflation index has the advantage of ensuring that the value of capital held in the company is valued in real terms. However, Irish tender price inflation is greatly in excess of CPI on all but short-life assets, meaning that CPI adjusted values will send incorrect signals to the market about the costs of capacity maintenance or expansion and will result in insufficient funds for a capital programme, resulting in dynamic inefficiency. However, if IHC is usual, on balance, CPI is the appropriate index.
- It requires little independently verifiable data other than an appropriate index and has the advantage of being a relatively transparent calculation;
- Historic NBV is clearly insufficient to give a reasonable return on shareholders current investment. Indexing historic costs involves using a lower "real" rate of return, so the return allowed to Aer Rianta will still be low. However, indexed historic cost will result in returns approaching a more realistic level.

The Commission accepted the substance of this representation since it has calculated the value of the RAB using indexed historic costs. This is for the reasons set out above. More generally, while the Commission would have preferred replacement cost approach, indexed historic costs will take the valuation which would be arrived at using replacement costs. Further the Commission believe that the use of CP1 for indexation is appropriate.

171. Consistency between the determination of the RAB at future reviews and current RAB valuation is necessary. Estimation of future asset values for the period of the price control must be made having regard to:

- New capital expenditure;
- The depreciation of assets;
- The disposal of assets; and
- Indexing.

The Commission has rejected the first part of this representation insofar as determination of the RAB at future reviews and current RAB valuation or indeed RAB valuation at any time, are two separate tasks. Determination of the RAB requires an assessment of the assets that are necessary to ensure sustainable operation of the business. Those assets that are necessary are included in the RAB. RAB valuation concerns placing a value on the assets within the RAB. To the extent that this is a representation for consistency in the treatment of one or the other between future reviews and the current review, the Commission has rejected this representation on the basis that a more optimal approach could become available for future reviews, in which case any treatment in the current review that was necessary as an input into future reviews would be appropriately adopted.

The Commission has accepted the second part of this representation and has adopted this approach for the purposes of its Determination

172. A financial capital maintenance (FCM) approach would be superior when assets are valued on the basis of replacement cost in order to ensure that shareholder and debtor value is maintained. This is a key issue for equity or debt holders, who will provide funds on the basis that charges will be set so as to allow a return on the real value of their investment. If there is a risk of holding gains or losses due to changes in asset prices relative to inflation, then investors will require a higher cost of capital to compensate for this risk.

The Commission has rejected this representation for the reasons given in Professor Colm Kearney's report on Valuation of the RAB, which is published to accompany the Commission's Determination.

173. Rolling forward the value of the RAB ensures that it more closely represents shareholder's investment in the company. If credible commitments from CAR are put in place, it should reduce the cost of capital and encourage appropriate and efficient investment.

The Commission accepted this representation. The Commission has decided to roll forward the RAB from year to year of the Determination, because to do otherwise would create uncertainty and would therefore increase the cost of capital

Cork/Southwest Consortium – Cork Chamber of Commerce

174. The RAB should consist only of the current assets necessary to support the services provided to all airlines.

The Commission accepted this representation because it is consistent with the replacement of only those assets that are necessary for the sustainable operation of the airport and, therefore, with the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users.

175. Airlines should not be required to pay for any facilities that are not yet operational and, hence, the formula should be changed to allow charges to be adjusted as and when new facilities become operational.

The Commission rejected this representation. It proposes to include in the RAB assets in the course of construction (AICC) in order to maintain price continuity, to ensure investment is made at the appropriate time and to ensure that Aer Rianta has sufficient funds with which to fund the capital costs associated with the construction of such assets, thereby facilitating the sustainability of its airport operations.

Irish Association of International Express Carriers

176. IAIEC needs more guidance/detail as to what assets CAR considers should be included in the regulatory asset base for cargo in order to give the RAB the detailed attention requested by CAR (at the public meetings).

The Commission rejects this representation because there is no separate RAB for cargo. However, the composition and valuation of the RAB is detailed in CP8/2001.

Ryanair

177. It is the requirement of Ryanair (and also a requirement of the regulatory objective to facilitate cost effective airports) that Aer Rianta's assets be valued at their current written down historical cost (net of grants) subject to the following further deductions.

The new terminal building in Shannon must be valued at zero, because there was clearly no user requirement for it given the significant over capacity of the terminal facilities at Shannon Airport.

The new terminal was built for political and regulatory (to inflate the RAB) reasons. It does not facilitate the development and operation of cost effective airports that meet the requirements of users and its entire cost should be excluded from the valuation of Aer Rianta's assets.

The Commission rejected these three representations for the reasons set out in the IMG study of Aer Rianta's CAPEX Programme, which is being published by the Commission to accompany its Determination.

178. The cost of Pier C must be written down to £15 million for valuation purposes, which equates to the cost of a "cost effective" pier that would meet the requirements of users, had it been designed along the lines of the agreed Pier D.

The Commission rejected this representation for the reasons set out in the IMG study of Aer Rianta's CAPEX Programme, which is being published by the Commission to accompany its Determination.

179. The cost of the 6-bay extension should be reduced in value by 50% to reflect the additional costs incurred as a result of the totally unnecessary development of the underground baggage handling facility, which is neither efficient nor cost effective and which substantially adds to the operational burden placed upon users as a result of being run alongside a ground level baggage facility in the old terminal. Such a markdown would also reflect the fact that neither Ryanair nor Aer Lingus, the two main users at Dublin Airport (who together account for 70% of the passenger users of Dublin Airport), actually use or benefit from this profligate and ineffective terminal extension.

The Commission rejected this representation for the reasons set out in the IMG study of Aer Rianta's CAPEX Programme, which is being published by the Commission to accompany its Determination.

180. Such a devaluation of these assets would also send a clear signal to Aer Rianta that in future all such capital projects <u>must</u> comply with the regulatory objectives of Section 33 of the Act, namely to *"meet the requirements of the users"* who are ultimately expected to pay for them, whilst at the same time facilitating *"the development and operation of cost effective airports"*.

The Commission accepted this representation on the basis that the receipt of such a signal by Aer Rianta as a result of the Commission's devaluation of pier C and the Shannon terminal would be likely to further the statutory objective of aiming to facilitate the development and operation of cost-effective airports that meet the requirements of users. However, its rationale for these devaluations is also the failure of these facilities to meet the current requirements of users and the inconsistency with the statutory objective of requiring those

users to bear the full cost of these facilities through airport charges.

181. Furthermore, Ryanair requires that <u>all</u> of Aer Rianta's assets be included in the regulatory single till. This means that assets such as the Great Southern Hotels Group and Aer Rianta International must also be included in Aer Rianta's asset base, because clearly a disposal of some or all of these assets in the near to medium term will enable Aer Rianta to pay down a significant proportion of its debt or fund any further capital expenditure requirements at the regulated airports and will enable/assist Aer Rianta to develop and operate *"cost effective airports"* which *"meet the requirements of users"*.

The Commission rejected this representation because Aer Rianta and Great Southern Hotels do not have sufficient nexus to the regulated activities.

VI SERVICE QUALITY

Aer Lingus

182. What matters is service quality, not investment and regulators often see capital expenditure as a leading indicator of service quality.

The Commission rejected this representation. Although service quality investment does not necessarily guarantee quality of service, given the nature of airports, investment significantly impacts on quality of service. In the Commission's view capital expenditure should not be used as a conclusive indicator of service quality

183. The Commission should fulfil its objective of incentivising Aer Rianta to reduce costs more effectively by measuring service quality directly and penalising failure to perform, rather than being mainly concerned with aggregate capital expenditure, which bears only a loose relationship to quality.

The Commission accepted this representation as follows. The Commission will be monitoring quality going forward. In that regard, the Commission notes that a failure to meet specified measures of service quality levels could constitute substantial grounds leading to a review of the determination. However, the Commission must necessarily concern itself with the aggregate capital expenditure going forward, given its importance as a determinant of the maximum levels of airport charges. The Commission shall publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner

184. We require the Commission to ensure that Aer Rianta signs service level agreements with airlines and other interested parties.

The Commission rejected this representation. The Commission, at this point in time, is not minded to insist on contractual undertakings, in the Commission's view, what matters is the standard of service, rather than the fact of entering into agreements. In that regard, the Commission will be monitoring quality going forward and notes that a failure to meet or exceed measures of service quality levels could constitute substantial grounds leading to a review of the determination. The Commission shall publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking

***the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner**.*

Aer Rianta

185. In theory, airports subject to price regulation have an incentive to deliver lower quality. In practice, the countervailing power of airlines and airports' determination to avoid the negative impact on their business, which the perception of poor quality exerts considerable influence to limit this theoretical incentive.

***The Commission rejected this representation for the following reasons. The Commission has considered the argument that the power possessed by airlines reduces the probability that a regulated firm faced with a price cap will neglect quality standards. The Commission believes that in this case, the bargaining power of airlines is overstated, having regard to the lack of any alternative comparable airports. Furthermore, there is a clear financial incentive for the regulated firm when faced with price cap regulation to allow service quality to deteriorate. Accordingly, the Commission will be monitoring quality going forward. In that regard, the Commission notes that a failure to meet measured service quality levels could constitute substantial grounds leading to a review of the determination. The Commission shall publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner*.**

186. Any conclusions on service quality must be related to operating cost, capital expenditure and passenger throughput. The role of the regulator should be to incentivise the regulated airports to:

- Meet service levels it has agreed with customers
- Offer value adding services to customers who are prepared to pay for them;
- Encourage appropriate investment and maintenance to meet service standards.

The Commission accepted this representation because the Commission considers that a determination based on the above elements is best calculated to achieve the statutory objective. The Recoverable CAPEX Programme is appropriate, quality and service standards will be measured going forward, and Aer Rianta and the airlines are free to contract for different grades of service. The Commission will publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking

the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner.

187. CAR should not become directly involved in setting service standards because:

- Airport services are so varied;
- Airport users' requirements are so varied.
- Airport quality depends not only on airport operators but also on airlines and other companies, over which the airport operator has little control;
- It is costly to establish and administer
- Their development is most effectively handled through direct negotiation between airports and airlines.
- Instead, CAR should form an overall judgement about service quality at the five yearly price reviews, making it another factor in judging the performance of the company and the reasonable rate of return it should earn, given that performance.

The Commission accepted this representation because the Commission has decided that as a preliminary matter, quality and service standards need to be measured. Without such a measurement, a prescriptive approach would not even be possible. Separately, at this point in time, the Commission does not consider that an interventionist approach to quality and service standards is consistent with the achievement of the statutory objective. The Commission accepts that the airport operator and users are likely to have a good understanding of their respective needs and capabilities.

The Commission will publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner

188. Bilateral agreements should only relate to arrangements for additional service elements. No bilateral agreement should be permitted that arranges for service levels which are below the generic standard at a lower price than standard charges because it would place a disproportionate burden of cost on the majority of airlines who wish to operate to the generic standard.

The Commission rejected this representation on the basis that no evidence has been provided or is available to the Commission to suggest that this is the case.

At this point in time, the Commission will not be prescribing the types of agreements to be entered into.

189. Information on service quality could be published by CAR to aid transparency and external validation of Aer Rianta data may be appropriate if cost effective. (The precedent for such structures exists in the Australia and UK systems*.)*

The Commission accepted this representation. The maximum levels of airport charges are set so as to facilitate the development and operation of cost effective airports, which meet the requirements of users. Given the importance of quality of service to user requirements, the Commission will be monitoring quality standards going forward, and will be publishing relevant information.

The Commission shall publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner

bmi

190. We suggest that service quality could be considered and developed with Aer Rianta and the Regulator over the course of the next few years*.*

The Commission accepted this representation. The maximum levels of airport charges are set so as to facilitate the development and operation of cost effective airports, which meet the requirements of users. As such, the provision of capacity, and operational efficiency must be monitored, and therefore the Commission will be monitoring quality going forward. The Commission regards this as feasible. The Commission will publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner.

British Airways

191. We welcome the implicit recognition by the Commission of the incentives to the regulated airports to allow quality of service levels to drop in a price cap regulatory environment as a means of saving costs and maximising returns***.***

The Commission accepts this representation for the following reason. The Commission believes that in Aer Rianta's case, there is a risk that the introduction of a price cap may lead to a deterioration in quality of service. Therefore, the Commission will be monitoring quality and service standards going forward.

In that regard, the Commission notes that a failure to meet or exceed measured service quality levels could constitute substantial grounds leading to a review of the determination*.*

The Commission will publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner

192. The existence of robust measures of quality with effective implementation policies are fundamental both to furthering the reasonable interests of users, both providers of air transport services and passengers**.**

The Commission accepts this representation. The maximum levels of airport charges are set so as to facilitate the development and operation of cost effective airports, which meet the requirements of users. Given their importance as user requirements, the provision of capacity, and operational effectiveness must be monitored, and therefore the Commission will be monitoring quality going forward, and will be publishing relevant information.

The Commission will publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner

193. The Commission should concentrate on core provisions including timely provision of capacity, and operational effectiveness, particularly as measured by punctuality*.*

See immediately above

194. Therefore, the Commission should establish binding service standards for the provision of core services such as jetty availability, people movers, security queuing, planning standards, ramp services, baggage systems and stand availability*.*

The Commission rejects this representation as resulting in a degree of intervention which would frustrate the statutory objective.

195. The Commission should ensure that granting of rights to the airports to levy aeronautical charges should be conditional on the existence of agreed binding service standards which in the event of these not being achieved results in some form of rebate or compensation payment to users***.***

The Commission rejects this representation for the following reasons. The granting of rights to recover airport charges is a legal right conferred on Aer Rianta by law. The Commission is not empowered to make the right conditional in any way.

The Commission itself is legally obliged to set the maximum level of airport charges, and in doing so it is proposing to monitor quality going forward. The Commission is not mandating SLA's, but it does note that deterioration in the quality of service below measured levels could constitute substantial grounds leading to a review of the determination. The Commission shall publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner.

196. Airlines should be able to request service levels above the generic standard, for which a premium may be paid.

The Commission accepted this representation and has not restricted users from doing so.

197. However, the generic service standard should not be set so low as to make it necessary for most airlines to put in place bilateral agreements in order to reach a standard level of service that is acceptable to users.

The Commission rejected this representation since it is not proposing to set binding standards.

198. In addition bilateral agreements must only address the achieving of higher standards than the generic.

The Commission rejected this representation on the basis that no evidence has been provided or is available to the Commission to suggest that this is the case.

Cork/Southwest Consortium – Cork Chamber of Commerce

199. Use of the CPI-X formula should be coupled with strict monitoring of quality of service by reference to SLAs with users of airlines.

The Commission accepts this representation for the reasons stated in CP8/2001. However, the Commission notes that SLAs are usually only concerned with contracting for a particular service level. Aer Rianta and the airlines will be free, but not legally obliged to enter into SLAs.

The Commission will be monitoring quality and service.

Irish Association of International Express Carriers

200. What is the quality of service that CAR has based it calculations on for cargo, in the context of maximum yields and allowable CAPEX being so in excess of current user requirements.

The Commission shall publish a consultation paper on service and quality levels, including those pertaining to cargo, seeking the views of the industry and the public as to how best to meet service quality standards in a cost-effective manner.

IATA

201. Generic standards should be included in the airports' conditions of use and such contracts should be linked to the charges. The agreed standards should be backed by robust and effective service level agreements (SLAs) and/or quality (Q) factors.

The Commission interprets this representation as an argument in favour of the Commission imposing conditions in its determination in relation to service standards, as well as mandating Service Level Agreements. The Commission rejects this representation for the reasons set out above.

202. Airport charges should be for agreed basic facilities and service levels that users need and use. Agreement with users is required on such basic or generic levels. Those users requesting them should then pay for any additional facilities or services above this level.

The Commission accepts this representation for the following reason. The requirements of users are not homogenous, either as to the scope or quality of service, which they wish to have provided by the airport operator. In principle, the Commission welcomes the concept of airlines and the airport operator contracting with each other for differentiated service and quality offerings.

203. Providing that the necessary meaningful and effective consultation is made available, all users should have the ability to agree and "buy into" the CAPEX programme. Against this background, together with the requirement for agreed basic or generic levels of facilities and service, we do not believe that individual users should have use of these facilities at lower cost. Such a situation could be considered discriminatory or anti-competitive. We could support however, consideration of specialisation of service provision at different terminals or satellites providing they are agreed within the CAPEX programme, and that there is adequate and appropriate equal opportunity of access with safeguards against possible discrimination.

The Commission notes this as a representation in relation to the setting of charges for different types of facilities and services. The Commission, in setting maximum levels of airport charges, believes that the statutory objective is best achieved by not setting individual charges other than in respect of cargo, as well as a sub-cap for off-peak utilisation of runway 10/28. In making its Determination, the Commission noted Aer Rianta's stated intention to adopt a new charging structure going forward.

VII OPEX AND BENCHMARKING

Aer Lingus

204. The Commission is not making effective use of its benchmarking results, nor recognising that unit cost improvements will take place because of factors that are partly outside of Aer Rianta's control, and for which the airport operator should not, therefore receive credit in the form of returns above the cost of capital.

The Commission rejected the part of this representation dealing with benchmarking because the uncertainties attached to airport benchmarking exercises mean that the Commission could be in conflict with its statutory objective were it to demand efficiency improvements equal to the full amount of the measured unit cost differences between the Aer Rianta airports and their benchmark comparators. Regarding scale economies and general productivity growth, the Commission accepted this part of the representation because these factors must be taken into account in order to make the benchmarking relevant.

205. Customers will continue to pay for inefficiency throughout this price control period, because even by the end of the period, charges at Dublin and Shannon will fully compensate Aer Rianta for half of its existing operating inefficiency.

The Commission rejected this representation because the uncertainties attached to airport benchmarking exercises mean that the Commission could be in conflict with its statutory objective were it to demand efficiency improvements equal to the full amount of the measured unit cost differences between the Aer Rianta airports and their benchmarked comparators.

206. The efficiency targets do not appear to take account of the effects of traffic growth, which will almost certainly allow Aer Rianta to beat these cost reduction targets without effort.

