

# Aer Rianta Response To Commission Paper CP5/2004:

## Access Fees to Airport Installations

Consultation on the Implementation of the requirements of Statutory Instrument No.505 of 1998 European Communities (Access to the Groundhandling Market at Community Airports) Regulations 1998

August 2004

**AerRianta**

## 1. INTRODUCTION

Aer Rianta is making this submission in response to the Commission's invitation to make representations in respect of certain matters which are set out in CP5/2004, and, in particular, in the context of its recent submissions to the Commission regarding check-in desk rental charges for Dublin, Cork and Shannon airports and the proposed CUTE charge at Shannon Airport.

Aer Rianta welcomes the Commission's conclusion, having undertaken a line-by-line analysis of the relevant financial information that Aer Rianta's proposed charges are reasonable, by reference to any rational view of costs that might be taken.

Aer Rianta's specific comments in relation to the four issues raised in CP5/2004 are set out in Section 3 below.

## 2. COSTING ANALYSIS

Aer Rianta would like to make a general comment regarding the Commission's analysis in respect of what it referred to as "de minimis costings". This term has the potential to be misleading, insofar as it implies some validity in the exclusion for such purpose of certain legitimate cost components, including return on and of capital for the terminal assets associated with the check-in function. It is clear that, in all circumstances, Aer Rianta is fully entitled to earn an appropriate return on and of capital with respect to its assets. Indeed, this was acknowledged by the Advocate General in the context of access to airport installations in his opinion to the ECJ in the Flughafen Hannover case:

*"...the right of access to installations should be remunerated at a fair value, that is to say that it allows for the depreciation of the installations and the costs of the management and that it provides airports with a reasonable level of profit."*

## 3. MATTERS RAISED BY THE COMMISSION IN CP5/2004

Aer Rianta's submission is structured to respond to each of the four matters raised by the Commission in CP5/2004.

***Whether Aer Rianta has complied with the specified criteria in setting the fees for which approval is sought?***

In Aer Rianta's view, the check-in desk rental fees and the proposed fee in respect of CUTE at Shannon Airport meet the criteria of relevance, objectivity, transparency and non-discrimination espoused in the Council Directive 96/67/CE and in the corresponding Irish legislation, S.I. No. 505 of 1998 ("the Regulations"). In addition to the information that has previously been provided by Aer Rianta to the Commission (and summarised in CP5/2004), Aer Rianta would make the following comments.

The charges in question have been set having regard to the costs and value of the services/facilities that are being provided. In each case, the charges were set below cost, following a process that took account of the prevailing charges, operational requirements and the commercial perspective of users in this regard, in particular in relation to price continuity. The charges to be applied are published, and the criteria upon which they are based have been clearly promulgated to users and other relevant parties.

***What should constitute a proposed list of “airport installations” in the context of groundhandling activities and if, in particular, are there items of infrastructure or equipment which can/ought not reasonably be regarded as an installation?***

In order to identify which charges should be considered to be ‘fees for access to airport installations’ (ATI) as outlined in the Regulations, it is essential that a robust and methodical approach is developed. Aer Rianta believes that this can best be achieved by reviewing a charge in terms of a series of classification criteria, such as:

- In order for a charge to be classified as an ATI, it must be levied in respect of the use of an airport facility by a ground handler (a person approved under the Regulations to provide ground handling services and/or self handle) in the carrying out of its handling function.
- The charge must be levied exclusively on ground handlers and must not be common to other airport users. It would not be appropriate to classify as an ATI a charge that is levied on airport users generally as this would extend the remit of the Regulations beyond that intended at the time of drafting, and constitute a regulatory burden on the aviation industry.

To provide otherwise would result in an illogical situation whereby a uniform charge would require to be approved in respect of its application to one subset of users, and not approved in respect of its application to other users.

- The charge must be one that is paid for the use of a tangible asset at the airport.
- An operational charge levied to facilitate the day-to-day management and control of the airports should not be classified as an ATI charge.
- Any charge which involves Aer Rianta passing on utility type costs to ground handlers (including, where relevant, any margin added) should not constitute an ATI, e.g. utility charges for water, gas, electricity, rates etc. Such utility charges are already approved or set by other regulators or local authorities and should not be subject to re-review by the Commission for Aviation Regulation.
- An ad hoc charge that arises only from time to time as a result of a service or facility provided to users on demand should not be classified as an ATI charge.

Based on these criteria and recent judicial developments, Aer Rianta is currently in the process of identifying those charges that constitute fees in respect of access to airport installations at Dublin, Cork and Shannon airports, and will make submissions to the Commission when this exercise has been completed.

