

REPORT

of the

COMMISSION FOR AVIATION REGULATION

to the

MINISTER FOR PUBLIC ENTERPRISE

under Section 26 (c) of the Aviation Regulation Act, 2001.

27th March 2002

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Report to the Minister for Public Enterprise under

Section 26 (c) of the Aviation Regulation Act, 2001

Foreword

I am pleased to present the first annual report of the Commission for

Aviation Regulation. The report sets out the activities of the Commission in

2001 and the work programme for 2002.

The Commission was formally established on 27th February 2001. During

2001 the Commission made its first determination on maximum levels of

airport charges, managed a smooth transition of the licensing and bonding

functions in relation to the travel trade industry, initiated the process which

will result in the first determination on maximum levels of aviation terminal

services charges and performed its other statutory functions.

The Commission also looks forward to a productive 2002 and submits its

work programme here.

I would like to publicly express my appreciation to the staff of the

Commission whose efforts and expertise are reflected in the work completed.

In addition, I would like to thank each of the interested parties who assisted

the Commission in carrying out its statutory functions.

I would also like to express my appreciation to Mary O'Rourke, T.D., Minister

of Public Enterprise and her officials for the support given since the

establishment of the Commission.

William Prasifka

Commissioner

27th March 2002

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GENERAL

History of establishment

Following the passage of the Aviation Regulation Act, 2001, ("the Act"), the Commission for Aviation Regulation was established on 27th February 2001. Subject to the Act, the Commission is independent in the exercise of its functions.

Scope of Report

This Report covers the period from 27th February to 31st December 2001.

Functions

The principal function of the Commission is to regulate airport charges and aviation terminal services charges at certain Irish airports.

In addition to those functions, the Act also transferred to the Commission a number of functions, which hitherto had been discharged by the Minister for Public Enterprise under certain Council Regulations, viz:-

Slot allocation and appointment of schedules coordinator

Section 8(1) of the Act provides that the Commission shall be the competent authority for the purposes of Council Regulation (EEC) 95/93, other than the functions of coordinator. Section 8(2) provides that the Commission shall have the function of appointing a coordinator under Article 4 of the Council Regulation (EEC) 95/93.

Licensing of air carriers

Section 8(3) of the Act provides that the Commission shall have the function of licensing air carriers under Council Regulation (EEC) 2407/92. Section 9(2)(d) of the Act transferred the Minister's functions under the Air Navigation and Transport Act, 1965, (Section 8) Regulations, 1993 (S.I. No. 323 of 1993). This Instrument gives effect to the licensing arrangements.

The following functions hitherto vested in the Minister under national legislation were transferred to the Commission with effect from the date of its establishment: -

Ground handling

Section 9(2)(c) of the Act transferred the functions contained in the European Communities (access to the ground handling market at Community airports) Regulations 1998 (S.I. No. 505 of 1998)

Travel trade Licensing

Sections 9(2)(a) and 9(2)(b) transferred the functions contained in the Transport (Tour Operators and Travel Agents) Act, 1982 and the Package Holidays and Travel Trade Act, 1995

In summary, therefore, the Commission is responsible for:

- regulating airport charges,
- regulating the Irish Aviation Authority's aviation terminal services charges,
- approval of ground handlers,
- implementating certain aspects of Community legislation in relation to slot allocation,
- licensing of air carriers, and
- licensing travel agents and tour operators in Ireland.

Statutory basis of the Commission

The Commission was established on 27th February, 2001 as a body corporate which shall consist of at least one, but not more than three, members. On establishment, the Minister for Public Enterprise appointed Mr William Prasifka as a Member of the Commission. The legislation also provides under Section 13 that the Commission may appoint a member of staff as Deputy Commissioner. The Commission appointed the Commission's Head of Legal Affairs to carry out the functions as set out in Section 13 of the Act, and, on the resignation of the Head of Legal Affairs to pursue further legal studies, the Head of Economic Affairs was nominated in his stead.

REVIEW BY FUNCTIONAL AREA

Airport charges

During its first six months, the Commission carried out an extensive public consultation process, which led to its first determination on maximum levels of airport charges.

Section 32 of the Act required the Commission, within six months of the date of its establishment, to make a determination specifying the maximum levels of airport charges that could be charged by regulated airports. The Act also specified that the airports to which its determination would refer would be those with a passenger throughput in excess of one million passengers annually. In effect, this meant the Aer Rianta operated airports at Dublin, Cork and Shannon.