The Commission has accepted this representation and revised its efficiency targets to take account of scale economies and general productivity growth. Taking this factor into account allows for a more accurate assessment of feasible improvements in operational efficiencies.

207. The efficiency targets do not appear to take account of any expected technical progress and general economy-wide improvements in productivity growth. Aer Rianta can and should be expected to take advantage of such improvements and it should not be rewarded for "normal" cost efficiencies of this sort.

The Commission accepted this representation and revised its efficiency targets to take account of scale economies and general productivity growth, because it allows for a more accurate assessment of feasible improvements in operational efficiencies.

208. The Commission should not allow Aer Rianta a 5-year glide path in respect of improvements in operational efficiencies. The final level of required improvements in operational efficiency should be increased so as to require a 75% reduction in the gap between actual and best practice, over a period of 3 rather than 5 years.

The Commission rejected this representation because of the uncertainties attached to benchmarking exercises and because Aer Lingus has not provided any factual basis to support the time periods and proportions it recommends.

209. Given that some costs are fixed in the short term, increasing volumes should not produce proportionate increases in cost, and on that basis the Commission may be allowing Aer Rianta to achieve all of the required savings simply through economies of scale rather than actual improvements in operational efficiency.

The Commission accepted this representation and revised its efficiency targets to take account of scale economies and general productivity growth, because it allows for a more accurate assessment of feasible improvements in operational efficiency.

210. The Commission has wrongly assumed either that there will be no technical progress in the airports of the economy generally, in the next 5 years, or that Aer Rianta should receive excess returns for performing as well as any other firm in economy in adopting innovations. The Commission must make allowances for general productivity growth, such as improved labour productivity, as otherwise, Aer Rianta will not in fact have closed half of the efficiency gap as proposed in CP6, given the ongoing improvements in the comparators. As such, the targets proposed by the Commission are not sufficiently demanding.

The Commission accepted this representation and revised its efficiency targets to take account of scale economies and general productivity growth, because it allows for a more

accurate assessment of feasible improvements in operational efficiency.

211. An alternative efficiency target is proposed based on 5% growth per annum, assuming half of operating costs to be fixed relative to changes in traffic, and a further assumption of 1.5% improvement in best practice to reflect technical progress, as well as a requirement for full convergence with best practice by 2006.

The Commission rejected this representation on the basis that the Commission's revised efficiency targets represent its best estimate of the scope for improved efficiency at Aer Rianta's airports, taking account of the benchmarking exercise and the statutory representations received by the Commission

Aer Rianta

212. *Clarification:* of the Commission's intentions with regard to benefits arising from efficiency improvements in order to provide regulatory certainty. According to Aer Rianta:

- It is in the interests of consumers, users, Aer Rianta and the shareholder to allow the sharing of both operating efficiencies and capital efficiencies on an ongoing basis;
- Best practice regulation now involves the regulated firm keeping the benefits of opex reductions for a fixed period of time, e.g., five years (through glidepaths as in the Australian method);
- This approach is best geared to driving continuous innovation, efficiency and service improvements to the benefit of both consumer and regulated company.

The Commission accepts this representation in principle, however, for this Determination being the first Determination of the Commission, it has decided that it is appropriate to fully incentivise Aer Rianta by allowing it to retain the benefits of efficiency achieved in excess of the requirements of the Determination.

213. In its response to CP2/2001, Aer Rianta uses OPEX/WLU and OPEX/ATU comparisons to conclude that "the Aer Rianta cost performance is well within the average range, which is very creditable given the fact that the company is being compared, for the most part, against single airport operators and the average size of the airport is generally larger than that of Aer Rianta airports."

The Commission rejected this representation, its reasons for doing so are that, insofar as the reader can judge, the Warburg

***et al* report compares the Aer Rianta company (not its Irish airports) against pure airport operations, does not give any reason for selecting the particular comparator airports and the data are for the year 1998.**

214. The efficiency targets set out by CAR correspond exactly to those suggested by its benchmarking exercise, and there is no evidence to demonstrate what "other things" were considered or how they influenced CAR's thinking.

***The Commission accepted this representation based on the information disclosed in CP6/2001. However, the benchmarking study prepared by its consultants, IMG, includes more variables and more analysis than the extract published with the Commission's draft Determination. The Commission is now publishing the full IMG benchmarking report to accompany its final Determination*.**

215. There are a number of reasons why the partial productivity comparisons used by CAR may be misleading and why they are inappropriate for assessing differences in firms' efficiency and setting its price cap:

- They fail to take account of substitution possibilities between different inputs because they only use a single measure of input and they fail to take account of significant differences in the quality and quantity of other unmeasured inputs.
- They often measure output imperfectly, missing out on important dimensions of output, such as service quality;
- They usually fail to take account of important external factors that give rise to legitimate cost differences between firms, even if they are equally efficient, e.g., economies of scale, the lumpiness of investment (airports may have different costs simply because they are at different positions in the investment cycle), and differences in input prices.

Applying these reasons to CAR's comparisons of operating expenditure per WLU, Aer Rianta finds that CAR's analysis:

- Ignores potentially important differences in the quantity and quality of fixed assets and other capital costs at the airport;
- Ignores potentially important aspects of output, such as the number and nature of aircraft movements, the proportion of transit passengers, peakiness of demand and the quality of service delivered, all of which could lead to significant cost differences between airports;

In addition they:

- Could be subject to measurement problems and data inconsistencies, e.g., inappropriate choice of exchange rates can lead to misleading results;
- Could be distorted by different accounting practices (e.g., governing the difference between opex and CAPEX);
- Could be distorted because operating costs are included for activities that are provided at some airports but not others.

The Commission rejected this representation because, while the Commission recognises that benchmarking exercises may be subject to certain difficulties, it is fully satisfied that its own approach to setting efficiency improvement targets has been a prudent and cautious one. Its reasons are as follows. First, the Commission excluded the US airports in its benchmarking study from the comparator set on which its efficiency targets were derived. Second, the Commission set efficiency improvement targets for Dublin and Shannon airports at a level well short of the measured difference in unit costs between Dublin and Shannon airports and their respective comparators. Third, the Commission subjected its benchmarking report to an intensive review, following the receipt of the statutory representations, the report of which is being published to accompany the determination, and is satisfied that its revised efficiency targets are robust. Finally, the Commission notes that none of the above factors dissuaded Aer Rianta from itself using, what would appear to be a much simpler benchmarking comparison than that of the Commission to conclude (in its second representation) that Aer Rianta's cost performance "is well within the average range, which is very creditable".

216. The Commission's study fails to take account of the different activities included in the "peer group" airports' costs and, consequently, the results are not comparable and any benchmarking analysis on this basis will not be robust. For example:

- It appears that CAR has included the cost of sales in its analysis, a fundamental weakness because most of the peer airports outsource commercial activities;
- It is unclear whether the cost figures include or exclude depreciation.

The Commission accepts this representation to the extent that the manner in which CP6/2001 described the benchmarking may not have clearly articulated how differences were taken into account. The Commission subjected its benchmarking report to an intensive review, following the receipt of the statutory representations, the report of which is being

published to accompany the determination, and is satisfied that its methodology is robust and that the targets are appropriate in all of the circumstances.

217. Different output measures, for example, WLU vs. ATU, produce different results and this highlights the need for any comparative efficiency analysis to be based on more sophisticated methods that are capable of dealing with the multi-dimensional nature of airport outputs.

Using different output measures and varying between the inclusion and exclusion of depreciation, Aer Rianta cites lists of varying results.

The Commission rejected this representation, because Aer Rianta's cost performance is poor on almost all these measures, Aer Rianta does not claim that one measure is better than the others, and no evidence is provided by Aer Rianta of the results of more sophisticated measures.

218. Cost data for other airports are available and there is no obvious reason why these should not be used. Aer Rianta extends its analysis to include, for Dublin, Stuttgart, Geneva, Hamburg and Zurich, and, for Cork and Shannon, Aberdeen and Billund, which yield different efficiency results, raising concerns about the robustness of CAR's analysis.

The Commission rejected this representation because the Commission's focus is not on average performance but on those airport operators close to the performance frontier. Adding airports with efficiency around, or worse than, the average is irrelevant to the Commission's concern with best performance and the attainment of productive and dynamic efficiency.

219. The efficiency of Aer Rianta's operations is borne out by various inter-airport comparisons such as, for example, Warburg Dillon Read/SH&E/AIB Corporate Finance report.

The Commission notes that Aer Rianta, in consecutive representations, relies upon, what would appear to be, very limited benchmarking results and yet also rejects the more comprehensive analysis that has been undertaken by the Commission. The Commission rejected this representation. Its reasons for doing so are that, insofar as the reader can judge, the Warburg et al. report appears to compare the overall Aer Rianta company (not its Irish airports) against pure airport operations, and does not give any reason for selecting the particular comparator airports. Furthermore, the data are for

the year 1998 whereas the Commission's benchmarking data are for 1999.

220. Cost differences identified by CAR's benchmarking analysis cannot simply be assumed to represent efficiency differences and these are difficulties that cannot be addressed by refining or improving it.

The Commission has conditionally accepted the first part and rejected the second part of this representation for the reasons given in the Commission's response to Aer Rianta's fourth and sixth representations. The Commission is fully satisfied that its own approach to setting efficiency improvement targets has been a prudent and cautious one.

221. It is appropriate that CAR, in order to have due regard to international cost competitiveness and operational efficiency under section 33, adopt best international practice in relation to its benchmarking analysis. (Appendix 7b of Aer Rianta's submission, summarises the efficiency reviews undertaken by regulators in other jurisdictions.)

The Commission rejected this representation for the reasons given in the Commission's response to Aer Rianta's fourth and sixth representations. The Commission is fully satisfied that its own approach to setting efficiency improvement targets has been a prudent and cautious one.

222. It would be risky for CAR to set regulated charges on the basis of its benchmarking exercise because, if Aer Rianta has less scope in reality to improve its efficiency than assumed by CAR, prices based on such targets could create significant financial difficulties for Aer Rianta, making it difficult to finance new investment and perhaps the operation of existing facilities.

The Commission rejected this representation. While recognising that benchmarking may be subject to certain difficulties, the Commission is fully satisfied that its own approach to setting efficiency improvement targets has been a prudent and cautious one. ***In any event, the Commission has not solely relied on benchmarking. It has also had regard to general improvements in productivity.***

223. It is important to establish an alternative methodology for setting operational efficiency targets going forward and Aer Rianta considers the projections presented in confidential appendix 8 and summarised in section II provide the best available information in order to set efficiency targets. These projections are firmly set in an understanding of Aer Rianta's actual cost base and scope for efficiencies (rather than high level and unreliable efficiency comparison with other airports) and assume that Aer Rianta will continue to achieve significant gains in operating performance.

The Commission accepts the representation insofar as it relates to future consideration of alternative methodologies, alongside benchmarking, for the assessment of operational efficiency. The Commission is willing to entertain proposals regarding methods by which efficiency might be assessed for future Determinations*. *The Commission rejected this representation insofar as it proposes adoption of Aer Rianta's cost and efficiency forecasts for the reasons given in the Commission's response to earlier Aer Rianta representations.

224. It would be inappropriate for CAR to impose more stringent efficiency targets without having robust evidence to demonstrate that they are feasible, that they are achievable in the next control period, and that they can be achieved without jeopardising national and international standards on safety and security, as well as minimum quality standards.

The Commission rejects this representation for the reasons given in its response to Aer Rianta's fourth and sixth Determination*. *Compliance with national and international standards is fully provided for in the Determination.

Antoin Daltún

225. The information available concerning the benchmarking exercise was quite restricted. Errors and omissions in relation to easily ascertainable facts and the simplistic treatment of cargo are telling indications that it is seriously deficient as a basis for any Determination, the manner in which CP6/2001 described the benchmarking exercise was restrictive.

The Commission accepts that the manner in which CP6/2001 described the benchmarking exercise was restrictive. However the benchmarking study prepared by IMG included many more variables and much more analysis than the extract published with the Commission's draft Determination. The Commission is publishing the full IMG benchmarking report to accompany its final Determination*. *The Determination takes account of the representations accepted by the Commission is relation to methodology.

226. Since the Commission does not appear to have, or has not published, data which would allow it to reach sound conclusions based on cost levels of the Aer Rianta airports compared to others, it may be safer, at least pending adequate cost benchmarking, to regulate the maximum published tariff(s) for Dublin airport relative to the distribution of such tariff(s) in a nominated list of other comparable European airlines (e.g. the median of such a list).

The Commission rejected this representation for the reason given in the Commission's response to Mr Daltún's first representation*. *In addition, no reason is given or is known to the Commission as to how this would further the objective of the Act.

227. Section 33(h) of the Aviation Regulation Act 2001 requires the Commission to take due account of the cost competitiveness of airport services with respect to international practice. Since the users are more directly interested in Aer Rianta's prices than in their costs, price competitiveness must be relevant to the Commission's determination.

The Commission rejected this representation because it is bound by the terms of the Aviation Regulation Act, 2001 to measure cost rather than price competitiveness. Moreover, it is cost competitiveness given the environment of economic regulation within which Aer Rianta must operate that will drive price competitiveness. However, the Commission is free to consider price competitiveness to the extent that it would further the statutory objective. In that regard the Commission believes that price competitiveness is of little guidance or assistance, and is even more problematic than cost benchmarking.

228. Not taking into account any economics of scale or other expected changes in unit costs in other airports when setting the draft determination.

The Commission accepts the principle of this representation since it allows for a more accurate assessment of feasible improvements in operational efficiency. Its benchmarking methodology has been reviewed accordingly.

229.

WLU is only a fair measure for similar airports. Shannon and Southampton are not comparable, since Shannon is a transatlantic gateway.

The Commission rejected the representation because although there is a point of difference, it does not undermine the broad equivalences, which exist to justify the comparison.

230. The draft determination is based on one year – 1999. In terms of improvements in operational efficiency, the goal posts seem to be static

The Commission accepted this representation in principle since taking account of general improvements in productivity as well as falling unit costs with rising volumes, for a more accurate assessment of feasible improvements in operational efficiency

231. Why are US airport figures shown for Dublin and then dismissed Performance measurement data for Shannon and Cork is inadequate

The Commission rejected this representation because of the fundamentally different operating and regulatory environment of US and EU airports.

232. There was no sensitivity analysis to help identify which facts/assumptions were critical or of minor importance.

The Commission rejected this representation because given that the Commission is concerned with measurements vis à vis the frontier airports, and not by reference to the mean, sensitivity analysis is not a necessary part of benchmarking exercise

bmi

233. Clearly the price cap proposed should require adjustment and is therefore yet to be determined. We understand from the Commission Paper that 15% efficiencies have been included in arriving at the Revenue Cap.

The Commission rejected this representation, as the maximum yields are adjusted annually with reference to the CPI-X formula. To aid clarity and understanding, the Commission has decided to publish a summary of the calculations underlying its maximum yields in its final Determination. This will make the incorporation of the CPI and the X factor into the yield transparent.

Bord Failte

234. The choice of comparator airports for the bench marking exercise does not seem to take account of the composition of air passenger traffic by purpose of visit. Traffic through Irish airports is characterised by a higher level of discretionary passenger traffic, i.e. those traveling for leisure purposes, than is the case at most other European city (non resort) airports. The bench marking exercise focused on city airports, with the exception of Luton (LTN) - historically a holiday charter, and more recently a growing low cost airport. As the analysis only takes account of the share of international passenger traffic and not purpose of travel, the conclusions run the risk of assuming that the traffic to Ireland will exhibit the same price elastic characteristics as traffic for purposes other than leisure to comparator city airports.

The Commission rejected this representation because the benchmarking exercise sought to measure cost performance, which does not depend on the price elasticity characteristics of passengers.

British Regional Airlines Group PLC

235. The efficiency targets to be set should take account of cost reduction/efficiencies that are specific to Aer Rianta and the results of the benchmarking exercise.

The Commission rejected this representation because the information available to it regarding efficiencies that are specific to Aer Rianta derives from the benchmarking exercise.

CityJet

236. In the benchmarking process recognition of Ireland's western peripheral geographical location and the importance of access transport particularly from an economic and tourism point of view in particular must be taken into account.

The Commission rejected this representation as it considers that these issues fall more properly under the statutory factor of the regional impact of an airport rather than the statutory factor of international cost competitiveness. The Commission's treatment of the statutory factor that is concerned with the impact of an airport on the region in which it is located is discussed under the relevant section of this Report.

237. The recognised inefficiency at Dublin Airport should be taken into consideration in the determination of the proposed maximum permitted revenue per workload unit each year (CPI-X). The suggested scope for improvements at 15% over 5 years is too low in our view and should be further evaluated by Commission for Aviation Regulation.

The Commission rejected this representation as the Commission's efficiency improvement target for Dublin Airport

were, in fact, incorporated into the maximum yields published as part of the draft Determination. To aid clarity and understanding, the Commission has decided to present a summary of the calculations underlying its maximum yields in its final Determination. This will make the incorporation of the efficiency factor into the yield transparent. Regarding the magnitude of the efficiency factor, the Commission rejected this representation because the uncertainties attached to airport benchmarking exercises mean that the Commission could be in conflict with its statutory objective were it to demand efficiency improvements equal to the full amount of the measured unit cost differences between the Aer Rianta airports and their benchmarked comparators.

Councillor Patricia McCarthy

238. It does not appear that the CAR has compared like-with-like in its benchmarking exercise. The basis for the chosen airports and how the Commission's conclusions are reached are requested.

The Commission rejected this representation because it is fully satisfied that while benchmarking exercises are subject to certain difficulties, its own approach to setting efficiency improvement targets has been a prudent and cautious one. To aid understanding of the basis on which comparator airports were selected and benchmarking conclusions reached, the Commission is publishing the full IMG benchmarking study to accompany its Determination.

Fingal County Council

239. Sustainability issues[5], as well as the cost efficiency parameters, should be assessed in the benchmarking exercise, for example, the quality of the environment both within and surrounding the airport and hosting regions and communities.

The Commission rejected this representation because it fails to see the connection with cost competitiveness, and more generally does not interpret Section 33 of the Aviation Regulation Act as being concerned with this issue.

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[5] This refers to the COFAR report, which states that "sustainability in relation to airport problems means that measures to be taken should foster economic growth, protect and improve environmental conditions and support social cohesion."