***The approach which might be adopted by the Commission in its statutory role of analysing a request for approval to impose access fees***

Aer Rianta suggests that the approach should comprise a review of the proposed charges to ensure that the criteria upon which the charges are based are relevant, objective, transparent and non-discriminatory. Such an examination would be limited in that it would involve the Commission assessing whether the charge had been determined having regard to the factors set out on pages 18 and 19 of CP5/2004, and would not necessitate a public consultation process in respect of each individual charge or increase in an existing charge.

The Commission's examination should be focused primarily upon ensuring that the statutory requirements are met, and should be proportionate to the circumstances. Indeed, this would be consistent with the approach advocated by the Aviation Regulation Act 2001 in respect of airport charges, whereby the Commission, in assessing airport charges, is required to impose the minimum restrictions on the airport authority consistent with the functions of the Commission. It would also be consistent with the principle of proportionality outlined in the recent White Paper on regulation.<sup>1</sup> In the case of ATI, the revenues involved are likely to be of a substantially lower order of magnitude than those relating to airport charges, a factor that should be reflected in the approach adopted.

Clearly, the Commission's role in relation to ATI charges is substantially different to its role in relation to the regulation of airport charges, in which it has the responsibility to set the maximum levels for airport charges. It is not necessary that the Commission's review and consultation processes should be similar in both cases. In this regard, Aer Rianta's views are consistent with the position taken by the Commission in CP1/2001.<sup>2</sup>

Finally, in approving ATI charges, it is appropriate that the Commission bear in mind that revenues generated from ATI charges form part of the overall non-aeronautical revenue contribution used to reduce the airport charges price cap through the mechanism of the single till. In the current Determination, significant growth parameters have applied to such revenue streams in the Commission's model. Consequently, any adjustment to such charges would imply a corresponding adjustment to the relevant airport charges price cap(s).

***What is the appropriate role of an Airport Users Committee in the context of consultation on fee setting by the managing body of an airport?***

Aer Rianta recognises the benefits of consultation with the Airport Users Committees at each of the three airports and has consulted, and will continue to consult, with these groups on charging issues and other operational matters. However, such a forum has its limitations, for example, the SH&E review of Council Directive 96/67/EC<sup>3</sup> noted that the AUC at some airports may be dominated by larger airlines. Only airlines are permitted to be members of the DAUC, with ground handlers entitled to attend only as their nominated representatives. By definition,

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<sup>1</sup> "Regulating Better – A government White Paper setting out six principles of Better Regulation" - Jan 2004

<sup>2</sup> "[T]he Commission wishes to point out that the process proposed in this paper is unique to airport charges. Different processes may be required for other activities falling within its remit." – CP1/2001

<sup>3</sup> "Study on the quality and efficiency of the ground handling services at EU airports as a result of the implementation of Council Directive 96/67/EC" - Report to the European Commission, SH&E, October 2002

such a forum represents the views of incumbent rather than prospective users. The views of the AUC may, therefore, be neither comprehensive, in terms of the requirements of all ground handlers, nor objective in relation to the overall management, operation and development of the airport. Hence, it would be inappropriate for the Commission to rely solely, or too heavily, on the views of such a forum.

In the past, Aer Rianta has found it difficult to reach a consensus with the committee at Dublin Airport in relation to the levels of miscellaneous charges, despite strenuous efforts to do so. Indeed, in some cases, users simply objected in principle to the levying of any such charges. In any case, the airport will continue to seek to reach a level of consensus on such matters through bodies such as the AUC.

In summary, Aer Rianta is committed to ongoing consultation with all its customers, and specifically with members of the AUC. However, for the reasons outlined above, it would not advocate granting the AUC any kind of determining role in respect of consultation in relation to ATI charges. In particular, Aer Rianta is concerned that, if the Commission were to deem the absence of AUC approval of a charge a sufficient reason to reject Aer Rianta's charging proposal, airlines and/or handlers would effectively have a veto on charge levels. Such a situation would not be consistent with the role of the Commission in relation to ATI charges.

#### 4. CONCLUSION

In view of the fact that the proposed check-in desk rental and CUTE charges (set out in the table below) are reasonable by reference to any reasonable view of costs that might be taken, and that they meet the statutory criteria laid down in Section 14(3) of the Regulations, Aer Rianta requests the Commission's immediate approval for these charges.

<b>Proposed charge for:</b>	<b>Dublin Airport</b>	<b>Shannon Airport</b>	<b>Cork Airport</b>
Annual check-in desk rental	€16,718.00	€8,000.00	€7,846.00
Hourly check-in desk rental	€20.90	€19.05	€20.00
CUTE per embarking passenger		€0.23	

The approval is sought with effect from the date of the original applications, namely 8 April 2004 for Dublin and 9 July 2004 for Shannon and Cork.