On 27th February 2001, the date of its establishment, the Commission published two consultation papers, CP1 and CP2.

The papers set out the process the Commission would follow to make its determination, the issues the Commission considered to be relevant to the setting of airport charges and invited submissions from all interested parties.

Within the allowed 30 day time period, the Commission received 32 submissions, which were published on the Commission's website.

Following an analysis of these submissions, and detailed consideration of the matters relevant to its decision, the Commission published CP6 on 26th June 2001. CP6 was a draft decision and notice of intent to make a determination. In response to CP6, the Commission invited interested parties to make statutory representations, both orally (at a two day public hearing) and in

writing. Transcripts of the oral presentations and copies of the written presentations were placed on the Commissions website.

The Commission also used its statutory powers to collect information relevant to the setting of airport charges. The Commission sent nine such requests to Aer Rianta. It also made requests for information from airport users.

The Commission engaged consultants to evaluate certain issues relevant to the setting of airport charges.

On 26th August 2001, the Commission made its first determination on maximum levels of airport charges. It also published a comprehensive report setting out an explanation of, and the reasons for, its decision along with its considered views on the statutory representations received. The determination, report and accompanying documents were published in Commission papers CP7, CP8 and CP 9.

Section 40 of the Act allows any person who is aggrieved by a determination under section 32(2) or 35(2) to make an appeal to the Minister, who will establish a panel to consider such an appeal.

Five persons made appeals under section 40 in relation to the determination on airport charges and, on 14th November 2001, the Minister established an Appeal Panel to consider appeals. The Panel was to complete its work within two months of its establishment, the timeframe laid down by statute.

On 10th February, 2001 elements of these appeals were referred by the Appeal Panel to the Commission for review

The Commission invited comments from interested parties (in CP1/2002) and, having considered these, issued a Varied Determination (in CP2/2002), which amended the Determination of August 2001 in regard to certain issues.

<u>Judicial Review of the Commission's Determination on Airport</u> <u>Charges</u>

On 23rd October 2001 Aer Rianta initiated Judicial Review proceedings against the Commission in relation to the Determination on Airport Charges.

The Commission will vigorously defend that action.

Aviation terminal services charges

Section 35 of the Act required the Commission, within twelve months of its establishment, to make a determination specifying the maximum levels of aviation terminal services charges that may be imposed by the Irish Aviation Authority.

The Commission initiated the process by publishing, on 2nd May 2001, two consultation papers, CP 4 and 5. The papers set out the process the Commission would follow to make its determination and the issues the Commission considered to be relevant to the making of that Determination. Submissions were invited from all interested parties. Two submissions were received and were placed on the Commissions website.

On 17th October 2001, the Commission published CP11. CP11 was a draft decision and notice of intention to make a determination. The Commission received two representations from interested parties on CP11 and these were placed on the Commission's website.

The Commission also used its statutory powers to collect information relevant to the setting of airport terminal charges. These statutory requests were made to the Irish Aviation Authority.

The Commission engaged consultants to evaluate certain technical issues relevant to the setting of aviation terminal services charges.

The Commission made its final determination on maximum levels of aviation terminal services charges in 2002.

Travel trade licensing

Responsibility for administering the licensing of travel agents and tour operators in accordance with the Transport (Tour Operators and Travel Agents) Act, 1982 as amended was transferred from the Department of Public Enterprise to the Commission on its establishment day.

All licences granted by the Department prior to that date remained valid but expired during the remainder of 2001.

In the course of 2001, the Commission granted new licences to 70 tour operators and 349 travel agents. While the majority of these were renewals of licences, 20 licences were issued to new travel agents and 12 to new tour operators.

The Commission continued with work that had been started by the Department of Public Enterprise on processing claims from customers against the bonds of travel firms which had ceased trading prior to the establishment day.

On 25th May 2001, the Commissioner announced that stronger measures would be taken to ensure effective enforcement of the licensing requirement. These include the publication of details of current and expired licences on the Commission website and a commitment to investigate instances of unlicensed trading and where appropriate, to initiate legal proceedings.