Impact

240. Performance indicators have major difficulty in the absolute measurement of an airport's performance. Doganis states that "revenue performance indicators are easier to calculate than cost efficiency indicators and greater reliance can be placed on the actual figures produced". Why do the Commissioners only use five? Furthermore the five used are cost based and are recognised by a world expert as being less reliant than revenue based indicators.

The Commission rejected the representation about absolute performance measurement because the benchmarking exercise is a measure of relative performance. The benchmarking study prepared by IMG included many more variables and much more analysis than the extract published with the Commission's draft Determination. The Commission is publishing the full IMG benchmarking report to accompany its final Determination. The Commission rejected the representation about using revenue over cost measures of performance because it does not regard this as furthering the statutory objective.

241. Figures for the year 2000 published on the ACI web site for traffic at Brussels show passenger traffic at 21,604,478 and cargo traffic at 634,342 tonnes. This equates at 100 kgs per WLU to 27,947,898 WLUs. In other words cargo traffic at Brussels increased WLUs by 22.7%. ACI figures again for the year 2000 for traffic at Copenhagen show passenger traffic at 18,294,387 and cargo traffic at 419,342 tonnes. Again at 100 kgs per cargo WLU the total WLUs are increased to 22,487,807. In other words cargo traffic at Copenhagen increased WLUs by 18.6%. The Figures for Dublin for the same period are 13,843,528 passengers and 150,023 tonnes of cargo, which equates to 15,343,758 WLUs. Cargo traffic increased WLUs by 6.5%.

The Commission understands this representation to argue that only part of an airport's service output, namely passenger services, should be taken into account by the Commission and other aspects of service output, namely cargo, should be disregarded. The Commission rejected this representation as the WLU is a standard international measure of airport output and Impact has offered no reason why airports with relatively small cargo traffic should have this fact disregarded in a benchmarking exercise.

242. The cargo business at most European airports exists with minimum resources applied by the airport authority. The cargo is moved through terminals operated entirely by the handlers and on to aircraft again using equipment provided and operated by the handlers. There are no information desks, security checks, flight information systems, lifts, escalators etc. provided by the airports for cargo. A small amount of property administration and operations staffing is required but none of it dedicated. Incorporating cargo operations into the measurement of airport efficiency is generally considered to be a desirable goal.

The Commission accepted this representation. If the handling of cargo is a relatively uniform process across airports, and if the incorporation of cargo into the measurement of airport efficiency is considered desirable, as the representation maintains, then these appear to be valid reasons to measure productivity relative to WLU.

243. The task of incorporating cargo traffic into the measurement of an airport's performance efficiency is very difficult and given that its importance as an airport's measure of output efficiency is so difficult the question must be asked as to whether it is a valid measure. The Transport Research Laboratory in the UK is also involved in trying to measure airport efficiencies. They publish an annual review of 39 airports and airport groups using 34 performance indicators. They feel this is a better measure of airport production than the WLU. They continue to work with Durham with a view to a single measure, which could be weighted and adjusted for the many differences in airport operating environments, and thus give an overall total overall performance indicator.

The Commission understands this representation to address one or both of the following: 1) that the TRL's output measure called the Airport Throughput Unit (ATU) is a superior measure to the WLU; and/or 2) the TRL's performance indicators based on the ATU measure of airport output, 39 airports and 34 indicators is superior to the Commission's exercise. The Commission rejected this representation because while it recognises that performance measurement is subject to certain difficulties, it is fully satisfied that its own approach to setting efficiency improvement targets has been a prudent and cautious one and does not suffer from shortcomings relative to the TRL's analysis. The Commission would of course welcome the development of improved measures of performance.

244. Using a very small number of performance indicators to measure what is very clearly not like with like is of questionable validity.

The Commission rejected this representation because the benchmarking study prepared by IMG included many more variables and much more analysis than the extract published with the Commission's draft Determination. The Commission is fully satisfied that the choice of these indicators and the comparator airports has been guided by a prudent and cautious

exercise. The Commission is publishing the full IMG benchmarking report to accompany its final Determination.

245. Authors such as Horanjeff and Mc Kelvey, De Neufville, Ashford et al, Doganis etc. all point to the fact that the resources consumed by international and O and D passengers is very much higher than transit and domestic operations. On this basis there is a strong correlation between the Commission's definition of efficiency and the proportion of long, short and domestic passengers handled at the three Aer Rianta airports.

The Commission rejected this representation because, while the Commission recognises that inter-airport cost comparisons may be subject to certain difficulties, it is fully satisfied that the set of factors used to choose comparator airports has been broad-ranging enough to capture the concerns raised in the above representation. The Commission is publishing the full IMG benchmarking report to accompany its final Determination, which will include a full explanation of the set of factors used to chose those comparator airports.

246. However, if this is broken down into the classes of employees the figures used in the draft determination do not hold up. The peer airports do not employ their own staff to operate their retail outlets.

The Commission rejected this representation because, while the Commission recognises that benchmarking exercises may be subject to certain difficulties, it is fully satisfied that its own approach to setting efficiency improvement targets has been a prudent and cautious one. Its reasons for thinking so are threefold. First, the Commission excluded the US airports in its benchmarking study from the comparator set on which its efficiency targets were derived. Second, the Commission set efficiency improvement targets for Dublin and Shannon airports at a level well short of the measured difference in unit costs between Dublin and Shannon airports and their respective comparators. Third, the Commission subjected its benchmarking report to an intensive review, following the receipt of the statutory representations, the report of which is being published to accompany the determination, and is satisfied that its revised efficiency targets are reasonable.

247. In 1999 the Minister of Public Enterprise commissioned a report on the strategic options for Aer Rianta, undertaken by Warburg Dillon Read, AIB Capital Markets and SH&E. This report shows that in percentage terms Aer Rianta's aeronautical revenues were the lowest of 15 survey airports, and this has been supported by subsequent UK studies. In Aeronautical revenue per passenger Aer Rianta was considerably below any of the European Airports in the TRL report at 2.68 SDRs per passenger. The BAA group was 5.64 SDRs and Copenhagen was 4.33 SDRs. And in terms of economic welfare low prices to consumers must be the best way this is measured. However, low price is not at the expense of low quality of service.

The Commission rejected this representation. While Aer Rianta's aeronautical revenues are currently low by international standards, the Commission notes that, up to now, airport charges at Aer Rianta's airports have not been set with reference to economic fundamentals and that Aer Rianta has sought a doubling of its aeronautical charges. In any event, reference to aeronautical revenue per passenger provides no assistance in deciding what the maximum levels of airports charges should be, consistent with the requirement of the Act.

248. The logical conclusion of only measuring efficiency on an Operating Cost Efficiency basis is that Aer Rianta should reduce costs so that its efficiency measurements would look better

The Commission rejected this representation because the benchmarking study prepared by IMG included more variables and more analysis than the extract published with the Commission's draft Determination. The Commission is publishing the full IMG benchmarking report to accompany its final Determination.

249. When factors such as security requirements, which require Aer Rianta to employ more staff in these areas than its peers are factored into employee productivity, Aer Rianta performs as well as or better than most of its peer airports. In addition, extra staff is required for policing, and by virtue of licensing regulation.

The Commission rejected this representation. No evidence has been presented in this representation or elsewhere to demonstrate that the burden on Aer Rianta of security and policing services is heavier than in airports generally nor has evidence been offered of an efficiency advantage from the provision of such services from within the company.

250. The Commission must have due regard for "the efficient and effective use of all resources by the airport". Knowledge and experience are a resource, a human resource. Aer Rianta in its best use of human resources turns a better commercial profit than any of the peer airports except Gatwick.

The Commission rejected this representation on the basis that the relative commercial profitability of Aer Rianta's human

resources is unrelated to the international cost competitiveness of Aer Rianta's airports.

251. However, as with most of the measures of efficiency there must be some caution in the use of these figures. Some of the volume of an employee's workload is relative to the size and design of the assets they work with rather than the assets volume of production.

The Commission accepted the first part of this representation because the Commission is mindful of the difficulties associated with any benchmarking exercise. The Commission has also accepted the second part of this representation and would note that comparisons of the relative scales of assets and workforces have been taken into account in choosing the set of comparator airports. The Commission also notes that it is publishing the full IMG benchmarking report to accompany its final Determination, which includes a full analysis of the rationale for the chosen sets of comparator airports.

Irish Hotels Federation

252. The IHF supports the introduction of a benchmarking exercise, whereby independent specialists review the airport operator's current inefficiencies such as 'gold plating', where they exist. Such inefficiencies should be taken into account when calculating the appropriate level of airport charges.

The Commission notes the IHF's support of the benchmarking exercise. However, the Commission rejected the second part of this representation because it feels that inefficient investments and the possible existence of 'gold-plating' is best addressed in the context of the assessment of the RAB and its valuation, the CAPEX programme and international airport planning standards used for the purposes of those assessments, as opposed to a benchmarking exercise that is designed to measure international operational cost competitiveness.

Limerick Chamber of Commerce

253. The comparator airports used in CAR's benchmarking exercise are all located in densely populated areas. Ireland has one of the lowest population densities in the world.

The Commission rejected this representation as the relevance of population density to the Commission's statutory framework, in particular, to the international cost competitiveness of Aer

Rianta's airports, has not been demonstrated by the Limerick Chamber of Commerce and is not apparent to the Commission.

Ryanair

254. We require that the proposed maximum permitted revenue per work load unit (RWU) of IR£4.96 at Dublin Airport be reduced by 50% to reflect the current proven inefficiency of Dublin Airport when compared to the best of its peer group airports, namely Copenhagen. The Commission acknowledged in CP6 that Copenhagen is a strong comparator airport. The Commission also noted that Copenhagen Airport opened a new terminal in 1999 (similar to DUB) and did not increase rates and charges for several years leading up to 2000. Given that the average air fares charged to and from Dublin Airport are lower than at Copenhagen (and are in fact the lowest in Europe), it is the requirement of the users at Dublin Airport (the airlines and passengers) that the efficiency at Dublin Airport be the best in Europe and the charges at Dublin Airport reflect the best possible practice (i.e., be the lowest) in Europe.

The Commission is clearly permitted under Section 32(6)(b) of the Act to impose such a reduction in the RWU. The Commission is also permitted to make such a finding in accordance with Sections 33(a), (c), (e), (g), (h) of the Act.

The Commission rejected this representation because the uncertainties attached to airport benchmarking exercises mean that the Commission could be in conflict with its statutory objective were it to demand efficiency improvements equal to the full amount of the measured cost differences between Aer Rianta and the comparator airports.

255. Furthermore, although the Commission included three US airports in its benchmarking exercise, it nevertheless failed to take these into account when calculating the inefficiency of Aer Rianta. Given the success of deregulation in the US and its resulting pressure on airports to increase their efficiency and reduce their prices, these airports should have been factored into the calculation of Aer Rianta's inefficiency. These airports are also relevant given the extent of low fares competition in the US and greater availability of low fares competition at Dublin Airport.

The Commission rejected this representation because the uncertainties attached to airport benchmarking exercises mean that the Commission could be in conflict with its statutory objective were it to demand efficiency improvements equal to the full amount of the measured cost differences between the Aer Rianta and the comparator airports. It is precisely because

of the differences in operating and regulatory environment that US airports have been excluded.

Shannon Airport Marketing Consultative Committee

256. Shannon's peer group in the benchmarking exercise needs to be re-examined because they are dissimilar in many respects, for example, they do not handle intercontinental traffic to the same extent.

The Commission rejected this representation because it is fully satisfied that while benchmarking exercises are subject to certain difficulties, its own approach to setting efficiency improvement targets has been a prudent and cautious one. In any event the Commission has not solely relied on benchmarking. To aid understanding of the basis on which comparator airports were selected and benchmarking conclusions reached, the Commission is publishing the full IMG benchmarking study to accompany its Determination.

Shannon Development

257. Concerned about the choice of peer group for Shannon benchmarking. Chosen airports do not have the infrastructure to support intercontinental operations. Believe the group may be appropriate to Cork, but that airports like Luxembourg, Bangor, Maine would be better choices for Shannon.

The Commission rejected this representation because it is fully satisfied that while benchmarking exercises are subject to certain difficulties, its own approach to setting efficiency improvement targets has been a prudent and cautious one. To aid understanding of the basis on which comparator airports were selected and benchmarking conclusions reached, the Commission is publishing the full IMG benchmarking study to accompany its Determination. No reasons as to why the specified airports should be used were given or available to the Commission.

258. To include Cork and Shannon in the same category is incorrect because of the higher costs associated with the provision of intercontinental traffic.

The Commission rejected this representation because it is fully satisfied that while benchmarking exercises are subject to certain difficulties, its own approach to setting efficiency improvement targets has been a prudent and cautious one. The fact that there are some differences does not invalidate the

association. In addition the nature of the difference does not invalidate the association

259. Further analysis should be undertaken using more appropriate comparators to more accurately determine the full efficiency requirements.

The Commission accepted this representation insofar as it relates to future assessments of operational efficiency and is open to suggestions about supplementary methodologies or approaches to measuring efficiency for future Determinations.

260. The benchmarking exercise is heavily skewed towards Dublin and issues impacting on Dublin. Shannon and Cork's specific conditions must receive similar consideration.

The Commission rejected this representation. Publication of the full IMG benchmarking study, to accompany the Commission's Determination, will show that its benchmarking exercise pays full attention to all three airports.

Signal

261. International comparisons are useful in a cost analysis but constitute a very narrow interpretation of the efficient use of resources. No account is taken of the unique rural setting in which Shannon operates and the consequential investment that is required.

The Commission rejected the first part of this representation because it is fully satisfied that while benchmarking exercises are subject to certain difficulties, its own approach to setting efficiency improvement targets has been a prudent and cautious one. The Commission rejected the second part of this representation as the relevance of the unique rural location to the Commission's statutory framework, in particular, the international cost competitiveness of Aer Rianta's airports, has not been demonstrated by Signal and is not apparent to the Commission.

262. No consideration is given to the effective use of resources. This should be measured by way of an airport's contribution to the regional economy and should also take into account the original philosophy and objective against which the airport was established and the role it plays in the economic and social infrastructure of the whole western seaboard.

The Commission rejected this representation as it considers that these issues fall more properly under the statutory factor

that is concerned with the regional impact of an airport rather than the one that is concerned with international cost competitiveness. The Commission's treatment of the former statutory factor is discussed under the relevant section of this Report.

263. Shannon and Cork are not comparable for the purposes of benchmarking and the peer group for Shannon and Cork is much more closely comparable to the business model of Cork than Shannon. The following areas are where distinctions arise:

- Nature of services provided: no transatlantic service from Cork, operates as feeder to Dublin for such flights. Other airports in the peer group are similar to Cork in that respect;
- Nature of the location: Cork and other airports located adjacent to large centres of population. This is not the case with Shannon.
- Support services provided: fuel and catering businesses.

The Commission rejected this representation because it is fully satisfied that while all benchmarking exercises are subject to certain difficulties, its own approach to setting efficiency improvement targets has been a prudent and cautious one and takes account of the concerns addressed in this representation. Again, the nature of the differences specified do not invalidate the association.

SIPTU

264. Estimation of potential efficiencies:

- Only looks at the cost side and ignores the benefit side in terms of the nature and level of the services provided;
- Ignores important structural differences between the chosen international comparators.

The Commission rejected this representation because it is fully satisfied that while benchmarking exercises are subject to certain difficulties, its own approach to setting efficiency improvement targets has been a prudent and cautious one.

VIII INDIVIDUAL/GROUP REGULATION AND REGIONAL ISSUES

Aer Lingus

265. In relation to the 3 airports, it is agreed that all fall to be considered under Section 33(d), and it submitted that regional development is promoted by providing efficient and cost-effective airport services, not by encouraging unnecessary investment projects in the hope of "contributing" to the region's development.

The Commission accepted this representation because Section 33 of the Act is not simply concerned with the development of airports. The development and operation of cost-effective airports meeting the requirements of users must be facilitated. As such, the Commission does not favour, in the context of its statutory objectives that airport charges should cover the cost of unnecessary investment designed to further regional development. The extent to which Government may wish to make such investments is a matter for it to determine subject to its obligations.

266. Given that the present bilateral agreement distorts free choice between airports, an 80% discount applies to landing charges in respect of transatlantic flights where the immediately preceding point of take-off was within the State, there should be a sub-cap so as to ensure the continuation of this charging regime for so long as the bilateral continues in its present form.

The Commission rejected this representation on the following terms and for the following reasons.

The Commission has decided that the statutory objective is given best effect by setting maximum levels of airport charges based on a revenue per passenger yield. As such, Aer Rianta will be free to set individual charges within the Caps. In any event, even if the Commission were to set individual charges, it notes that this proposal, designed as it is to remedy what Aer Lingus regards as a distortion, could itself be regarded as a further distortion and therefore contrary to the statutory objective.

267. Subsidies to Shannon or Cork should be funded by the State (directly or indirectly), and not through airport charges at Dublin.

The Commission accepted this representation on the following terms and for the following reason.

In the Commission's view, the statutory objective is given best effect by treating the airports on this basis, having regard to their differences in size, capacity utilisation and operational characteristics. The extent to which Government may wish to fund subsidies is a matter for it to determine subject to its obligations.

Aer Rianta

268. Dublin, Cork and Shannon should be regulated as a group, which Is consistent with company strategy as discussed and submitted to the Government in 1999; allows the company to best achieve its statutory obligations in the 1998 Act; and meets the statutory objective and factors (regions and minimum restrictions) in section 33 of the 2001 Act.

The Commission rejected this representation because the Commission is concerned with the statutory objective. Regulation in the form proposed or adopted by the Commission does not prevent or restrict Aer Rianta from achieving its statutory obligations or implementing it company strategy.

269. A single cap will permit a structure of relative charges that will promote overall economic efficiency.

Regulation as a group would present opportunities for maintaining the benefits derived from economies of scale, scope and density, which is essential to the continuing long-term development of cost-effective airports.

The Commission rejected this representation on the following terms for the following reason:

The Commission has decided to set one overall cap, with a separate cap for Dublin. Regulation in the form originally proposed, or in the form prescribed by the determination, will not prevent, restrict, or limit Aer Rianta from maintaining the benefits mentioned in the representation through the operation of its airports.

