2nd May 2006

Mr Cathal Guiomard
Commissioner for Aviation Regulation
Commission for Aviation Regulation
3rd Floor
Alexandra House
Earlsfort Terrace
Dublin 2

Dear Cathal,

I refer to the CAR's request for comments regarding Commission Paper CP2/2006 on the Introduction of Sanctions Under Article 14.5 of EU Regulation 95/93 (as amended).

The below comments are without prejudice to Ryanair's challenge of the CAR's decision to impose full coordination at Dublin Airport. Your statement in Section 2 of CP2 that this decision was *"in accordance with the procedures laid down in the Regulations"* is not correct as CAR failed to undertake a thorough capacity analysis to determine whether there was a shortfall in capacity (Article 3(3)(ii) of the Regulation). The CAR also failed to consult on the capacity situation at the airport with the managing body of the airport or the air carriers (Article 3(4) of the Regulation). Finally, the CAR failed to determine if any shortfall was of such a serious nature that significant delays could not be avoided at the airport and there were no possibilities of resolving these problems in the short term (Article 3(6) of the Regulation).

In fact, the CAR based its decision solely on the issue of "refused moves" under the schedules facilitated regime, which are completely irrelevant for deciding on the need for full coordination. Indeed, the refused moves in the summer 2005 schedule did not lead to any *"significant delays"*, and this demonstrates that full coordination is not necessary and that the capacity declared by the airport was artificially too low for summer 2005. The DAA have adopted the same artificially low capacity declaration for summer 2006, despite the fact that the terminal actually operated at 30% higher passenger volumes in 2005; there have been improvements in terms of the number of security desks and security processing procedures; Ryanair has gone to web check-in; and 5 additional temporary gates will be added pending completion of Pier D. These issues would have been brought to light had the CAR consulted with the airport operator and airlines <u>before</u> imposing full coordination at Dublin Airport.

Ryanair also objects to the way in which this "consultation" is being carried out. The CAR have only provided interested parties with less than a month's notice (particularly considering that the Easter break was in the middle of this period) to comment on the imposition of penalties. The CAR has also failed to conduct a regulatory impact assessment (RIA) of its proposals in order to determine the necessity and likely impact of these proposals. By contrast, the UK Department for Transport has spent over 6 months consulting with industry and has published an RIA detailing a number of different proposals and their likely impact on the industry. The purpose of the consultation paper is also unclear given that the CAR states in Section 3.5 that it is actually the Department of Transport who are responsible for introducing the legislative arrangements for a sanctions regime. Should we expect a further consultation process by the Department?

The following are Ryanair's specific comments on CP/2:

1) The whole purpose of the Slots Regulation is to ensure the maximum efficient use of airport capacity. There is a recognition in the Regulation that full coordination does not necessarily achieve this, which is why there is a strong presumption against full coordination unless there are serious capacity constraints that cannot be resolved in the short term. It is also clear that airports have an interest in having full coordination as it enables them to limit capacity and charge higher prices or justify unnecessary additional facilities (e.g., bringing forward plans for a second runway at DUB). Therefore, there must be a proper mechanism for determining the maximum capacity of the airport, which will then form the basis for any slot regime. The current process is driven by the airport operator, DAA, who presents the declared capacity to users as a fait accompli, based on commissioned reports that they refuse to share with airlines. For example, we have made several requests to the DAA for copies of the NATS and Arup reports that form the justification for their winter 2006 capacity declaration and they have refused to provide them, despite the fact that they are required to do so under Article 6(3) of the Regulation.

2) Once the declared capacity is agreed by users following a proper consultation process, which the CAR should take a more active role in, any action under either Article 14(4) or (5) should only be taken if the enforcement body can demonstrate that the breach is causing prejudice to airport or air traffic operators. This requirement is explicit in the Regulation and must be explicit in any enforcement regime. This is because, even where capacity limits are agreed, there may nevertheless be times during the day when it is possible to introduce capacity over and above what has been declared due to improvements in facilities or procedures mid season. If penalties are imposed simply as a result of a breach of the limit (which is necessarily a theoretical limitation), then this additional capacity would go to waste. We acknowledge that this point is recognised in the consultation paper. However, we have already had experience where the coordinator, ACL, have imposed the ultimate sanction, i.e., withdrawing a slot, without demonstrating <u>any</u> prejudice to either the airport or air traffic operators.

3) With respect to Section 3.3 of the Paper, we believe that the IAA should have no function in enforcing the Slots Regulation. The IAA is only concerned with the capacity of the airspace and should not be involved in enforcing the Slots Regulation. We would also object to the airport operator being given the enforcement of Article 14(5) given the conflict of interest mentioned above. ACL would seem to be the most appropriate body to enforce any regime under 14(5). However, ACL appear to believe that there is no requirement to show prejudice, despite the fact that it is specifically stated in the Regulation, both in 14(4) and 14(5). The CAR's consultation paper also attempts to ignore this requirement for 14(4), despite the fact that the language in both paragraphs is the same. There would also need to be an effective appeals mechanism for both 14(4) and 14(5) in order to address instances where ACL is superceded its enforcement powers. It would not be sufficient to refer these matters to the Coordination Committee as there are conflicting interests in that body.

4) There is no explanation under Section 3.5 of why the CAR is proposing to impose a €5,000 fine on airlines for a breach of 14(5) of the Regulation. This appears to be based solely on the fact that 3 other Member States are imposing such fines. There is no discussion on whether administrative measures would or would not be sufficient to

achieve the objectives of 14(5). There is also no discussion of what such fines would be used for. There is only a mention that they would be paid to the CAR.

In general this consultation paper is ill thought through and is an insufficient basis for considering the imposition of potentially serious penalties against airlines. It is also not clear what the purpose of the consultation is given that the CAR acknowledges that the Department for Transport that will ultimately decide on the legislative arrangements for any sanctions regime under 14(5).

Yours sincerely,

Jim Callaghan
Head of Regulatory Affairs and Company Secretary

CC: Martin Cullen, TD, Minister for Transport