



06 November 2009

COMMISSION NOTICE CN 2/2009 Notice of publication of consultancy report and Ministerial Direction

The Commission today published for comment a consultancy report by Booz & Co. on the operating costs associated with opening a new passenger terminal at Dublin Airport. The Commission has also today published a direction given to the Commission by the Minister for Transport, Noel Dempsey, T.D. under Section 10 of the Aviation Regulation Act 2001. Both of these documents are related to the Commission's ongoing work towards the making of a determination on airport charges at Dublin Airport for the period 2010-2014.

On 18 June 2009 the Commission published a draft determination on airport charges. How the opening of the second terminal would affect the annual price caps was only partially addressed in the draft determination. This was due to the uncertainty regarding the appointment of an operator of certain services at T2 by way of competitive tender. At that time, there had not been a public announcement setting out definitively which parts of T2 operations would be included in the tender. Consequently, the Commission was unable to include in the draft determination an estimate of the costs the DAA may incur operating parts of T2. Instead for those parts of T2 operations put out to competitive tender, the Commission proposed that the annual price cap should exactly allow the DAA to recover the costs of the winning bid. It would then have fallen for the Commission to determine a reasonable amount for the costs of those operations conducted by the DAA that were not subject to a competitive process.

In considering the representations received in response to the draft determination, it was clear that many parties favoured an approach whereby the Commission would include the costs of T2 in its final determination. In addition it was not clear that the Commission would ultimately have been able to include the outcome of the tender process in its final determination. Consequently it commissioned consultants Booz & Co. to examine the operating costs associated with T2, including any costs implications for existing facilities. The Booz report includes an annex setting out the types of costs that may arise under alternative operating scenarios. The working assumptions used in Booz main report were chosen by the Commission on the basis of the analysis set out in the annex.

The Commission is seeking comments of interested parties on Booz's report and how the Commission should treat it in making a determination on airport charges for the period 2010-2014. Parties may make representations to the Commission until 5.00 p.m. on Friday 20 November. Submissions may be addressed to

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info@aviationreg.ie

Making submissions

The Commission requests that all written submissions be typed. Submissions may also be sent to the Commission in electronic form either on disk or by email to info@aviationreg.ie and should be either in Microsoft Word (".doc") or portable document format (".pdf"). In all cases the sender shall have an obligation to ensure that the information is actually received by the Commission on or before the specified deadline.

To ensure that the Commission acts in a fair, transparent and non discriminatory manner, the Commission is concerned to ensure that all parties making representations in respect of the determination are clear about the meaning of the deadline set for receipt of such representations and the consequences of failing to meet the deadline.

Subject, where applicable, to the specific rules set out below, the time of receipt of representations by the Commission, whether in electronic form or otherwise, shall be the time when the representations are actually received at, or in, the offices of the Commission whether sent by post, courier, hand delivery, fax, e-mail or otherwise and all references to "received by the Commission" shall be construed accordingly.

The onus is on the party making representations to the Commission to ensure that the representations are received by the Commission on or before the deadline.

The Commission accepts no responsibility and will make no allowances for delays or technical faults, which arise otherwise than as a direct result of an act or omission of the Commission, howsoever caused, and which result in representations being received by the Commission after the deadline or which results in part only of the representation being received by the Commission on or before the deadline.

Representations, which are received by the Commission after the deadline, will be deemed not to have been received by the Commission and the Commission will not take them into account. If only a portion of representations are received by the Commission on or before the deadline and the remaining portion received after the deadline, then only that part received by the Commission on or before the deadline will be taken into account by the Commission. The remaining portion will be deemed not to have been received by the Commission.

In determining the time at which representation are actually received by the Commission, in accordance with the rules set out in this notice, the Commission shall use the clock settings, time and date stamps in use in the offices of the Commission, on its fax machine and on its information systems, as appropriate.

The Commission envisages that it may correspond with interested parties who have made submissions for clarification or explanation of their submissions. Such correspondence is not an invitation to make further submissions.

Without prejudice to the generality of the foregoing, the following specific rules shall apply to the following situations:

a. Post: Representations sent to the Commission by post shall be deemed to have been received by the Commission at the time when they are delivered by An Post to the offices of the Commission, at 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin 2. In the event of any disagreement as to this time, the time at which the Commission received the representations will be deemed to be the time at which they are delivered by An Post unless the party sending the representations can prove otherwise.

b. Courier or hand delivery: Representations sent to the Commission by courier or hand delivery shall be deemed to have been received by the Commission at the time when they are delivered by the courier company or the person effecting the hand delivery to the offices of the Commission, at 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin 2. In the event of any disagreement as to this time, the time at which the Commission received the representations will be deemed to be the time at which they are delivered by the courier company or the person effecting hand delivery unless the party sending the representations can prove otherwise.

Respondents should be aware that the Commission is subject to the provisions of the Freedom of Information legislation. While parties are free to designate part or all of their submissions as confidential this has the potential to create difficulties for the Commission. If the Commission is to make available the information leading to its determination, then all of the information upon which it relies for the purpose of its determination should, as a general rule, be put into the public domain. As a result, the Commission proposes to counteract any information asymmetry, which may otherwise arise in the following manner:

Confidential Information

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

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

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

LEGAL NOTICE

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

INDEMNITY

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