270. Operation of the three Aer Rianta airports as a group gives rise to cost efficiency gains through the pooling of resources. The introduction of separate price caps will increase the regulatory burden on each individual airport.

The Commission has rejected this representation because in its view the small increase in the regulatory burden on Aer Rianta (as a company, not as individual airports) will be substantially out weighed by the benefits of the Commissions treatment of Aer Rianta's airports in terms of furthering the statutory objective.

271. The introduction of separate price caps will affect Aer Rianta's marketing strategy to use capacity at all three airports effectively*;*

The Commission rejected this representation because it has failed to establish a logical link between the Commissions treatment of the Aer Rianta airports for the purpose of regulation and Aer Rianta's ability to market those airports in order to ensure the effective use of capacity at those airports. To the extent that "marketing strategy" refers to prices and that this is an argument in favour of allowing prices to drop at one or more of the Aer Rianta airports at the expense of users of another of those airports, the Commission has rejected this representation.

272. The introduction of separate price caps will diminish cost efficiency gains derived from economies of scale associated with the operation of the three airports as a unit.

The Commission has rejected this representation for the following reasons.

See above at 266.

273. The introduction of separate price caps will be contrary to the requirement of CAR to have due regard to the efficient and effective use of all resources by the airport authority*.*

The Commission has rejected this representation for the following reasons

See above at 266.

274. Regulation as a group is necessary to ensure a balanced and effective approach to capital investment*.*

The Commission rejected this representation on the following terms for the following reason:

The Commission has decided not to set individual CAPEX for each airport, other than for Dublin. However, it does not accept that the operation of individual CAPEX would produce the effects contested for.

In setting the maximum level of charges, the Commission can only concern itself with an efficient level of investment necessary for the development and operation of the airports, which meet the requirements of users.

275. Individual caps will have serious negative implications for Aer Rianta's ability and incentives to invest at the individual airports because of the insufficiency of revenues under individual price caps, leading to losses in dynamic efficiency and questions over the ability of the individual airports to meet the long-term requirements of users in terms of capacity provision and the prospects for future development, contrary to the Commission's statutory objective.

The Commission rejected this representation because the Commission has decided not to set individual CAPEX for each airport, other than for Dublin. However, as a matter of principle, the Commission does not accept that the operation of individual CAPEX would produce the effects contended for.

276. Regulation as a unit would allow Aer Rianta to balance CAPEX according to investment cycles at the individual airports, improving dynamic efficiency.

The Commission has rejected this representation because no evidence was supplied or is available to the Commission that this is the case. More fundamentally such an argument could be extended to justify the common ownership of all airports. Also, the market provides long-term financing for commercially viable investments while the absence of cross-subsidies has positive efficiency gain by ensuring that only investment that can be paid for by user of that investment will be undertaken.

277. Individual caps will not meet users' needs at Cork and Shannon, as it will divert the development of routes to Dublin. The impact will be large because Ireland is such a small country.

The Commission has rejected this representation for the following reasons. There is no direct link between the maximum levels of airport charges and the division of routes to Dublin. Aer Rianta holds the discretion to adopt pricing strategies at Cork and Shannon such that such diversion of routes is countered and the requirement of users of those airports are met.

278. By setting individual maxima, CAR would not have adequate regard to 33(iv) of the 2001 Act**.**

The Commission has rejected this representation because it has set its Determination to provide each airport with sufficient resources to fund necessary investments. It has done so, having regard, inter alia, to the Ministerial direction of August 2001, and because of its view that it is consistent with the achievement of the statutory objective.

279. The relative economic contribution of Cork and Shannon airports is proportionally more significant*.*

The Commission has rejected these representations for the following reason:

No evidence was supplied or is available to the Commission that this is the case.

280. The proportionally small increase in charges at Dublin that would be necessary to provide support for traffic development at Cork and Shannon will have a negligible effect on the economic contribution of Dublin airport due to its scale of operations*.*

The Commission has rejected this representation for the following reason:

No evidence was supplied or is available to the Commission that this is the case.

281. Support for traffic development may be sufficient to attract additional airline services because the elasticity of traffic demand is believed to be higher at Cork and Shannon airports due to their higher proportion of marginal traffic due, in turn, to the comparative scale of their operations, benefiting, these airports' contributions to their regions with a net economic benefit to the country as a whole.

The Commission rejected this representation because no evidence was supplied or is available to the Commission that this is the case.

282. Higher charges at Cork and Shannon will increase the competitiveness of Dublin and have the effect of diverting traffic away from these airports, thereby reducing their collective contribution to economic welfare*.*

The Commission rejected this representation because the objective contained in Section 33 of the Act is concerned with the requirements of all users. Further, as noted in CP6/2001, Dublin is also a region, and the Commission is unable to see how some form of subsidies from Dublin by way of maximum levels of airport charges is consistent with the statutory objective.

283. Pricing below the maxima at these airports would require Aer Rianta to earn a rate of return below its cost of capital, which could damage its financial position and credit standing, thereby threatening its ability to fulfil its mandate under section 24 of the 1998 Act

The Commission accepts that pricing below the maximum at Cork and Shannon Airports may require Aer Rianta to earn a rate of return below its cost of capital but rejects the representation that this could change its financial position and credit standing because no evidence was supplied or is available to the Commission to suggest that this is the case. However, the Commission notes that it is open to Aer Rianta to enhance efficiency and reduce its costs, thereby enabling it to price below the maximum, while at the same time continuing to recover a rate equal to or in excess of its cost of capital.

284. The opportunities for "limited but sustainable" competition between Aer Rianta's three airports can "be achieved most effectively" through regulation as a group

The Commission rejected this representation because the Commission is not empowered to foster competition between the 3 airports, which are in common ownership. Moreover the Commission fails to see how regulation as a group will achieve competition between the airports other than by allowing users of Dublin Airport to pay for facilities and associated costs at Cork or Shannon Airports.

285. Allocative efficiency would be reduced if the induced changes in airport charges (as a result of individual caps) increase the imbalance between price and marginal cost of production of aeronautical services

The Commission rejected this representation for the following reasons on the following terms:

The Commission has decided not to set caps for individual airports other than for Dublin. The Commission accepts that allocative efficiency is reduced when the imbalance between the price of any goods or service and its marginal cost of production is increased. However, to the extent that this is an

argument in favour of regulation as a group because the users of one airport can subsidise the prices at other airports, such that the prices at those other airports can be sustained at a level equal to marginal cost, the Commission has rejected this representation. Prices at the subsidising airport would be even more divergent from the marginal cost of production of services at that airport than without those subsidies, effectively negating the allocative efficiency gains at the subsidized airports.

286. Competition law will restrict Aer Rianta in terms of how it translates CAR's specified maximum into pricing structures for the individual airports and will place significant funding constraints and inhibit Aer Rianta's ability to make, what it considers, necessary investments at Cork and Shannon.

The Commission has rejected this representation for the following reasons:

Investments are only necessary, having regard to the terms of the Act, to the extent that they contribute to the development and operation of cost-effective airports, which meet the requirements of users. The maximum levels of airport charges cannot be used to fund unnecessary investment. EU rules on state aid may restrict certain forms of state assistance in terms of investment but this is not an issue of legitimate concern to the Commission.

Antoin Daltún

287. It is highly implausible to suggest that higher charges at Cork or Shannon than at Dublin would be sensible, either commercially or in terms of public policy.

The Commission has rejected this representation because the Commission is engaged in a regulatory task, which legally requires it to decide the maximum levels of charges. The Commission in setting maximum levels of airport charges must take into account the different cost structures as well as required CAPEX going forward of each airport. In any event, as a matter of commercial reality, in setting actual charges, Aer Rianta is free to price below the maxima.

288. On the basis of comments made by the Commission at the public meeting, it might be worth considering relating maximum charges at Cork and Shannon to off-peak charges at Dublin.

The Commission rejected this representation because nothing that the Commission said at the public meeting provided a basis for this proposal. A transcript of that public meeting is accessible at www.aviationreg.ie

Bord Failte

289. The determination arrived at in respect of proposed maximum charges at Dublin, Shannon and Cork airports, which allows for significant increases on the current level of charges, will likely result in: higher costs for the traveller and as such reduce Ireland's competitiveness as a holiday destination; failure to achieve the targets set for tourism - which is currently experiencing a serious downturn and faces significant challenges to recover its growth rates; erode the stimulative impact of low cost carriers operating into Ireland and the promotional fares offered by full service carriers; and a further distortion of traffic between gateways, with Dublin continuing to increase its share of arrivals - this is in stark contrast to Government policy, as expressed in the National Development Plan (NDP), and the targets set out for the dispersal of tourism within the country.

The Commission rejected this representation because any increase or reduction in the maximum levels of charges must occur by reference to the costs involved in developing and operating the airports, and not be reference to the desire to promote some other activity, no matter how desirable. Legally, the Commission must only be concerned with the statutory objective contained in Section 33 of the Act.

***The Commission is cognisant of the needs of all carriers, whether low cost or full service, as is evidenced by the composition of the Recoverable CAPEX programme as well as the required improvements in operational efficiency. In principle, it also welcomes in principle contracting between Aer Rianta and the airlines for different services and quality standards*.**

A simple stipulation by the Commission that charges be substantially lowered or stay as they are, while it might assist growth in passenger numbers and thereby assist the development of the airports (in terms of growth alone), would not facilitate the achievement of the statutory objective, in that the revenue generated might not be sufficient to cover efficient operation cost, pay for necessary expenditure, and incentivise the airport operator to develop the airports consistent with user requirements as utilisation increases.

***Finally, the NDP does not require or advocate subsidies from Dublin to other regions*.**

British Regional Airlines Group PLC

290. Agrees that cross-subsidisation of airports within a regulatory regime should be disallowed. However, concerned with the absence of a logical link as follows: Low airport charges – more activity – more growth in Ireland.

The Commission is concerned to prevent maximum levels of airport charges at one airport being set so as to lower charges elsewhere, a situation which the Commission views as inconsistent with the statutory objective. The Commission agrees that a more economically sustainable approach to airport development would be the pursuit of cost-efficiency, permitting low airport charges and hence the expansion of the airport's business, with a beneficial impact on the region. The maximum changes at each airport have been set as low as possible having regard to the cost characteristics of each of these airports in the context of furthering the objective of facilitating the development and operation of cost effective airports which meet the requirements of users.

Cork/Southwest Consortium – Cork Chamber of Commerce

291. Any increase in access costs will serve to portray Cork as uncompetitive, resulting in loss of tourism to the area, a consequent loss of jobs, exasperation of the regional tourism disparity in favour of Dublin and a compounding of efforts to develop Cork as a conference centre. It will also undermine the potential of the region to contribute to balanced regional development and provide a counterbalance to the Dublin region.

The Commission rejected this representation for the following reasons.
See 4 and 286.

292. CAR has not taken sufficient cognisance of Government policy and strategy as outlined in the NDP on 'balanced regional development' and the NSS in the need to provide a counterbalance to Dublin. There is no reference to social responsibility, which could be considered under section 33(j), "national obligations."

The Commission has taken full consideration of the NDP and NSS as a result the NDP and NSS as a result of the Ministerial

Direction (see CP8/2001). The NDP does not require or advocate subsidies from Dublin to other regions.

Social responsibility is not a national obligation. The Commission's consideration of the national objective is contained in CP8/2001.

293. Dublin and Shannon receive favourable treatment compared to Cork in respect of marketing budgets.

The Commission rejected this representation because the Commission does not decide the distribution of Aer Rianta's marketing budget. Neither is it appropriate for the Commission to do so, having regard for the statutory objective.

294. Cork airport is an efficient entity and vital to the region, which has not been adequately taken into account by CAR in arriving at its draft determination.

The Commission rejected this representation because the Commission has considered the efficiency of all three airports but the significant investment required at Cork, the recovery of which through charges furthers the statutory objective, means the maximum levels of airport charges must be set at the level that they are.

295. Efficient use of resources would suggest that the three airports be regulated as a group if consideration is not given to positive discrimination to regional airports.

The Commission rejected this representation for the following reasons (See above at 266). In addition, positive discrimination, to the extent that it means subsidies by way of maximum levels of charges, is not consistent with the statutory objective.

Fingal County Council

296. The definition and interpretation of regions that CAR has used is unclear.

Region has been given its common sense meaning by the Commission, consistent with accepted methods of statutory interpretation.

IATA

297. An airport cannot develop itself. In our view the contribution of the airport to the development and enhancement of the region in which it is located is dependent on the airlines investing and expanding at the airport in question. We therefore believe that charges need to be minimised to enable the opportunities for airlines to be able to do so.

The Commission accepts this representation on the following terms for the following reasons.

The Act is concerned with the development of cost effective airports. The Commission believes that this will be achieved by a price cap regime, which requires ongoing improvements in operational efficiency as well as efficient investment. To that extent, costs are minimised and therefore the maximum levels of charges are minimised.

The Commission is neutral on the question of airlines investing at Dublin, Shannon and Cork airports.

Impact

298. The Act does not require that different maximum charges be set for each airport. There should be one maximum for all of the airports. Aer Rianta may not increase levels of charges at Cork and Shannon to the maxima, but the inevitable tendency will be to increase charges above Dublin. The net effect of such price differential will be to reduce the propensity of the more cost conscious carriers to use Dublin Airport. Further, it will hinder regional development.

The Commission has rejected this representation.

The Commission does not fix or set prices. Aer Rianta has the freedom to price below the maximum to take advantage of commercial opportunities.

299. Freight operators will be likely to select Dublin over Shannon and Cork. The fact that the Commission does not allow for cross-subsidization is anti-region and ultimately anti-Ireland.

The Commission rejected this representation because the Commission's view as to providing for subsidies by way of maximum levels of airport charges is set out above.

300. Reduced levels of business at Shannon and Cork airports will increase costs and reduce economies of scale. The lost traffic will not all go to Dublin Airport, a high proportion being lost. Aer Rianta's ability to operate "cost effective" airports will suffer. This is not within the spirit of Section 33(c) of the Act.

The Commission rejected this representation because the extent that the Commission's specified levels of maximum charges are predicted to be the cause of the effects outlined in the representation, the Commission notes that Aer Rianta holds the discretion to price below the maxima if it is felt that they would result in the above effects. In any event, no evidence was adduced as to the effects contended for.

Irish Hotels Federation

301. The IHF is concerned that, overall, the draft determinations appear to favour Dublin airport to the detriment of Cork and Shannon airports and, with specific regard to the issues addressed, the IHF would appeal to the Commission to reconsider three points in particular, namely relating to capital expenditure, low cost air access and regional airports.

The Commission rejected this representation on the following terms for the following reasons:

The Commission has not favoured one region over another. The requirements of the Act must be read with reference to the requirements of users of each of the airports. No evidence or justification has been provided to the Commission that the users of any one of the airports, require that charges at the airport which they use should be increased above costs as well as a reasonable rate of return so as to reduce them elsewhere.

In relation to CAPEX, each airport has been considered separately because the needs of each are different. To the extent that further investment is justified, necessary and appropriate to meet the requirements of users, then it is included in the Recoverable Capex Programme. Finally, the Commission's statutory objective is not merely to facilitate the development of airports, or even 'regional airports', rather it is to facilitate the development and operation of cost effective airports which meet the requirements of users.

302. Airports represent important drivers of sustainable economic growth, encouraging tourism, commercial and industrial development in Ireland. Government policies for balanced regional growth and development underline the important role to be played by airports such as Cork and Shannon in acting as catalysts for economic development nationwide. Such Government policies ought to be supported and wholly embraced by the airport operator.

The Commission has rejected this representation because the representation is concerned with the airport operator rather than with the function of the Commission in making a determination on the maximum levels of airport charges.

303. The incentivisation of Cork and Shannon airports is made all the more necessary given that Dublin airport is currently suffering congestion problems, having handled 76.3 per cent of the country's total airport traffic in 2000.

The Commission has rejected this representation for the following reasons.

The fact that three quarters of all traffic is handled by Dublin does not, of itself, mean that Dublin is congested. For its part, the Commission, notes that subject to regulatory and environmental permits, Dublin airport is capable of further expansion.

The Commission interprets the argument for 'incentivisation' of Cork and Shannon as advocating lower maximum levels of charges for both of these airports than for Dublin. This fails to take account of the need to facilitate the development of cost-effective airports which meet the requirements of its users at each of the individual airport locations. In any event, in setting actual charges, Aer Rianta is free to price below the maxima.

304. A higher price cap for Shannon and Cork does not make sense in the context of the regional imperative. Shannon and Cork need incentivisation of traffic equally as much as Dublin.

The Commission rejected this representation for the following reasons:

See 288 above.

305. Given the importance of tourism to the regions, the proposed maxima will not benefit tourism, and will in fact damage it.

The Commission has rejected this representation because any increase or reduction in the maximum levels of charges must occur by reference to the costs involved in developing and operating the airports, as well as allowing a return so as to ensure development and not by reference to a wish to promote some other activity, no matter how desirable. The Commission is legally obliged to be concerned with the statutory objective contained in Section 33 of the Act. The Commission has

considered important Governmental policies such as the promotion of tourism, but it does not consider that using its determination to further those goals will contribute to achieving the statutory objective.

306. The Commission's draft determination of applying price caps to average revenues per Work Load Unit (WLU) at each of the airports is of concern to the IHF, particularly as the caps in Cork and Shannon airports are higher than Dublin airport, thereby making them potentially less competitive.

The Commission rejected this representation for the following reasons:

See 288 above. However, the Commission is not proposing to use a WLU.

307. Airport charges at airports such as Cork and Shannon should be benchmarked against charges at European regional low cost airports such as Dinard or Carcassoone in France, or Brescia and Pescarra in Italy.

The Commission rejected this representation because the Commission interprets this representation as advocating that the Commission should consider benchmarking with a view to basing its determination on a comparison between Cork and Shannon and the specified airports. Given the differences in operational characteristics; differences in cost structure; and the unreliability of published charge structures, owing to discounts, rebate schemes and route incentivisation schemes, the Commission regard the approach of benchmarking charges (rather than costs) as unreliable, having regard to the statutory objective of facilitating the development and operation of cost effective airports in Ireland.