The Commission subsequently initiated proceedings in the High Court, in exercise of its function under Section 34 of the Package Holidays and Travel Trade Act, 1995 which sought to require the firm of Bon Voyage Travel Ltd. to discontinue from carrying on business as a travel agent in the absence of a valid travel agent licence. The proceedings were terminated after the company was granted a licence on 19th July 2001.

Subsequently, investigations were carried out into instances of illegal trading by a small number of travel firms and in early 2002, a number of cases were referred to the Commission's solicitors for prosecution.

On 23^{rd} July 2001 the tour operator licence granted to Bon Voyage Travel Ltd. was revoked after the Commission found it necessary to draw on the company's bond to repatriate 108 customers who were unable to return home from a pilgrimage in Lourdes due to the failure of the company to fulfil its obligations to them. Subsequently, the Commission arranged refunds of money from the bond to 882 customers, amounting to £180,080.78 (€228,655.42), who had made bookings with the company. This work was ongoing at the end of 2001.

The Commission has availed of every opportunity to draw to the attention of the public the importance of vigilance in ensuring that they purchase overseas travel products from operators that hold a current licence.

A full list of current licence holders is published on the Commission's website for the information of the public. The website also carries a list of recently expired licences.

All licences currently held by tour operators and travel agents are due to expire in the course of 2002.

The Commission anticipates that virtually all of these firms will apply for new licences, which it will have to process over the remainder of the year. The

Commission also expects that it will continue to receive a steady stream of enquiries and licence applications from new enterprises who are considering establishing themselves in the sector.

The Commission has reviewed operational procedures for processing licence applications from tour operators and travel agents and has decided that the practice of applying two common expiry dates (30th April and 31st October annually) should be discontinued with a view to enhancing efficiency. In the course of 2002 the expiry dates of a number of licences will be transferred from 31st October to an alternative expiry date.

The Commission will continue to process outstanding claims from customers against bonds of travel firms who have gone out of business.

The Commission is committed to continuing the policy of investigating and where appropriate initiating prosecutions or other legal proceedings in respect of instances of illegal trading in the sector.

Ground handling approvals and Air Carrier licensing

Ground handling

Prior to the establishment of the Commission on 27th February 2001, there were eleven approved self-handlers¹ and twenty-five approved suppliers of ground handling services (or third party handlers²) operating between Dublin, Cork and Shannon airports. The Commission had granted six self-handling approvals and nine third party approvals at the end of 2001. No ground handling approvals have been granted so far this year although there is one application pending for a third party ground handling approval.

On 25th July 2001, the Commission received notice of an Appeal pursuant to Regulation 16 of the European Communities (Access to the Ground handling Market at Community Airports) Regulations, 1998 (S.I. 505 of 1998) on behalf of one ground handler. This took the form of an Appeal to the Commission against a decision taken by Aer Rianta to allocate a cargo warehouse facility at Dublin Airport to a third party, with the result that the ground handler was not granted a lease on the facility. On 5th October 2001, the Commission published its decision in respect of this Appeal. The Commission upheld the Appeal and considered the decision of Aer Rianta invalid, as it was not based on relevant, objective, transparent and non-discriminatory criteria which is required by the ground handling Regulations. The Commission directed that Aer Rianta take steps to re-allocate the facility.

In the interests of good regulatory practice the Commission ensures that proper financial information is submitted by approved ground handlers. For ground handling companies providing services to third parties, legislation requires the submission of separated accounts to the Commission.

¹ An airline may choose to provide its own ground-handling services (**self-handling**).

² An airline may enter into a contract with another company for the provision of ground handling services (**third party handling**), be it another airline or a dedicated ground handling company.

The Commission has identified a number of ground handling issues that may require to be addressed in the medium term and consideration is being given to the publication of a consultation paper.

Airline Carrier Licensing

Prior to the establishment of the Commission on 27th February 2001, there were eighteen licensed airlines in Ireland. During 2001, the Commission issued an Air Carrier Operating Licence to two new operators. During 2001, one licensed operator suspended operations following the sale of its aircraft and voluntarily surrendered their Air Carrier Operating Licence. Another carrier voluntarily surrendered its Air Carrier Operating Licence as it had withdrawn from the market.

At present, there are eighteen licensed airlines with one licence application currently under consideration.

In 2001, the Commission, in co-operation with the IAA, embarked on a campaign to remind all aircraft operators that they must be in possession of an air carrier operating licence in order to engage in the carriage of passengers for reward. The Commission wrote to the owners of Irish registered aircraft warning them of the penalties for unlicensed operations.