308. It is the view of the IHF that the Commission is not complying with the obligation placed on it by Section 33 (d) of the Act, which states, "in making a determination the Commission shall aim to facilitate the development and operation of cost effective airports which meet the requirements of users and shall have due regard to the contribution of the airport to the region in which it is located*".*

The Commission rejected this representation because in making its determination, the Commission has considered the contribution of the airports to each of the regions in which they are located, namely Dublin, Shannon and Cork. The Commission believes that its determination, by focusing on cost-effectiveness and the provision of facilities in accordance

with user requirements will benefit each of the regions. User requirements are not met by over –investment resulting in either higher charges at the airport concerned, or indeed higher charges elsewhere.

Limerick Chamber of Commerce

309. Implementation of CAR's proposals would be bad for regional development and growth, for tourism and business, for the consumer interest and for jobs. There is nothing that favours the interests of the mid-west or west. It will reverse the success arising from positive discriminatory public policy decisions to bring businesses to the west.

The Commission rejected this representation because the Commission is concerned with the achievement of the statutory objective. This will not be achieved by favouring one region over another. In addition, see 306 above.

310. The proposed maximum charges would make Shannon airport potentially unviable if implemented.

The Commission rejected this representation because the maximum levels of charges for Shannon are set in accordance with the requirements of the Act. Having considered and accepted representations those maxima have been recalculated. In relation to Shannon, Aer Rianta is free to price below the maximum.

311. The benefit to one airport's region as a result of a cross-subsidy from another airport may be substantially greater than the loss to the region in which the subsidising airport is located.

The Commission rejected this representation because no evidence was supplied or is available to the Commission that this is the case.

312. The airport authority must have discretion to have charges that discriminate favourably for the regions and for areas of Ireland other than Dublin.

The Commission accepted this representation on the following terms for the following reasons.

Aer Rianta is free to price below the maxima, subject to applicable legal obligations.

Mid-West Regional Authority

313. Given the objectives of the National Development Plan and the National Spatial Strategy, it is important that the mid-west region is not placed at any further disadvantage by allowing a situation to develop whereby airport charges at Dublin are lower than those at Shannon.

The Commission rejected this representation. The reasons are set out in the discussion of the Ministerial Direction contained in CP8/2001

314. If the fees being proposed are applied, low-cost carriers will have little incentive to land at airports like Shannon.

The Commission rejected this representation for the following reasons:

The Act is not per se concerned with incentivising airlines to land at any particular airport. The statutory objective has a broader concern specific to the development and operation of the airports, In addition, the Commission does not propose fees, it only sets maximum levels of charges. Aer Rianta is free to price below the maximum

315. The charges being proposed for cargo will result in a loss of business to the airport and to the region.

The Commission rejected this representation on the following terms for the following reasons:

The Maximum levels of charges have been revised on foot of other representation and further analysis by the Commission. However, the Commission does not believe that setting maximum levels of charges in accordance with the Act will result in any of the effects contended for in this representation.

Mr. Tony Killeen, T.D.

316. Unless charges at Shannon and Cork are substantially lower than those at Dublin, it is inevitable that more and more airlines will choose to serve Dublin, which will add to congestion and contribute further to regional imbalance and increase pressure for further expensive infrastructure at Dublin, while Shannon and Cork facilities remain under-utilised.

The Commission notes that Aer Rianta holds the discretion to price below the maximum set for Shannon and Cork. More

generally, the Commission's view as to subsidies by way of maximum levels of airport charges are set out above.

317. The potential to support the Government's regional policy will be undermined by regulating the three airports separately. An inevitable outcome of the latter will be the neglect of the infra structural needs of the (Shannon) airport.

The Commission rejected this representation because the Commission sets the maxima taking an account of the need for infra structural investment at Shannon.

318. It is important that the history of services at Shannon be taken into account, the main reason for the high staffing level per passenger relative to Cork and Dublin. In particular, staff requirements due to the transfer of responsibility from the Department of Transport and Power to Sales and Catering before the Aer Rianta takeover and the positive influence of Shannon's in-flight catering service on development of the business.

The Commission has rejected this representation because it is not clear how consideration of this issue assists with achieving the statutory objective. However, to the extent that it points out the extent of in-house activity at Shannon, the Commission has taken this into account in relation to benchmarking.

319. Regulation should not undermine the potential growth of Aer Rianta International or force the sale of GSH.

The Commission accepted this representation because the Act is predicated on the development and operation of cost effective airports. The determination achieves this. The determination is not concerned with nor will it force the sale of GSH.

Mr. Tom O'Driscoll, Lord Mayor of Cork

320. The viability of services operating from Cork is in doubt if airport charges are increased by the amount proposed in the draft determination.

The Commission rejected this representation because the maximum levels of charges are set in accordance with the requirements of the Act. Aer Rianta holds the discretion to price below that maximum if the viability of services operating from Cork are in doubt.

321. It is unfair to expect Cork to fund its own CAPEX programme so soon after the other State airports have received major investment from the State.

The Commission rejected this representation because the Commissions function is the regulation of airport charges by setting maxima therefore in order to facilitate the development and generation of cost effective airports which meet the requirements of users. Furtherance of this objective requires consideration of investment going forward at the airports. The Commission does not have the power to mandate funding for such investment from any source other than airport charges.

322. There is a concern about the imbalance in the marketing support budget available to Cork relative to Shannon.

The Commission rejected this representation because the Commission sets an allowable OPEX, which includes a global figure for marketing. Its distribution is a matter for Aer Rianta.

Shannon Airport Marketing Consultative Committee

323. It does not make sense to have the lowest maximum at the dominant, congested airport (Dublin) and the highest maxima at the airports where there is spare capacity. This has the potential to undermine growth at Shannon and turn 'regional balance' on its head. This is against the spirit of CAR's statutory objective. A more flexible formula that allows Cork and Shannon to be competitive is required.

The Commission rejected this representation for the following reasons:

See 286, 299 and 301 above

324. The maximum charges for cargo would result in a loss of business to the airport and could have serious implications for businesses with a heavy cargo export requirement.

The Commission accepted this representation on the following terms for the following reasons:

The Commission has substantially revised its treatment of cargo charges in its determination. Aer Rianta is now subject to a price cap in respect of cargo.

Shannon Development

325. The regulatory environment should be working to facilitate the objective of balanced regional development and, therefore, there should be lower maxima at Cork and Shannon than at Dublin. The current proposal is also illogical given the congestion at Dublin airport and the surrounding region and because airlines will be more price sensitive in respect of Shannon and Cork than Dublin.

The Commission rejected this representation for the following reasons:

See 286, 299, 300 and 314 above.

326. If the currently proposed maximum cargo charges are applied, Shannon and Cork will become uncompetitive, which would threaten the airport and the region.

The Commission rejected this representation on the following terms for the following reasons:

See 286, 299, 301 and 314 above. However, the Commission has revised its approach to cargo for which see 327 above.

327. A more flexible formula that recognises that a lower rate of return is required at Shannon than at Dublin in order to stimulate the further development of air services.

The Commission has rejected this representation no evidence has been provided or is available to suggest that Aer Rianta's cost of capital to which would be different for capital required to fund investment at Shannon Airport to that required to fund investment at Dublin Airport.

Signal

328. Treating the three airports as separate units does not form a sound strategy for the long-term development of airports that will satisfy user needs now and in the future.

The Commission accepted this representation on the following terms for the following reasons.

The Commission has decided not to have a cap for each airport, other than for Dublin. It has done so for the reasons stated above.

329. Treating the airports separately also ignores the principle of economies of scale.

The Commission rejected this representation for the following reasons.

See266 above

330. The maximum charges will result in Shannon and Cork becoming uncompetitive relative to Dublin.

The Commission rejected this representation because Aer Rianta may price below the maxima or take other action to ensure that Shannon and Cork remain competitive.

331. The approach of CAR to statutory factor (d) ignores the real issue of the contribution made to the region.

The Commission rejected this representation on the following terms for the following reasons:

The Commission, as it did in CP6/2001, notes the significance of airports to the economies of the regions in which they are located. However, the Act does not require or suggest differential treatment between the regions, other than where it is objectively justified having regard to Section 33.

SIPTU

332. The proposal to regulate Aer Rianta's airports as three separate entities will introduce an unwelcome rigidity that will prevent the timely upgrading of individual facilities as needs arise. Passengers will suffer from the resulting infra-structural deficit, as will citizens of the region. Therefore, it is contrary to statutory factor (d) and contrary to Government policy on balanced regional development.

The Commission rejected this representation on the following terms for the following reasons:

The Commission has decided not to set a cap for each individual airport. It has done so, having regard to the Ministerial Direction of August 2001, and because it is consistent with the requirements of the Act. However, it does not accept that separate caps would create any of the difficulties contended for.

333. Regulating each airport separately is also contrary to statutory factor (i) (minimum restrictions) because a common cap would provide greater flexibility in prioritising and funding its capital expenditure programme in a timely and effective manner.

The Commission rejected this representation the following terms for the following reasons.

The Commission has decided not to set individual caps for all of the airports. However, it rejects the substance of this representation for the reasons set out in 272, 273 and 274 above.

Southwest Regional Authority

334. The draft determination will, if adopted, constitute a major constraint on the growth and development of Cork airport and consequently on the regional economy of the Southwest and, as such, CAR will have failed to respect one of its primary legislative requirements to have due regard to the contribution of the airport to the region in which it is located. It will also make Cork uncompetitive in relation to Dublin Cork and Shannon.

The Commission rejected this representation because the Act is not concerned with relative competitiveness of the airport.

See 286, 321, 322 above.

335. Cork did not receive the same National Exchequer-funded investment as Dublin and Shannon. Cork is presently operating at capacity and will now effectively be penalised. In addition, its marketing budget is significantly less than that at Shannon, which should be equalised.

The Commission rejected this representation for the following reasons:

See 286, 321, 322 above. In addition, the Commission has provided for significant investment in Cork as part of the recoverable CAPEX programme.

336. With a view to meeting Government stated policy of achieving balanced regional development, recommend that a levy or tax be placed on Dublin airport and a corresponding subsidy be provided at Shannon and Cork to allow for cheaper airport charges at these two airports.

The Commission rejected this representation for the following reasons:

See 279, 284 and 286 above.

337. In view of the fact that Aer Rianta is a state monopoly, to act in a manner other than considering its operating costs and financing as unitary is a perverse means of differentiating charges and, in this light, constitutes an artificial input to regulation. It would also open the door to other monopolies/oligopolies to begin to differentiate charges on a geographical basis.

The Commission rejected this representation because the Act does not provide for the Commission to set airport charges on the basis of the identify of the shareholder. The Commission is not responsible for economic regulation of other parts of the economy.

338. Recommends that, while the airports are under one ownership, a common accounting approach should operate with one standardised cost basis, calculated on all capital investments dating back five years and averaged over the three airports.

The Commission rejected this representation for the following reasons:

The Commission is concerned with the development and operation of cost effective airport. No reason is given as to why the Commission should look back 5 years in relation to investment. In fact, in order to discharge its statutory obligation, the focus on CAPEX must be especially forward looking.

IX REGULATORY TILL

Aer Lingus

339. The retention of the single till is supported, including the exclusion of Aer Rianta International and Great Southern Hotels. However, the suggestion that future commercial developments be excluded from the regulatory till is rejected, due, inter alia, to the absence of information as well as the possibility that if capacity becomes constrained, Aer Rianta may neglect aeronautical activities in favour of investment in commercial ventures.

The Commission accepted this representation, but only to the extent stated. The Commission holds the view that for most airports a single till mimics behaviour found in competitive markets. However, a single till may have potentially adverse incentive effects on efficient decision making for airports approaching limits of physical capacity. The Commission did consider excluding from the regulatory till in Dublin all revenue from future commercial investments. The Commission had not yet reached a conclusion on whether Dublin had sufficient capacity constraints to warrant such separate regulatory treatment. However, due to the inadequacy of Aer Rianta's accounts, the Commission was unable to ensure the correct application of a partial dual till at Dublin Airport and on practical grounds has decided to apply a single till at all Aer Rianta airports.

340. In addition, commercial revenues should be applied for the benefit of those bringing additional revenues to the airport, and in any event, it will be difficult to identify 'new' and 'old' commercial revenues. Separately, the cut-off point could operate perversely to the extent that new developments could be favoured over improvements to existing ones.

The Commission has accepted this representation as commercial revenues should be used to the benefit of those bringing additional revenues to the airport insofar as the airport in question is not experiencing constraints in capacity to the extent that subsidising airport charges would result in inefficient use of the airport's infrastructure. Applying commercial revenues in the latter circumstances could be inconsistent with the statutory objective.
The Commission has also accepted the representation that it will be difficult to identify 'new' and 'old' commercial revenues because of the concerns it expresses with respect to the proposal for the regulatory till for Dublin Airport contained in

***the draft Determination. Moreover,* due to the *inadequacy of Aer Rianta's accounts, the Commission was unable to ensure the correct application of a partial dual till at Dublin Airport and on practical grounds has decided to apply a single till at all Aer Rianta airports*.**

The Commission notes the representation made by Aer Lingus with regard to the potential for perverse incentives arising from the cut-off point, but would point out that Aer Rianta's strategy with regard to its commercial operations at the airport is outside of the Commission's statutory remit. The Commission would also note that it would not expect it to be in Aer Rianta's interests, in terms of meeting the requirements of its commercial customers, to neglect existing commercial facilities.

Aer Rianta

341. A single till fails to provide stand-alone cost-reflective price signalling in the market. In the case of a congested facility, the price may fail to cover the marginal cost of production, giving rise to allocative inefficiency and an exacerbation of that congestion. In the case of un-congested airports, may enhance allocative efficiency, though this is considered only to be the case in the short term. In the longer term, it may give rise to under-priced aeronautical services, inflated demand and the possibility of congestion because the market fails to clear.

The Commission notes that the third sentence shows that the first sentence is not always true.
The Commission rejected this representation but only to the extent stated. The Commission holds the view that for most airports a single till mimics behaviour found in competitive markets. However, a single till may have potentially adverse incentive effects on efficient decision making for airports approaching limits of physical capacity. The Commission did consider excluding from the regulatory till in Dublin all revenue from future commercial investments. The Commission had not yet reached a conclusion on whether Dublin had sufficient capacity constraints to warrant such separate regulatory treatment. However, due to the inadequacy of Aer Rianta's accounts, the Commission was unable to ensure the correct application of a partial dual till at Dublin Airport and on practical grounds has decided to apply a single till at all Aer Rianta airports.

342. A single till may distort future investment incentives in both aeronautical and non-aeronautical activities, since the return on aeronautical assets through airport charges is not required to cover the stand-alone cost of providing aeronautical services and non-aeronautical revenue streams are used to supplement aeronautical revenue streams. Additional incentives for investment in activities outside the till are created. The overall result is reduced dynamic efficiency.

See 342 above.

343. A single till increases the level of uncertainty associated with forecasted returns on aeronautical assets because of the risk associated with both aeronautical and non-aeronautical demand, and its effect on the revenue streams derived from aeronautical charges.

The Commission accepted the principle of this representation but believes it may be of little practical importance to Aer Rianta's airport businesses since, Aer Rianta's report to the Commission on its cost of capital, concluded that "the non-aeronautical services[of Aer Rianta] will display only slightly higher systemic risk than the aeronautical services".[6]

344. A single till awards scarcity rents to airlines.

The Commission rejected this representation because, in regulated airports, the apportionment of scarcity rents is also a function of the treatment by the regulator of commercial income growth in excess of that forecast.

345. A single till extends the remit of regulation beyond the confines of aeronautical charges (where there may be some market power) into commercial areas (which are subject to competition) in a manner in which there is no legal precedent.

The Commission rejected this representation on the grounds that profitable behaviour by certain unregulated businesses (an example is newspapers) causes them to behave as though there were a single till even without regulation and this would also tend to be true at airports with substantial overall spare capacity.

346. All other regulated sectors that comprise businesses combining regulated and non-regulated activities apply a dual till (with the exception of rail networks).

The Commission rejected this representation on the basis that Aer Rianta has failed to provide evidence to support its claim.

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[6] "Aer Rianta's Costs of Capital", NERA, June 2001, p32.

347. A single till does not facilitate the achievement of the statutory objective.

See 342 above.

348. A dual till offers superior benefits in terms of overall economic welfare by facilitating the development of a more cost-reflective pricing structure that allows for the effective and efficient use of all resources by the airport authority, an argument that is not limited to airports with capacity constraints.

The Commission rejected this representation on the grounds that, as stated in Aer Rianta's first representation, there do exist circumstances in which a single till may promote efficiency and for the reasons given in response to Aer Rianta's second representation. In addition, profitable behaviour by certain businesses (an example is newspapers) causes them to behave as though there were a single till even without regulation and this would also tend to be true at airports with substantial overall spare capacity.

349. A dual till ensures efficient signals in the market regarding new investment in capacity, thereby easing congestion and allowing the market for aeronautical services to clear.

The Commission rejected this representation. The Commission does not accept the case for a pure dual till at Dublin in the absence of absolute constraints on its ability to expand capacity. However, due to the inadequacy of Aer Rianta's accounts, the Commission was unable to ensure the correct application of a partial dual till at Dublin Airport and on practical grounds has decided to apply a single till at all Aer Rianta airports.

350. A dual till offers benefits in terms of dynamic efficiency as it increases the incentives to invest in both aeronautical (because Aer Rianta can earn a full return on aeronautical assets) and non-aeronautical (because Aer Rianta is entitled to a proper competitive return on these activities) parts of the business.

The Commission accepted the substance of this representation for the reasons contained therein but does not support the application of a pure dual till on the sole basis of the merits of the arguments posed in this representation and for the reasons outlined in the Commission's response to previous Aer Rianta representations. In addition, profitable behaviour by certain businesses (an example is newspapers) causes them to behave

as though there were a single till even without regulation and this would also tend to be true at airports with substantial overall spare capacity.

351. A dual till enables a more equitable distribution of scarcity rents between the airport and airline industry.

The Commission rejected this representation because a fair distribution of scarcity rents does not form part of its statutory mandate.