In March 2002, the Commission published a notice in the print media advising the public of its function with regard to air carrier licensing.

Over the coming months the Commission intends to examine the 5-year review process (provided for by the Regulations) of air carrier operating licences with a view to implementing an enhanced renewal process. This is intended to ensure that the Commission can continue to effectively monitor the operations of its licensed airlines.

The Commission will continue to monitor ownership and control of licensed airlines.

Insurance

The events of September 11th had an adverse effect on the insurance market worldwide and as a result, many licensed airlines and ground handlers experienced a reduction or cancellation in the level of war risk insurance cover available to them. Under the Government sponsored Indemnity Scheme many airlines and ground handling companies availed of the temporary protection offered by the Scheme in order to restore their levels of insurance cover to the levels that were in place prior to September 11th. The Commission ensured that all licensed airlines and ground handlers had adequate levels of insurance cover in place as required by the legislation. The Commission will continue to monitor developments on this issue.

Slot allocation

Prior to the establishment of the Commission the Minister for Public Enterprise designated Dublin Airport to be a coordinated airport under the terms of Council Regulation (EEC) 95/93. and appointed a schedules coordinator at the airport. As the term of appointment of the coordinator expires on 30th March 2002, the Commission, on 13th December 2001 invited tenders for appointment to the position for the three-year period commencing on 31st March 2002. Following evaluation of responses to that invitation, the Commission reached a decision in principle to appoint a schedules coordinator for that period and initiated a consultation process with all interested parties in regard to the intended appointee, as required by the Regulation.

The Commission hopes to be in a position to finalise the appointment of a schedules coordinator at Dublin Airport shortly.

DIRECTIONS BY MINISTER UNDER SECTION 10 OF THE ACT.

Section 10 of the Aviation Regulation Act, 2001, provides that the Minister may give such general policy directions (including directions in respect of the contribution of airports to the regions in which they are located) to the Commission as he or she considers appropriate to be followed by the Commission in the exercise of its functions and that the Commission shall comply with any such directions.

On 16th August 2001, the Minister exercised her powers under Section 10 to give the Commission a Direction in relation to its determination on the maximum levels of airport charges (copy of this direction is at Appendix I).

In making its determination the Commission was directed to make every reasonable effort to ensure that its final determination reflected the important emphasis which the Government has place on balanced regional development. In particular the Minister referred the Commission (1) to the National Development Plan 2000 – 2006 (NDP) and one of its four objectives of fostering balanced regional development and (2) to the National Spatial Strategy (NSS) and one of its key principles of the creation of the right conditions for balanced regional development to take place by developing the potential of areas in the regions to create and sustain economic strength in a structured way.

The Commission took the Ministerial Direction fully into account in making its determination and the manner in which this was done is set out in Commission Paper CP8/2001 of 26 August 2001.

Personnel

With the exception of those staff who had been discharging the Minister's function in relation to the licensing of tour operators and travel agents, the Commission directly employed the personnel necessary to discharge its functions. Staff were seconded from the Department of Public Enterprise to the Commission to maintain a continuity of service and expertise in the travel trade functions, while administrative support was also made available by the Minister to the Commission to assist in its formation.

Commission staff are generally retained on fixed term contracts of employment, the terms and conditions of which have been approved by the Minister and the Minister for Finance in accordance with Section 12 of the Act.

The staff of the Commission currently comprise sixteen persons. The Commission's personnel needs are currently under review and it is anticipated that proposals in that regard will be made to the Minister and the Minister for Finance during 2002.

The Commission, in accordance with its obligations under Section 15 of the Act, has drawn up a code of conduct which forms part of the fixed term contract of employment, and which has the approval of the Minister, and the Minister for Finance.

The Commission is in the process of establishing superannuation schemes as required by Sections 20 and 21 of the Act. Pending approval of those Schemes by the Minister and the Minister for Finance, an interim scheme was devised with the assistance of external pensions expertise.

Regulations underpinning a permanent scheme have been drafted and submitted for the approval of the Minister and the Minister for Finance, as required by statute. The Commission is committed to facilitating the continuing training and personal development of its entire staff. In the period under review, the Commission funded the developmental training of a number of its staff, and facilitated the taking of study leave by one member.

The Commission recognises the importance of balancing the domestic interests of staff with the exigencies of employment and is committed to encouraging a family friendly working environment. In line with this policy, the Commission has agreed parental and term time arrangements respectively with two of its staff.

Statutory Obligations

In accordance with the obligation contained in Section 30 of the Act, the Commission has provided itself with a seal, and has complied with the statutory requirements in regard to its use.

Declarations and statements of interests have been submitted to the Minister in compliance with statutory obligations.

Accommodation

The Commission is currently located in temporary accommodation at 36 Upper Mount Street, Dublin 2. In consultation with all interests, the Commission is actively engaged in identifying suitable alternative accommodation which meets the reasonable needs of the office, having regard to the statutory requirement that costs of operation are kept to a minimum and are not excessive. The Commission has made proposals to the Minister in this regard and anticipates moving to permanent accommodation in 2002.

Financial

The Accounts of the Commission for the period ended 31st December 2001 have not yet been audited by the Comptroller and Auditor General under Section 26(b) of the Act. However, the Commission has prepared a Draft Income and Expenditure Account, which is subject to audit. The Commission proposes to recover its 2001 costs, based on these draft accounts, since they form a fair and reasonable estimate of the operating costs and expenses for the period 27th February to 31st December, 2001. Any variation in the final audited accounts will be carried forward into next year's levy calculations. The draft figures are as follows:

INCOME

	€	IR£
Airline Licence Fees	€3,000	£ 2,000
Travel Trade & Tour Operator Licence	€389,000	£ 307,000
Fees		
TOTAL INCOME	€392,000	£ 309,000

EXPENDITURE

Staff Costs - includes Basic pay, Superannuation, Employers PRSI	€865,000	£ 681,000
Travel & Subsistence – includes Flights, Accommodation & Training	€101,000	£ 80,000
Central Costs, includes Stationery, Postage, Insurance	€69,000	£ 55,000
Accommodation – e.g. Rent, Rates, Utilities	€56,000	£ 44,000
Finance Costs – Interest due to the Department for Cash Advances	€18,000	£ 14,000
Equipment & Software	€47,000	£ 37,000
Communications and Media Relations, includes Advertising, Web set-up & maintenance, Notices in the Newspapers, design for stationery.	€209,000	£ 164,000
Professional advisors	€1,266,000	£ 997,000
Depreciation	€1,000	£ 1,000
TOTAL EXPENDITURE	€2,632,000	£ 2,073,000
DEFICIT OF EXPENDITURE OVER INCOME	(€2,240,000)	(£1,764,000)

Apart from those costs which have been accrued - repayable advances from the Minister for Public Enterprise, as provided for in the Act, have temporarily met the deficit between income and expenditure.

Retention of advisors/consultants

The Commission has authority under Section 14 of the Act to engage such consultants or advisers as it may consider necessary to assist it in the discharge of its functions. In the course of the period under review, the Commission retained consultants to assist it in its determination of the maximum levels of airport charges and in the determination of aviation terminal services charges. In addition, the Commission engaged general legal and communications advisors and retained senior and junior counsel as appropriate.

Communications policy

The Commission recognises the importance of discharging its functions in an open, transparent and proactive manner. To this end, the Commission has made substantial use of information technology as a means of disseminating documents and information, and interfacing with interested parties in all facets of its operations.

All Commission Papers (CP's) have been published on the commission's website, www.aviationreg.ie, and extensive use has been made of electronic mail to receive inputs from respondents. (list of Commission Papers and Documents Issued in 2001 is at Appendix II)

Further enhancements of the implementation of this policy are being explored and are anticipated to be available in 2002.

WORK PROGRAMME FOR 2002

The Commission will carry out its continuing statutory functions in the travel trade, ground handling and air carrier licensing areas.

The Commission intends to appoint a co-ordinator to Dublin airport.

The Commission will place a levy on the industry to cover its expenses and adopt regulations necessary to implement the levy.

The Commission will continue to vigorously defend the judicial review proceedings brought by Aer Rianta to quash its determination on maximum levels of airport charges.

The Commission will analyse issues relevant to the making of determinations on maximum levels of airport and aviation terminal services charges including: capex, operating efficiencies, regulatory models and approaches, and service quality.