352. A dual till focuses regulation exclusively on the natural monopoly elements of the airport business, resulting in a lower level of uncertainty in forecasting, a return on aeronautical investment as the risk factor involved relates solely to aeronautical activity.

The Commission accepted the principle of this representation but believes it may be of little practical importance to Aer Rianta's airport businesses since, Aer Rianta's report to the Commission on its cost of capital, concluded that "the non-aeronautical services [of Aer Rianta] will display only slightly higher systemic risk than the aeronautical services".[7]

353. A dual till is increasingly gaining currency amongst experts in airport regulation and a number of jurisdictions are moving towards it, including Switzerland, Germany, Australia and South Africa, while the UK is considering it (see pp. 26-27 for references to CAA debate).

The Commission rejected this representation because it is bound by the term of the Aviation Regulation Act, 2001. However, it has noted international developments as regards the policy of airport regulators on the regulatory till and has taken full account of such developments.

354. Aer Rianta believes that a dual till should be adopted from the outset in order to avoid a difficult transition at a later stage.

The Commission rejected this representation on the basis of the reasons provided in response to Aer Rianta's previous representations on the issue of the regulatory till and also on the basis that Aer Rianta has yet to present the Commission with accounting systems or information that would be adequate to ensure the correct application of a dual till.

355. It is appropriate to apply it at all three airports; Dublin does not warrant any differential treatment in this regard.

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[7] "Aer Rianta's Costs of Capital", NERA, June 2001, p32.

The Commission rejected this representation for the reasons provided in response to Aer Rianta's previous representations on the regulatory till and, in particular, that, as stated in Aer Rianta's first representation, there exist circumstances in which a Single Till may promote efficiency.

356. The Commission's draft determination appears to indicate that while aero and commercial revenues have been included in the till, the CAPEX associated with commercial revenues has been excluded. This is inconsistent, as without provision for CAPEX to deliver a revenue stream, the income will not materialise.

The Commission has very substantially revised its Recoverable CAPEX Programme. In particular, appropriate future commercial investment falls within the Regulatory till and hence within the Recoverable CAPEX Programme.

357. The Commission's proposed approach for Dublin (interpreted as a gradual introduction of a dual till) is consistent with trends in other jurisdictions and with Aer Rianta's submitted position in relation to the regulatory till. However, Aer Rianta does not consider that the approach could be implemented in practice because it would:

- Require separate identification and recording of all revenues and costs associated with new commercial investments;
- Raise definitional problems, e.g., defining whether extensive refurbishment of existing commercial facilities constitutes "new" investment;
- Create undesirable incentives for Aer Rianta to seek to transfer costs and revenues from existing commercial activities to "new" commercial activities.

Aer Rianta suggests a more practical way to implement the proposal by limiting the single till contribution from commercial revenues to a set level obtaining at a particular point in time. If this were applied on the basis of 2000 commercial revenues, it would increase charges by approximately 50p per WLU.

The Commission is cognisant of the possible practical challenges to the gradual implementation of a dual till at Dublin Airport. However, the Commission rejected this representation.

358. The Commission's primary justification for a move to a dual till in Dublin appears to be based on the level of available capacity, although it does not suggest its application at Cork. This would result in uncertainty as a reversal to a single till could be envisaged when the capacity constraints are removed, resulting in price discontinuities for customers and perverse incentives for Aer Rianta to ensure that capacity increases trailed increases in demand.

The Commission rejected this representation because it favours the application of a dual till only in circumstances where an airport faces absolute constraints on its ability to add capacity in the longer term. Cork does not face such absolute constraints, rather a temporary shortfall in capacity, and Dublin is only showing preliminary signs of such constraints. However, due to the inadequacy of Aer Rianta's accounts, the Commission was unable to ensure the correct application of a partial dual till at Dublin Airport and on practical grounds has decided to apply a single till at all Aer Rianta airports.

359. Consistency in approach across the airports would be key to delivering a stable regulatory environment for all users.

The Commission accepted this representation because it considers that the approach that will serve to further the Commission's statutory objective in the case of one airport must be applied to all other airports in order that the statutory objective be furthered for those airports also. However, the Commission notes that a consistent approach when applied to airports in significantly different situations may lead to different regulatory regimes.

bmi

360. We appreciate that Aer Rianta comprises several companies, and although this complicates the issue, it should not preclude the relevant items being included in the till for each airport.

The Commission rejected this representation insofar as it can be construed as an argument for a single till at the regulated airports and the inclusion of ARI and GSH in that till. Although the Commission favours the use of a single till at Shannon and Cork, the reasons for its opposition to the inclusion of ARI and GSH in the regulatory till and the support of a modified dual till (as proposed in the draft determination) are given in the responses to Aer Lingus, British Airways, Cityjet and Servisair's representations. Also, in calculating the maximum per-passenger yields at Aer Rianta's airports, the Commission has excluded non-interest bearing loans from Aer Rianta to both of these subsidiaries, which would otherwise have had the effect of raising airport charges in Ireland.

Bord Failte

361. The exclusion of Aer Rianta International income from "the regulatory till" is questioned. The investment in aeronautical related enterprises overseas by Aer Rianta has been effectively funded by resources associated with its airport operations in Ireland and engages management resources based in Ireland. These activities, it can be argued, have effectively diverted resources in the past, therefore it would seem more in keeping with the original rationale for this diversification within core company activities to take current and future income earned into account in the determination. Surely, the benefits to be derived from the strategic investment in Aer Rianta International and associated activities should directly accrue to enhancing the efficiency of its' core function. Similarly, if Aer Rianta is to develop future commercial revenue streams should these not be taken into account in the operation of the airport.

The Commission rejected this representation because these activities do not have sufficient nexus to the regulated activities. However, in calculating the maximum per-passenger yields at Aer Rianta's airports, the Commission has excluded non-interest bearing loans from Aer Rianta to its subsidiaries which would otherwise have had the effect of raising airport charges in Ireland.

British Airways

362. There will be increased complexity, potential of gaming on the part of the airports and the need for regulatory intervention under the proposal of the Commission to exclude new commercial activity from the regulatory till at Dublin airport.

The Commission accepted this representation because of the concerns it expresses with respect to the proposal for the regulatory till for Dublin Airport contained in the draft Determination. Moreover, due to the inadequacy of Aer Rianta's accounts, the Commission was unable to ensure the correct application of a partial dual till at Dublin Airport and on practical grounds has decided to apply a single till at all Aer Rianta airports.

363. Incentivising the airport to increase commercial activity to the detriment of operational functionality in the face of increasing passenger numbers sends the wrong signal to the airport company, and will incentivise it to devoting more terminal space to commercial activities thereby reducing the operational (passenger handling) efficiency of the airport. It also allows the monopoly airport company to reap supernormal profits directly from the extra expense incurred by airlines, already operating with low margins in a competitive business environment, who are facilitating the demand for air transport being generated by the economic activity of the city of Dublin, not Dublin airport.

The Commission notes that the proposed till for Dublin airport was not designed to incentivise the airport authority to increase commercial activity to the detriment of operational functionality in the face of increasing passenger numbers. The rationale for the proposal was that charges that are subsidised by commercial revenues at an airport that is showing preliminary signs of constraints on its ability to add capacity, would not encourage the efficient use of infrastructure and would, therefore, be inconsistent with the statutory objective. However, due to the inadequacy of Aer Rianta's accounts, the Commission was unable to ensure the correct application of a partial dual till at Dublin Airport and on practical grounds has decided to apply a single till at all Aer Rianta airports.

364. A dual till would skew airport development to retail facilities and away from operational requirements, thereby compromising aspects of customer services and operations, and would not be in the interests of airlines or passengers.

See 340 above

365. A Single Till gives the airport an added incentive to develop and grow in order to develop retail opportunities in the new or redeveloped facilities, and it also ensures that the economic surplus generated from commercial revenue is not kept solely by the monopoly airport company, but rather is used to benefit the whole air transport community, including airlines and passengers.

See 340 above.

366. In the UK model of airport regulation used to regulate BAA's London airports and Manchester Airport the application of the Single Till is such that the airports have the incentive to maximise commercial revenue in the 5 years of a regulatory period. The benefit to the airport is that if the out-turn commercial revenue is more than was forecast when the Single Till was set at the beginning of a regulatory period the airport keeps the commercial revenue surplus which it can use to increase shareholder value. The UK single till model provides a half way house allowing airports to benefit from additional commercial revenue in the short term while enabling airlines and therefore passengers to share in the benefits from commercial revenue in the long term.

See 340 above.

367. In the application of a dual till, the fairest way to fund infrastructure under the forward looking dual till system being considered by the Commission would be for Dublin to use the increased commercial revenue kept by them to finance capital expenditure in a way which reduces the need for airlines to pay for infrastructure through airport charges on a pound for pound basis. This effect is already achieved by a Single Till in a less complex manner.

See 340 above.

British Regional Airlines Group plc

368. Disagrees with new commercial activities being excluded from the regulatory till at Dublin. Could it not create opportunities for regulatory gaming? In addition, it could lead to the neglect of commercial areas that feed into the regulatory till and, so, impair incentives to improve commercial activity to keep airport charges low.

See 340 above

The Commission has noted BRAG's concerns in relation to regulatory gaming and notes that, for the practical reasons, the Commission has had to revise its policy on Dublin's regulatory till, because Aer Rianta's accounting systems are inadequate to ensure the correct application of a dual till.

The Commission has also noted BRAG's concerns over the possibility for the neglect of existing commercial activities but would point out that Aer Rianta's strategy with regard to its commercial operations at the airport is outside of the Commission's statutory remit. However, the Commission would also note that it expects it not to be in Aer Rianta's interests, in terms of meeting the requirements of its commercial customers, to neglect existing commercial facilities.

CityJet

369. The Great Southern Hotel and Aer Rianta International revenues should be included in the single till in order to maximise the operating efficiency of Aer Rianta as an Airport Authority.

The Commission rejected this representation because these activities do not have sufficient nexus to the regulated activities and because the Commission believes that Aer Rianta's operational efficiencies will not be determined by what

activities are included in the regulatory till. However, in calculating the maximum per-passenger yields at Aer Rianta's airports, the Commission has excluded non-interest bearing loans from Aer Rianta to both of these subsidiaries which would otherwise have had the effect of raising airport charges in Ireland.

Cork/Southwest Consortium – Cork Chamber of Commerce

370. Profits from all non-core activities directly related to an airport should be used to the benefit of the airport's customers, the airlines, passengers and freight forwarders.

The Commission accepted this representation that commercial revenues should be used to the benefit of those bringing additional revenues to the airport insofar as the airport in question is not experiencing constraints in capacity, to the extent that subsidising airport charges would result in inefficient use of the airports infrastructure. However, the Commission notes that, for the practical reasons, it has had to revise its policy on Dublin's regulatory till because Aer Rianta's accounting systems are inadequate to ensure the correct application of a partial dual till.

In the case of Cork and Shannon, the Commission considers that the statutory objective can be furthered by allowing the revenues from commercial activities be used to subsidise airport charges in a single till framework to enhance allocative efficiency at those airports.

The Commission rejected this representation insofar as it relates to Aer Rianta International and Great Southern Hotels, as these activities do not have sufficient nexus to the regulated activities. However, in calculating the maximum per-passenger yields at Aer Rianta's airports, the Commission has excluded non-interest bearing loans from Aer Rianta to both of these subsidiaries which would otherwise have had the effect of raising airport charges in Ireland.

371. It will be impossible to separate revenue streams based on different investment.

The Commission accepted the substance of this representation in light of the current condition of Aer Rianta's accounts and notes that it has, for the practical reasons alluded to in this representation, had to revise its policy on Dublin's regulatory till.

372. No reference has been made to the fact that the Cork terminal was built to cater for 1m passengers whilst it is now catering for 1.7m when referring to Dublin's capacity problems and the introduction of a sub-cap there for commercial developments.

The Commission rejected this representation insofar as it refers to the maintenance of a single till at Cork airport. The Commission favours the application of a dual till only in circumstances where an airport faces absolute constraints on its ability to add capacity in the longer term. Cork does not face such absolute constraints, rather a temporary shortfall in terminal capacity.

Department of Tourism, Sport and Recreation

373. Income from Aer Rianta International and GSH should not be excluded from the regulatory till because the income stream generated through the efforts and leverage of the enterprise charged with the development of airport infrastructure in the State should go some way towards the development costs of that enterprise. (The Department suggests that, consequently, CAR should consider computing the NPV of that income stream and offsetting it against the recoverable CAPEX programme, as would be the case in the event of a capital realisation of these assets. Having done so, the charges could be re-calculated to reflect the lower recoverable capital costs.)

The Commission rejected this representation because these activities do not have sufficient nexus to the regulated activities. However, in calculating the maximum per-passenger yields at Aer Rianta's airports, the Commission has excluded non-interest bearing loans from Aer Rianta to both of these subsidiaries which would otherwise have had the effect of raising airport charges in Ireland.

IATA

374. We do not believe it is appropriate or necessary for income from new commercial investments at Dublin to be excluded from the regulatory till. The recently revised ICAO Document 9082/6 allows that contributions from non-aeronautical revenues should be taken into consideration when determining costs to be shared. Within the 'single-till' policy there are sufficient incentives for the airport from its ability to increase profits from retail and commercial revenues, while minimising the user charges. We believe this policy is an acknowledgement of the partnership between airports and airlines in achieving the optimal capacity, price and quality relationship for the passenger, who is the ultimate customer.

See 340 above

375. We note that the reason given for the Commission's proposal to exclude income from new commercial investments at Dublin are the supposed preliminary signs of some limits of its ability to add to capacity in a cost-effective manner. We are not convinced there are such limits. From the scheduling side, we understand that terminal infrastructure was previously the main limiting factor at Dublin, but that most, if not all, of the terminal expansion plans have been completed. From the most recent IATA Schedules Conference we are not aware of any complaints from operators unable to obtain slots they required.

The Commission accepted this representation but only to the extent that it has not taken a conclusive view on the cost effectiveness of marginal additions to capacity in Dublin.

Irish Association of International Express Carriers

376. The exclusion of revenue from Aer Rianta International and GSH is not correct as the acquisitions and developments involved were funded from income generated by airport users.

The Commission rejected this representation because these activities do not have sufficient nexus to the regulated activities. However, in calculating the maximum per-passenger yields at Aer Rianta's airports, the Commission has excluded non-interest bearing loans from Aer Rianta to both of these subsidiaries which would otherwise have had the effect of raising airport charges in Ireland.

Ryanair

377. As noted above, we require the Great Southern Hotels and Aer Rianta International to be included in the regulatory till. This will maximise the efficiency of the working capital within Aer Rianta and enable Aer Rianta to maximise the efficiency with which any further CAPEX is financed. This is necessary to comply with Section 33(e) of the Act.

The Commission rejected this representation because these activities do not have sufficient nexus to the regulated activities. However, in calculating the maximum per-passenger yields at Aer Rianta's airports, the Commission has excluded non-interest bearing loans from Aer Rianta to both of these

subsidiaries which would otherwise have had the effect of raising airport charges in Ireland.

Servisair

378. Servisair submits that revenues from new commercial investments should be included in the regulatory till. Moreover, Servisair submits that revenues from Aer Rianta's international activities (Aer Rianta International) and its revenues from its group of hotels (the Great Southern Hotels) should also be included.

See 340 above.

Southwest Regional Authority

379. On the proposed regulatory till for Dublin, CAR appears to be entering internal management decisions of Aer Rianta in relation to the operation of Dublin, resulting in the creation of an uneven playing pitch for the other airports.

The Commission rejected this representation because the formulation of the regulatory till at Dublin Airport is motivated not by a wish to enter into airport management decisions but, rather by a desire to provide better incentives (than would be likely under a pure Single Till) to undertake appropriate commercial and aeronautical investments at the airport, and by a desire to encourage the efficient use of infrastructure at an airport that is showing preliminary signs of constraints on its ability to add capacity.

X MECHANISM/FORMULA

Aer Rianta

380. Though transit passengers are not levied with a passenger charge, they use runways, taxiways, aprons etc and, therefore, all passenger types should be included.

The Commission's treatment of transit passengers is detailed in its determination.

381. It is essential that there is a correction factor for prior year errors in the regulatory formula arising from forecasting uncertainty.

The Commission accepted this representation because of the shortcomings of forecasts. Accordingly, there will be an annual correction factor in relation to under-recovery against the cap.

382. Aer Rianta should be insured against unanticipated cost changes arising from exogenous factors outside the control of the company by allowing cost pass throughs, e.g., security costs that may be imposed by new directives/legislation. This is consistent with the workings of a competitive market.

The Commission rejected this representation on the following terms for the following reasons. Cost pass-throughs are fundamentally at variance with the principle of cost effectiveness. In respect of Aer Rianta, any change in compliance obligations which are foreseeable over the term of the Determination are provided for. Significant unforeseen changes may constitute substantial grounds for reviewing the Determination. Accordingly, the Commission has decided not to insert cost pass-through terms.

383. Partial passthrough (which is debatable in the case of security costs) would ensure the incentive to find the least cost method of implementation. Allowing pass-through one year in arrears would allow CAR to verify the costs.

The Commission rejected these two representations as being inconsistent with the Commission's objective of facilitating cost-effective airports, and has not included any cost pass-throughs in its Determination.

384. Aer Rianta proposes that corporate tax liabilities be treated on a cost passthrough basis and that tax costs be directly included in allowed revenue as an operating cost. This relates to the fact that the cost of capital is to be set on a post-tax basis. The advantage is that it is more likely to give a more accurate estimate of Aer Rianta's tax liability than the application of a simple tax wedge to a post-tax WACC formula given the uncertainty surrounding Aer Rianta's future tax liability in the context of recent changes in corporation tax. This would also require a correction factor for deviations from forecasts.

The Commission accepts that tax be directly estimated. Accordingly, the financial model used to derive the maximum levels of airport charges estimates Aer Rianta's tax liabilities. However, Aer Rianta has not given any compelling reason why tax should be subject to a correction factor. In that regard, the Commission notes the prospective stability.of the Corporation tax regime, as well as the possibility of a review of the Determination in the event of substantial grounds.

385. The costs associated with regulation are an externally imposed expense and should constitute part of the overall airport cost base.