Appendix I - Direction by the Minister under Section 10 of the Act



OIFIG AN AIRE FIONTAR POIBLÍ, 44 SRÁID CHILL DARA, BAILE ÁTHA CLIATH 2.

Office of the Minister for Public Enterprise, 44 Kildare Street, Dublin 2.

Tel. (01) 670 7444 Lo Call (1890) 443311 Fax: (01) 604 1183 http://www.dpe.ie

// August 2001

Mr William Prasifka Commission for Aviation Regulation 36 Upper Mount Street Dublin 2.

Dear Commissioner

I refer to section 10 of the Aviation Regulation Act 2001 which provides that "the Minister may give such general policy directions (including directions in respect of the contribution of airports to the regions in which they are located) to the Commission as he or she considers appropriate to be followed by the Commission in the exercise of its functions"

As I, and indeed the Oireachtas in general, regarded the issue of the contribution of the airports to their regions, as being of particular importance, a separate obligation in respect of this matter was inserted in the list of regulatory objectives in section 33, to which the Commission was required to have regard.

I wish to advise you that I have decided that it is appropriate at this juncture to issue a direction under section 10, so that as you reflect on your conclusions on the proposed price cap determination, you are aware of the purpose and intent of Government regional development policy. In that context I would like to draw your attention to the following:-

1. The National Development Plan 2000-2006 (NDP)

The NDP was as you are aware, framed after extensive consultation with social partners and regional interests. It represents a development strategy supported by a multi-annual investment commitment for all sectors. The Plan provides the foundation for Ireland's economic and social progress not just for the duration of the Plan but for the foreseeable future.

OIFIG AN AIRE FIONTAR POIBLÍ, 44 SRÁID CHILL DARA, BAILE ÁTHA CLIATH 2.

Office of the Minister for Public Enterprise, 44 Kildare Street, Dublin 2.

Tel. (01) 670 7444 Lo Call (1890) 443311 Fax: (01) 604 1183 http://www.dpe.ie

The "fostering of balanced regional development" is one of the four national objectives identified in the Plan. Specifically, the Plan states that it is the Government's objective to achieve more balanced regional development in order to reduce the disparities between and within regions and to develop the potential of the regions to "contribute to the greatest possible extent to the continuing prosperity of the country." The Government considers that our airports have a key role to play in supporting the national objectives of the Plan.

2. National Spatial Strategy

In order to bring together the various elements of regional policy and to achieve the necessary balance in accordance with the principles of economic competitiveness and sustainable development, the Minister for the Environment was mandated to prepare a National Spatial Strategy (NSS) which would translate the broad approach to regional development into a more detailed blueprint for spatial development.

One of the key principles to be achieved under the Strategy is the creation of the right conditions for balanced regional development to take place by developing the potential of areas in the regions to create and sustain economic strength in a structured way. In that regard you are referred to the "Scope and Delivery" document which is available on the Department of the Environment's website.

In the light of these Government strategies, I am directing that the Commission make every reasonable effort to ensure that its final determination reflects the important emphasis which the Government has placed on balanced regional development.

With best wishes

Yours sincerely

Mary O Rourke T.D

Minister for Public Enterprise

Appendix II - Commission Papers And Documents Issued In 2001.

Number	Date of issue	Title
CP 01/2001	27 February 2001	Process for the Determination of Airport Charges
CP 02/2001	27 February 2001	Economic Regulation of Airport Charges in Ireland
CP 03/2001	1 May 2001	Consideration of the Full Coordination of Dublin Airport
S H & E Report	1 May 2001	Assessment of Capacity of Dublin Airport
CP 04/2001	2 May 2001	Process for Determination of Aviation Terminal Services Charges
CP 05/2001	2 May 2001	Maximum Levels of Aviation Terminal Services Charges to be levied by the Irish Aviation Authority
CP 06/2001	26 June 2001	Proposed Maximum Levels of Airport Charges
CP 07/2001	26 August 2001	Determination of Maximum Levels of Airport Charges
CP 08/2001	26 August 2001	Report on the Determination of Maximum Levels of Airport Charges – Part 1
CP 09/2001	26 August 2001	Report on the Determination of Maximum Levels of Airport Charges – Part 2
CP 10/2001	17 October 2001	Decision on the designation of Dublin Airport
CP 11/2001	17 October 2001	Proposed Maximum Levels of Aviation Terminal Services Charges