The Commission accepted this representation for the purposes of the determination to be applied for regulatory year 2001/2002 but reserves its position on the proposition that all costs that should become part of the overall airport cost base in subsequent regulatory years

British Airways

386. It is very important that the forecasts of passenger numbers and revenue requirements used in setting the price cap through the Single Till be as accurate as possible as it is recognised that airports have the incentive to under-forecast passenger numbers and game the system in a price cap based revenue yield framework.

The Commission accepted this representation for the reasons stated herein. The Commission notes that it has set its determination with respect to the most accurate passenger forecasts and revenue requirements that it was capable of producing with the information available to it.

387. The revenue yield approach remains the preferred form of price cap regulation although we would agree that when it is designed to allow a revenue yield per passenger, it can incentivise the airport companies to focus on passenger volumes at the expense of other outputs.

The Commission accepts this representation for the reasons given, and so as to obviate this risk, it has set a maximum charge for cargo.

388. It is very important that a framework of consultation be set up between the airports, users and the Commission with good transparency for all aspects of charges and rents.

The Commission notes this, and further notes Aer Rianta's stated intention in relation to the charging structure. The Commission views consultation of this nature as desirable.

389. Unless and until the Commission demonstrates tangible benefits from a tariff basket the revenue yield price cap would still be British Airways' preferred approach.

The Commission notes British Airways position with respect to a tariff basket approval and would refer British Airways to CP2/2001, in which the Commission provided some detail on what it believes to be the merits of a tariff basket approach. As regards implementation, the Commission has determined that this would not be possible given Aer Rianta's stated intention to revise its charging structure, and the implications that this would have in terms of the unavailability of the revenue weights that are necessary for a tariff basket approach

CityJet

390. By only proposing a maximum permissible WLU yield, without specifying the elements of airport charges included, leaves the users as defined by C.A.R. exposed to significant increases in individual airport charges by Aer Rianta.

The Commission rejected this representation for the following reasons. The Commission has made a determination, which is based on maximum revenue yields. The operation of the caps and maxima will restrict increases in airport charges.

391. All airport charges (including rentals) involved in the processing of the 'end user' (WLU as defined by C.A.R.) must be regulated in terms of its maximum levels, and the Commission must not leave users only with the recourse to the lengthy, time consuming and costly competition rules legal process. Otherwise costs to end-users will increase.

The Commission rejected this representation for the following reasons. The Commission has decided that the statutory objective is best realised by the adoption of the caps, sub-caps and cargo charge in the form determined by the Commission. In relation to the structure of charges, the Commission notes Aer Rianta's intention to adopt a new charging structure as detailed in its submission to the Commission of 27 March 2001. Please note response to first CityJet representation above.

Further, in addition to the operation of competition rules, the disciplining effect of which should not be underestimated, fees for access to airport installation. must comply with the Ground Handling regulations.

392. All direct and aeronautical related airport charges involved in the processing of the 'end user' (or WLU) are covered by the definition of airport charges contained in Section 2 of the Air Navigation and Transport (Amendment) Act, 1998.

The Commission notes this representation as arguing for a particular interpretation of airport charges as defined in Section 2 of the Air Navigation and Transport (Amendment) Act, 1998.

Cork/Southwest Consortium – Cork Chamber of Commerce

393. Opposed to all forms of differential pricing for identical airport services

The Commission rejects this representation in principle because there may be circumstances where differential pricing is economically justifiable.

394. Cork has a lower asset base and planned CAPEX than the other two airports and setting higher charges for Cork is, therefore, illogical.

The Commission rejected these representations. The maximum revenue yield per passenger that can be earned through airport charges has been determined by taking account of all the costs of the airport operation. Higher maximum revenue yields per passenger at Shannon or Cork than at Dublin could be attributed to several factors including

- ***Differences in operational efficiencies***
- ***Differences in passenger throughput leading to greater or lesser economies of density, scale and/or scope.***

Therefore differential charging is logical in terms of furthering the statutory objective to the extent that these differences exist.

395. It would appear that the proposed sub-cap on off-peak flights at Dublin is designed to accommodate the demands of low cost airline operations and, therefore, should be available at all three airports. After the morning peak in Cork, such potential exists in mid-afternoon and at weekends.

The Commission rejected this representation and wishes to clarify that the sub-cap on charges for aircraft movements at

Dublin Airport is not designed to accommodate the demands of low-cost carriers but to encourage the efficient utilisation of infrastructure, which shows signs of being congested at certain times of the day during certain times of the year. No evidence has been provided and none is available to the Commission to suggest that such congestion exists at Cork Airport.

Irish Association of International Express Carriers

396. How the ICAO WLU ratio is proportionate, non-discriminatory and objectively justified for cargo has yet to be established, but IAIEC believes it is not appropriate and that the intuitive reaction of members is that the contribution sought from cargo is overstated by a significant multiple[8]. The application of the WLU needs more detailed back-up as to how it will enhance and ensure cost-effectiveness for cargo users at all three airports.

The Commission accepted this representation for the reasons stated therein. It no longer proposes to use the WLU as a measure of output and has revised its approach to charges in respect of cargo.

397. Unless the Commission significantly reduces its proposed WLU maximum yield at each airport, the most basic requirement of users (to be competitive) will not be met, especially in the current economic climate.

The Commission rejected this representation and has made its determination in order to, as required by law, further the statutory objective of facilitating the development and operation of cost effective airports which meet the requirements of all users. The requirement of airline users to have low charges in order that they can be competitive is a given, but charges set by this reference alone are unlikely to guarantee the long-term sustainability and development of the airports.

398. The maximum permitted yield per WLU should not include revenue that is recovered by rent.

The Commission accepted this representation and has placed rents in the commercial part of the regulatory till, while at the

[8] ICAO has informed IAIEC that the WLU has not been used before to regulate airport charges. IAIEC adds that facilities for passengers are in stark contrast to those for cargo. The former utilise extensive, air-conditioned, highly specified buildings, shops, parking, toilets etc. The letter receives a vehicle to transfer material into the carrier's compound, the costs for which are recovered through existing rents.

same time basing its Determination on a passenger revenue yield, in addition to a maximum cargo charge.

399. The Commission should describe, in its final determination, the general criteria that Aer Rianta should take into account to ensure that their proposed restructuring of airport charges meets the statutory objectives of the Act, sections 5(4) and 33(a) and the process by which they should meet user requirements.

Based upon experience, it is clear (from representations) that users are convinced that Aer Rianta will seek to recover the maximum allowable revenue and that, therefore, the Commission can only meet user requirements if the maximum charge is itself acceptable. Aer Rianta has provided no evidence to suggest that this is not objectively justified. Therefore, a strong requirement of the Commission is to provide:

- Explanatory guidelines as to what would constitute substantial grounds cited in 32(14)(a)(ii) of the Act;
- See 6 above;
- A clear and unambiguous statement that Aer Rianta must not exceed the maximum irrespective of the outcome of Ryanair's High Court challenge to the groundhandling S.I.;
- An invitation to users to make immediate representations when they believe Aer Rianta may have exceeded the maximum;
- An unambiguous assertion of CAR's willingness to use its powers to intervene in the setting of airport charges and, in particular, under article 32(1)(6)(b) to restrict increases in any such charges or to require (further) reductions whether by reference to any formula or otherwise;

The Commission accepted this representation for the following reasons.

- ***The Commission has given indications of what might constitute substantial grounds. However, the Commission cannot fetter its discretion unduly.***
- ***Aer Rianta is legally bound not to exceed the maxima. However the Commission notes that to the extent that there is an overlap between the Directive by the Groundhandling Regulations and the Act, EU law is supreme in the event of a conflict.***
- ***The Commission has a legal power to address non-compliance with its determination under section 39 of the Act. The Commission has also specified a correction factor in its determination which provides inter alia for reimbursement of any over recovery against the Caps.***

Users will be free and welcome to make representation in relation to these issues.

- ***The Commission has discharged its function by way of the determination. Section 32(1)(6)(b) has been availed of as part of the determination.***

400. CAR is asked to address IAIEC's concern that CAR's concern that Dublin airport is reaching the limits of its ability to expand capacity in a cost effective manner may not apply to cargo as processing, sorting and consolidation can and has moved off the airport. IAIEC believes that economies of scale could continue to apply to cargo at Dublin because of this.

The Commission notes the IAIEC's concern and notes it revision of the approach to cargo. However, no evidence was provided or is available to the Commission to suggest that the situation described in this representation is actually the case. Accordingly, the Commission has rejected this representation.

401. Needs to be sufficient information to evaluate the feasibility of a cargo tariff basket or cargo within a wider tariff basket and sufficient time to prepare a substantial and sustainable case for one in response to CAR's suggestions re 'such a tariff basket'.

The Commission accepted this representation and does not intend to pursue the application of a tariff basket for the purposes of this determination due to problems associated with implementation.

402. A cargo sub-cap deserves consideration because, for example, flights arrive off-peak early and mid-morning. In that context, the value of those assets used exclusively for the airside facilitation of cargo or shared between cargo and passengers should be current written down historical cost as the cargo facilities have been there for decades without any significant investment.

The Commission rejected this representation on the basis that it feels that its revised approach is sufficient to assure the concerns of IAIEC.

Irish Exporter's Association

403. IEA believes that CAR's proposed maximum cargo charge of £49.60per tonne at Dublin, £60.50 at Shannon and £71.50 at Cork is excessive, does not reflect Aer Rianta's requirement or cost structure for cargo, and should be lower than the £10 per month originally applied for by Aer Rianta to the Minister for Public Enterprise to be implemented from

1st January 2001[9]. A maximum of £10 per tonne is considered the highest level that CAR should allow.

The Commission has accepted the substance of the representation and has revised its approach with respect to cargo charges. The Commission's revised approach is set out in the determination, where a cargo maximum has been specified.

Southwest Regional Authority

404. Cork is efficient and CAR is sending a signal that inefficiency will be rewarded while efficiency will be penalised by higher charges. Suggest that if an airline operator needs a reduced cost base at any of the airports (presumably Dublin), then the cost efficiency of that airport should be improved rather than introducing artificial levels of subsidy through taxes on efficient operations at Cork airport.

The Commission rejected this representation on the basis that it provides a completely inaccurate description of the basis for the Commissions draft or final determination. Firstly, cost efficiency requirements have been incorporated into the calculation of the total revenue requirements and the development of the determination (specifically the X factor). Secondly, relatively higher maximum allowable charges at different airports arise for several reasons(see earlier responses) while being set such that the statutory objective is furthered.

The Association of Flying Groups at Dublin Airport

405. Special provision must be made for Dublin-based light aircraft engaged in non-commercial operations and, therefore, calls upon CAR to establish, by means of a sub-cap for aircraft weighing less than two metric tonnes (consistent with section 32(6)(a)(ii) of the Aviation Regulation Act, 2001), a charging structure that reflects the special status of its members because*:*

- No demand is made on Aer Rianta in relation to the upkeep of the Association's member's premises nor parking positions and, therefore, its presence imposes zero marginal cost on Aer Rianta;
- Members do not make significant demands on the infrastructure of Dublin airport nor do they hold any priority in relation to the availability or otherwise of this infrastructure. Therefore, there is

[9] Comparisons of the contribution of cargo CAPEX and the potential total revenue contribution if the max revenue yield per WLU were applied to cargo are provided to support this argument.

no interference with the commercial capacity of the airport and no incremental cost is imposed on Aer Rianta;

- As a "user", the members of the Association are distinctly different from other users;
- In terms of wear and tear and the need for capital investment, the members demands are inconsequential;
- The nature of the facilities that Aer Rianta has provided to the members of the Association should justify lower prices for those facilities, consistent with what CAR has indicated on the issue of service levels and quality;
- The Association would attract "grandfather" rights and should be entitled to avail of the special provisions of section 32(6)(a)(ii);
- The WLU is not an appropriate mechanism for measuring charges in respect of general aviation users because they are non-commercial and are concerned with the carriage of neither passengers nor cargo. Because GA will have no statistical impact on the number of WLUs, the application of the revenue yield per WLU will have to effect on the charges which Aer Rianta can levy on the Association's members in the future;
- For an aircraft of one tonne to be charged on the same basis as a 300 tonne aircraft is not appropriate, particularly as a minimum charge of approximately four and a half times the one tonne rate currently applies.

The Commission has noted the characteristics of the operation of the Association member's activities at Dublin Airport. However, the Commission rejected the representation that there should be a sub-cap for aircraft weighing less than two tonnes for the following reasons.

First the Commission does not wish to restrict the adoption by Aer Rianta of an efficient charging structure, which could for the purposes of encouraging efficient utilisation of the airports infrastructure require higher charges for GA as commercial operations at the airport grow. Second the Commission has set a sub-cap on the charges for aircraft movements during off peak times.

The Commission does not see the acknowledgment of grandfather rights as consistent with the statutory objective contained in Section 33 of the Act. Neither does Section 32(6)(a)(ii) allow for or require this. However the Commission is no longer proposing to use the WLU.

XI SUBCAPS/CHARGING STRUCTURES

Aer Rianta

406. Regulation of average aeronautical yield is the best approach because:

- It is simple to apply, esp. where customers require a complex range of inter-related services;
- It facilitates changes to the structure of charges, the introduction of new charges and services, and the withdrawal of old charges as market conditions and customer requirements change over time;
- It offers no incentives to the airport operator to maximise revenues by distorting tariffs away from an efficient charging structure;
- Gives Aer Rianta the incentive to stimulate growth of new routes and services, facilitating compliance with section 24(3) of the 1998 Act;
- Provides a better reflection of an airport's underlying fixed costs;
- Facilitates minimisation of restrictions and efficient and effective use of resources by allowing it the flexibility to set its own pricing structure in response to market imperatives;
- Commonly applied in the case of airports, notably the UK and Australia.

A tariff basket would be unsuitable because:

- Problems arise with the introduction of new products with no revenue weights;
- While allowing some scope for rebalancing, it is less suited to situations where substantial changes in the structure of charges may be required and Aer Rianta is proposing a substantial revision in its charging structure.
- Meeting the requirements for its introduction would prove costly and time-consuming, which would be inconsistent with the minimisation of restrictions and challenging given CAR's six-month timescale;
- It may be difficult to change prices part way through the year, making it difficult to react to changing market conditions;
- CAR has not put forward a preliminary assessment of the values in applying a tariff basket and, therefore, has not afforded Aer Rianta, users or the public the opportunity for adequate consultation;
- It is more appropriate for the regulation of industries such as telecoms, where there is a series of distinct and independent activities and services to which the basket can be related. It is less appropriate for airports where a number of charges have inter-related cost drivers;

- The airport operator has an incentive to raise prices where demand is growing fastest and is least price sensitive, and this may have a "distorting effect";
- It is not widely supported. Aer Rianta cites MMC4's reference to airlines, BAA and CAA expressing no support for a tariff basket following extensive experience of regulation.

Individual price caps are rejected as complex, inflexible and requiring excessive regulatory intervention to establish and administer:

A total revenue cap is considered as seriously prejudicial to future investment.

A hybrid revenue and price cap is judged to combine the individual defects of price and revenue caps.

The Commission favoured the use of an average revenue yield or a tariff basket approach. Aer Rianta's stated intention to undertake a complete and thorough restructuring of its charges would, however prevent the practical implementation of a tariff basket approach. Therefore, the Commission, for these practical reasons, has adopted the average revenue yield approach. The Commission will revisit the matter for the purposes of subsequent reviews.

407. Sub-caps

Aer Rianta is opposed to sub-caps because**:**

- They would restrict the ability of Aer Rianta to use its charging structure to maximise economic efficiency and, would therefore, conflict with CAR's stated intention to afford discretion in this regard in order to comply with 33(i) (minimum restrictions) of the Act.
- Discretion to respond to market dynamics is fundamental to any business, to the principles of competition and to the desire of CAR
- (as stated in CP2/2001) to reflect a competitive market environment.

The Commission accepted this representation in all cases except changes in respect of the landing and take-off of aircraft during off-peak times at Dublin Airport and in respect of the cargo charge. In these cases, the Commission is of the opinion that the cost imposed by the loss of discretion to Aer Rianta is outweighed by the benefits that such a sub-cap will arrive in terms of encouraging the efficient utilisation of the necessary infrastructure and therefore, facilitating the achievement of the statutory objective.

408. Sub-caps for different levels of service quality are inappropriate because:

- In CP6/2001, CAR accepted Aer Rianta's submission that the basic standard for passenger terminal buildings should be IATA LoS B, with users willing to pay above this minimum being able to purchase additional services, e.g., airbridges. Rebates would be offered for use of remote stands.
- It is not easy to differentiate the service provided within most passenger facilities because many are common to all passengers and there are stringent regulatory and safety requirements. Facilities such as check-in desks and baggage reclaim are common and a reduction in service level for one airline would have an impact on other adjacent facilities;

The Commission is not imposing sub-caps for different levels of service quality. However, the Commission rejected this representation because with reference to the first point, the Commission in CP6/2001 simply stated that each airports price cap was set with reference to IATA Service Standard B for passenger terminal buildings. It did not state that it accepted that the basic standard for passenger terminal buildings should be IATA Level of Service B.

With reference to Aer Rianta's second point, the Commission has not been provided with nor has it available any evidence to suggest that this is the case.

409. The perception that cargo charges will increase appears to be based on a misconception that the maximum WLU yield implies a relative charging structure between passengers and cargo. Aer Rianta re-iterates that its revised charging structure will be cost-reflective and, therefore, a sub-cap for cargo is not required.

The Commission has noted Aer Rianta's intentions in respect of a revised charging structure. However, the Commission has revised its policy in respect of the cargo charge given the risk that a price cap based on a per-passenger revenue yield may induce Aer Rianta to discourage cargo operations.

410. Notwithstanding the case against them, it would be essential that any sub-caps are based on robust evidence about Aer Rianta's current and future cost structures, e.g., if the differential for lower cost facilities were too high, the following distortions would be created:

- Inaccurate price signals leading to overuse and under use of other parts of the airport, even though they were provided in response to market demand;
- Penalisation of airlines still using Aer Rianta's normal facilities.

The Commission is not proposing sub-caps to distinguish between low-cost and high-cost facilities. This is because of the perverse incentives that it would cause having regard to the current utilisation rates of both types of facility.

411. In addition, for off-peak use of the runway, CAR would need to accurately take into account the likely demand response to differential pricing to take account of the "shifting peak" phenomenon.

The Commission accepted this representation because such a change in demand is likely, and therefore the sub-cap is calculated taking account of this likelihood.

412. If the sub-cap was too low, it could give inappropriate incentives for airlines to switch services to off-peak times, which could result in many passengers being forced to travel at inconvenient times.

The Commission rejected this representation. It is unlikely that passengers will be forced to travel at times they do not want to. Airlines will make judgements as to whether they would lose traffic by shifting to the off-peak and passengers will switch airlines on flights if they do not wish to travel at those times.

bmi

413. The structure of charges is a very important issue for the airlines, as the structure and levels of charge could have a major impact on all or a number of airlines. All facilities must be reasonably available to all to eliminate discriminatory issues. The scheme proposed therefore is not acceptable.

The Commission rejects this representation.

The Commission has not proposed to limit and will not limit the availability of any facilities.

Bord Failte

414. Bord Failte acknowledges that the role of the Regulator is to set maximum prices and that the operator (Aer Rianta) and shareholder (the Government) are not precluded from offering discounts and/or incentives subject to relevant legal obligations.
In this context, the sub-cap proposed for Dublin - non-peak period charges - is most welcome.

The Commission accepted this representation and would note that the purpose of the sub-caps in respect of changes for the landing and take-off of aircraft at Dublin airport is to incentivise the efficient use of infrastructure that, at certain times, shows evidence of congestion, and to send correct signals about the need for future capacity expansion in this area.

415. In addition, Bord Failte would propose that the Regulator introduce another sub-cap to take account of the varying requirements of airline users. Specifically, lower service level requirements of carriers should be acknowledged by lower charges - "it would be expected that lower cost facilities would be available to users at lower prices"(page 17). Typically low fare carriers and their customers are content with a lesser range of facilities and lower service levels. This should be recognised and accommodated by means of a sub-cap.
Furthermore, the more efficient use of the resource by carriers, e.g. faster turn-around times and lesser demand on facilities, is not recognised in the formulation of charges. This is especially pertinent in the case of Dublin airport where there are capacity constraints and significant future CAPEX requirements.

The Commission rejected this representation on the following terms for the following reasons.

This representation is concerned, inter alia, with the availability of 'lower-cost' or lower specification facilities. The Commission does not believe that the adoption of sub-caps is the appropriate regulatory response to this requirement of users in this particular instance given the existing level of congestion in Pier A

In any event, this representation seems to also be concerned with discounts in respect of charges for differently specified piers and associated services. In this regard, the Commission, in furtherance of the statutory objective, has set the maximum levels of airport charges by reference to a per passenger revenue yield, which will allow Aer Rianta to set individual charges. The Commission also notes in passing that where a facility is already congested then discounts may serve to worsen this problem.

In its determination, the Commission has focused on satisfying the requirement of users for additional lower specification capacity, and to that end the Recoverable CAPEX Programme allows for the efficient cost of such a facility.

British Regional Airlines Group plc

416. The "Default Price Cap" (whereby the level of service for the price cap is fully specified, but users can contract outside the cap if they wish) could be applied to the Irish airports.

The Commission rejects this representation because a default price cap is a concept, which has been considered in the UK, based on a price cap regime applying to a minimum service and quality offering. While such a scheme would be possible under the Act, and may well advance the statutory objective, the Commission considers that this form of regulation is more appropriate for a utility which has been subject to price regulation for some time, where quality and service standards are already subject to measurement, and where contracting between the airline operator and the airlines in respect of these matters is already the norm.

417. Concerned about the average revenue cap in the following contexts*:*

- The incentive to push for quantity at the expense of quality;

The Commission accepts this representation on the following terms for the following reasons.

The Commission acknowledges the incentive for Aer Rianta to reduce quality and service standards in response to a price cap. Therefore the Commission will monitor quality and service standards going forward. In that regard, the Commission notes that a failure to meet or exceed measured service quality levels could constitute substantial grounds leading to a review of the determination.

418. Concerned about the average revenue cap in the following contexts: Treatment of over/under recovery against the cap*;*

The Commission accepts this representation. It is crucial to the integrity of the determination that deviation from passenger forecasts will be dealt with on an annual basis. Accordingly, in relation to under-recovery against the cap, there will be an annual correction factor. ***In respect of over recovery, without prejudice to its statutory rights under Section 39 of the Act, the Commission has provided for rebates.***

419. Concerned about the average revenue cap in the following contexts: Treatment of discounts from fully published charges.

The Commission rejected this representation on the following terms for the following reasons. The Commission has not set individual charges, other than in respect of the landing and

take-off of aircraft during off-peak times at Dublin airport and in respect of the cargo charge. The operation of discounts is a matter for Aer Rianta subject to its legal obligation, and in particular, those arising under Irish and European competition law.

CityJet

420. We would be concerned at price discounts by pier (if the same range of facilities were being offered to the end users) as this could discriminate and create an uneven playing field and further operating inefficiencies.

The Commission is not proposing sub-caps by piers for the reasons stated above.

Irish Hotels Federation

421. The Commission's proposals of applying the single-till principle to assess the airport operator's income and introducing a sub-cap within an overall price cap for off-peak use of the runway in Dublin airport are welcomed, although this sub-cap should be further extended to also include both Cork and Shannon airports.

The Commission rejected this representation on the following terms for the following reasons.

The Commission has decided on a single till for Dublin, with a sub-cap on charges in respect of the landing and take-off of aircraft during off-peak times at Dublin airport. The rationale for such a sub-cap is the increasing congestion, during peak periods, of Dublin airports runway system. It is anticipated that in response, Aer Rianta will introduce a higher charge for peak periods, thereby encouraging peak use only by those who are willing to pay peak surcharges. Further, it will send correct signals about the timing of capacity expansions in this area in particular the second runway. In that way, both allocative and dynamic efficiency are furthered consistent with the statutory objective.

No evidence as to runway congestion at either Shannon or Cork exists, and based on the Commission's own information, such congestion does not exist. Accordingly, there is no basis for off-peak sub-caps at Shannon or Cork.

422. In keeping with passenger needs, a low cost pier should be provided at Dublin airport for airlines, which are interested in providing low cost air services from this facility. Such low cost facilities are provided to airlines throughout Europe and would be a welcome development at Irish airports.

The Commission accepted this representation, on the following terms, and for the following reasons.

The Commission believes that there is a user requirement, which can be objectively justified from a business perspective, at Dublin airport for a lower specification pier than the current Pier C. As such, the Commission has allowed for its estimate of the efficient cost of such a facility in the Recoverable CAPEX Programme. Having regard to its statutory objective, the Commission will not be stipulating the type or specification of such a facility. That is more properly left to Aer Rianta and the users. However, the Commission notes that a failure to deliver such a facility could constitute substantial grounds leading to a review of the determination.

Limerick Chamber of Commerce

423. Maximum charges at Shannon should be significantly lower than Dublin's.

The Commission rejected this representation because no persuasive reason or evidence is provided or is available as to why this should be so, having regard to the statutory objective contained in the Act.

424. The proposal to introduce sub-caps for low-cost carriers who want lower service standards at Dublin airport is a dangerous one because it would result in charges that are even lower in Dublin than in Shannon and Cork.

The Commission rejects this representation because the Commission did not propose and has not decided for the introduction of sub-caps for 'low-cost carrier' or indeed for any sub- classification of carriers. The Commission also notes that the case for such sub-caps, having regard to the statutory objective, would not be appropriately determined by reference to whether maximum levels of charges would be lower for Dublin than for Shannon and Cork. Instead the Commission has attempted to identify instances where the efficiency likely to be derived from such an intervention is likely to be in excess of the cost of that intervention.

XII CHARGES/YIELDS

Aer Lingus

425. We would need to see a fully specified set of proposed tariffs before taking a final position on any change to the existing tariff structure.

The Commission rejected this representation because, in general, the Commission has decided that the statutory objective is best facilitated by the Commission not setting individual charges.

426. Fixed sub-cap on off-peak charges are opposed, and while Dublin airport remains co-ordinated but not fully co-ordinated, we would support compensating discounts for any airline who comply with a request from the co-ordinator (not Aer Rianta) to change their proposed schedule.

The Commission rejected this representation because it considers that a sub-cap on off-peak runway charges, computed at the level of short-run marginal cost, will encourage the efficient use of Dublin's runway system and will signal the appropriate timing for an expansion in Dublin's runway capacity on the basis of airlines' willingness to pay for such an expansion, thereby promoting allocative and dynamic efficiency and furthering the Commission's statutory objective of facilitating the development and operation of cost-effective airports that meet the requirements of users.
The Commission rejected the representation about discounts applied to airport charges in connection with an agreement to re-schedule a flight at the request of the airport co-ordinator because this falls outside the Commission's statutory framework.

427. Aer Rianta as a monopolist acting inside a single revenue cap has no incentive to offer discounts to encourage efficient use of the secondary runway and we therefore recommend that the Commission establish a sub-cap for this purpose.

The Commission rejected this representation because it believes that, on technical grounds, runway 10/28 (the main runway) and runway 16/34 (the secondary runway that the Commission presumes Aer Lingus is referring to) are substitutes rather than complements because simultaneous use is impossible. Therefore, the Commission believes that a sub-cap on use of Dublin's runway system will be sufficient to

encourage the efficient use of Dublin's entire runway system and is, therefore, consistent with the statutory objective.

428. We require that the Commission should interest itself in the structure, as well as the overall level, of charges. There is no commercial redress against any charges Aer Rianta chooses to set. By the time appropriate action has been taken through the courts, much of the damage may already have been done. It is an essential function of an aviation regulator to require consultation on, and subsequently approve or withhold consent for, changes in relative tariffs.

The Commission rejected this representation because it believes that detailed involvement by the Commission in decisions about the structure of airport charges and their manner of introduction would be in conflict with the Commission having due regard to imposing the minimum restrictions on the airport authority consistent with its functions. To the extent that the Commission has intervened in Aer Rianta's decisions on its charging structure through the setting of a sub-cap on off-peak use of Dublin airport's runway system, the Commission is of the opinion that this intervention will further the statutory objective.

429. If the Commission is unwilling to promote service-level agreements, it should at least require compensation payments for the use of low-quality facilities, and therefore require that the Commission imposes a sub-cap to reinstate the discount for users of Pier A at Dublin Airport (which was withdrawn without consultation last year).

The Commission rejected this representation because such a subcap would lower the relative cost of congested facilities with excess capacity (such as Pier C), producing perverse incentives to the efficient use of airport facilities and lessening congestion at least in the short run.

Aer Rianta

430. The current charging structure was developed in the 1980s and has a number of deficiencies that make it nowadays an ineffective tool for Aer Rianta to manage its airports in the most efficient and effective manner:

- It does not reward efficient use of facilities through a flexible charging structure, e.g., the aircraft parking charge;
- Its simplicity does not allow the clear identification of costs imposed through exogenous factors;
- It does not provide Aer Rianta with any signals as to when it is necessary to start providing for new capacity.

The Commission has noted deficiencies of the current airport charges structure and has intervened to encourage a more efficient charges structure where it felt the statutory objective could be furthered. In particular, the sub-cap on off-peak use of the Dublin airport's runway system is largely designed to address the above deficiencies while having due regard to imposing the minimum restrictions on the airport authority consistent with the Commission's statutory function.

431. The basic principles that Aer Rianta proposes in respect of its new charging structure are as follows:

- Charges should be objective, cost-reflective, non-discriminatory between users and transparent;
- Charges should encourage users to make efficient use of assets and signal clearly the consequences of such use (e.g., they should reflect the costs of increasing the capacity of particular facilities);
- Net revenues from appropriate and related on-airport commercial activities should be used to off-set the revenue that needs to be generated from airport charges;
- Charges should be as simple as possible to administer, consistent with the above criteria.

The Commission has noted Aer Rianta's intentions regarding the principles it proposes to follow in respect of its new charging structure

432. The approach advocated by ICAO for setting airport charges, that is, on the basis of an accounting allocation of costs over various activities, would not be consistent with the objective of encouraging economic efficiency and is, therefore, not advocated by Aer Rianta.

The Commission notes Aer Rianta's position in respect of the approach to setting airport charges advocated by ICAO and accepted this representation because of its consistency with the Commission's statutory objective.

433. A marginal cost approach would not be appropriate as Aer Rianta would not recover its total costs, due to the high proportion of fixed, common and sunk costs.

The Commission rejected this representation because Aer Rianta has failed to produce any evidence to support the claim that prices set equal to marginal cost would fail to cover the total costs of any or all of Aer Rianta's airports or any of its services at those airports.

434. It is appropriate to apportion charges to all users of airport infrastructure, on a basis that relates more closely to their consumption of these resources.

The Commission accepted this representation because of its consistency with the Commission's statutory objective.

435. If there are periods of time where demand is significantly greater than at other times, it is appropriate to levy a charge to the off-peak user reflecting the operational costs of production, which is reflective of the marginal cost of production. For the peak period, the user charge should reflect the concept of peak responsibility (with charges that reflect the operational costs plus the costs of expanding capacity to fulfil the demand of peak users, reflecting LRIC).

The Commission accepted this representation because it reflects the principles of economic efficiency at an airport (or any other business that requires lumpy investments in capacity) that does not face absolute constraints on its ability to expand capacity and is, therefore, consistent with the Commission's statutory objective. Furthermore, the Commission has applied the principles detailed in this representation in setting the sub-cap on off-peak use of Dublin airport's runway system.

436. Section II of Aer Rianta's submission in response to CP6/2001 presents a summary of the arguments presented in section I, accompanied by Aer Rianta's proposals in numerical terms. As these have already been set out they are not recapitulated again here.

CityJet

437. The proposed maximum permitted revenue per workload unit as set out in the Draft Determination for Dublin Airport must be significantly reduced. Otherwise the end user will be faced with significant increases as a result of the airport users having to pass on increased costs, which have come about as a result of the Airport Authority's acknowledged historical inefficiencies and the winding down of the gross incentive scheme for passenger load factors.

The Commission rejected this representation because, while the Commission's statutory objective refers explicitly to the requirements of airport users, it is also concerned with the development and operation of cost-effective airports that meet those requirements. The Commission also notes that the current charges are not grounded in any framework of economic regulation that would ensure the long-term

***development and operation of cost-effective airports that meet the requirements of users*.**

Irish Hotels Federation

438. Airports Charges should be capped and determined by market forces alone and should have no relevance whatever to the actual capital expenditure and so forth.

***The Commission rejected the representation that charges to passengers be determined by market forces because this is inconsistent with the Aviation Regulation Act, 2001, which specifies that the Commission must make a determination specifying the maximum levels of airport charges as defined in the Air Navigation and Transport (Amendment) Act, 1998. The Commission would also note that 1) placing no relevance on the capital expenditure programme of the airports would not be consistent with the statutory objective of facilitating the development and operation of cost effective airports that meet the requirements of users; 2) the market forces that would be necessary to restrain Aer Rianta, to the extent that it would fulfil the requirements of the statutory objective by setting charges without regulatory oversight, do not exist in the Irish airport market*.**

Ryanair

439. We require that the above maximum permitted RWU at each of the three airports is subject to an (RPI minus 7%) annual adjustment each year for the next five years, in order to promote further cost reductions and efficiencies at the three regulated airports. Such a formula is permitted under Section 32(6)(b) of the Act and is further permitted under Sections 33(a), (c), (d), (g) and (h) of the Act. As noted in our oral presentation, commercial entities operating in a competitive market place are forced to continually reduce their costs and improve their efficiency. The Commission must impose similar market type realities upon Aer Rianta in order to facilitate the development and operation of cost effective airports which meet the requirements of users.

We require that a specific sub-cap be imposed in the Commission's final determination by restoring the Pier A discount of 25% to all passengers and traffic using the A Pier facility. This is clearly permitted under Sections 32(6)(a)(ii) and 32(6)(b) of the Act and complies with the objectives set out in Sections 33 (a), (c), (g) and (h). Indeed, Aer Rianta itself has recognised the lower cost and inferior nature of the Pier A facility with its own Pier A discount (or "sub-cap") in recent years and there is no justification for its removal. Aer Rianta is currently discriminating against users of low cost facilities by imposing the same prices on users of these facilities as are levied for users of superior, higher cost facilities.

The Commission rejected these representations as their joint effect would leave Aer Rianta with an income insufficient to develop and operate its airports, which would be inconsistent with the Commission statutory mandate.

440. Finally, Ryanair requires that the Commission reject all of the representations made by Aer Rianta in so far as they relate to price or cost increases to be levied on users of the regulated airports. Any such price or cost increases will clearly contravene the regulatory objectives specified in Section 33 of the Act because they are directly opposite to the stated requirements of the users.

The Commission rejected this representation because it has 1) considered, as required by the Act, all statutory representations made to it and has accepted or rejected those representations on the basis of whether such acceptance or rejection would further the statutory objective; 2) Ryanair has failed to demonstrate that price or cost increases are directly opposite to the stated requirements of all users; and 3) the requirements of some airlines are not necessarily consistent with the Commission's objective of facilitating the long-term development and operation of cost-effective airports that meet the requirements of all users and are, therefore, not the sole guiding principle in the Commission's deliberations.

Servisair

441. Servisair submits that the proposed maximum charges set out in CP6/2001 are excessive in view of the Commission's own findings that Aer Rianta's operating efficiencies are excessive compared to the comparator airports. Servisair submits that the proposed maximum charges should be reduced to a level that encourages Aer Rianta to reduce its costs and improve its operating efficiencies.

The Commission rejected this representation because the maximum charges that have been set by the Commission do take into account the findings Aer Rianta is operationally inefficient relative to the set of comparator airports used in the benchmarking exercise. Therefore, the maximum charges are already designed to encourage Aer Rianta to reduce its costs and improve its operating efficiencies. The Commission would also note that the uncertainties attached to airport benchmarking exercises mean that the Commission could be in

conflict with its statutory objective were it to demand efficiency improvements equal to the full amount of the measured unit cost differences between the Aer Rianta airports and their benchmark comparators.