

**WILLIAM FRY**  
**SOLICITORS**

Our Ref 15970.0001.JH

25 July 2001

**By Courier**

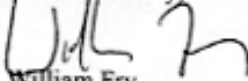
Mr William Prasifka  
Commissioner  
Commission for Aviation Regulation  
36 Upper Mount Street  
Dublin 2

**Our Client Menzies World Cargo**

Dear Sir

We hereby serve you with Notice of Appeal pursuant to Regulation 16 of the European Communities (Access to the Ground Handling Market at Community Airports) Regulations, 1998 (S.I. No. 505 of 1998).

Yours faithfully,

  
William Fry  
Solicitors

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COMMISSION FOR  
AVIATION REGULATION

25 JUL 2001

RECEIVED

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

**AerRianta**  
**Our Client: Menzies World Cargo ("Menzies")**

Dear Commissioner

We act on behalf of Menzies World Cargo with a registered office at 34 Ely Place, London EC1 N6 TD, United Kingdom.

*Introduction*

Our client is one of the leading independent cargo handling companies in the United Kingdom. It is a newly formed joint venture between Menzies Transport Services (part of John Menzies plc) and Globe Ground (the Lufthansa Group handling subsidiary) and it incorporates three businesses that operated formerly as The London Cargo Centre, Concorde Express and Menzies Cargo Services.

Menzies is an approved supplier of ground handling services in the Republic of Ireland, for the purposes of European Communities (Access to the Ground Handling Market at Community Airports) Regulations, 1998 (S.I. No. 505 of 1998) (the "1998 Regulations") under Licence No. 12/00 in respect of various Schedule I and Schedule II services specified therein.

Since September 2000, Menzies has attempted to enter the market for ground handling services at Dublin Airport. To this end, it has engaged in extensive written and verbal communication with AerRianta with a view to obtaining a suitable cargo handling premises at Dublin Airport, but to no avail.

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The purpose of this letter is to appeal - pursuant to Regulation 16 of the 1998 Regulations - a decision taken by AerRianta, to allocate a cargo handling premises at Dublin Airport (as described below) to a competitor of Menzies, contrary to the relevant provisions of the 1998 Regulations.

*Background*

We believe it is useful by way of background to set out a short summary of the events leading up to the contested decision.

From September 2000 to April 2001, Menzies held a number of meetings and corresponded with AerRianta informing them of their plans to enter the Irish market for the provision of ground handling services and their corresponding need for a suitable cargo handling premises at Dublin Airport. Menzies drew AerRianta's particular attention to a premises formerly occupied by Nippon Express (the "Premises"), which they gathered was to be vacated, and left AerRianta in no doubt about their very keen interest in taking over the lease of the Premises.

On 15 June 2001, at an informal meeting at Dublin Airport with representatives of another licensed ground handler, Reed Aviation Limited ("Reed Aviation") Menzies learned to their astonishment that AerRianta had just confirmed to Reed Aviation that they were to be granted the lease of the Premises.

On 19 June 2001, our client wrote to Mr Liam Flood, Property Manager with AerRianta expressing its consternation over the disclosure by Reed Aviation that they had secured a lease from AerRianta to the Premises. Our client expressed its particular concerns that notwithstanding its previous expressions of interest to AerRianta:

- (1) it had only learned of this through unofficial channels and,
- (2) had been given no opportunity to tender for the lease of the Premises.

They informed Mr Flood that this matter needed to be resolved.

Earlier that day, our client had contacted officials in the Property and Cargo Handling sections of AerRianta, who had confirmed that it had indeed been decided to lease the Premises to Reed Aviation on the basis that:

- (1) they had expressed an interest earlier; and
- (2) they were already an existing operator at Dublin Airport.

Our client contacted Mr Flood by telephone later that day and repeated its concerns about the unfair manner in which AerRianta's decision had been made and the absence of an opportunity to tender for the lease on the Premises. Mr Flood replied later that day acknowledging Menzies' concerns and undertaking to give our client a more detailed reply when he had "an opportunity to speak to the various individuals who were involved in the process". Our client was informed that this would take up to two weeks as some of these

individuals were on leave. Our client responded by thanking Mr Flood for his reply and stating their assumption that the contract for the lease of the Premises would not be signed with Reed Aviation or indeed any other party until they had an opportunity to discuss the matter further with him. Mr Flood acknowledged this, informing our client that he would get back to them when he had further information.

On 22 June 2001, Menzies wrote to Mr Flood emphasising again that the Premises represented the only opportunity for them to operate ground handling services at Dublin Airport and reiterating their view that the lease of the Premises in question should be dealt with in a more fair and open way. They advised Mr Flood that they were considering legal action.

On 2 July 2001, our client again contacted Mr Flood. He informed them that he was unable to give them any more information nor was he able to confirm when any such information might be forthcoming. On 12 July 2001, our client contacted Mr Flood by telephone to enquire about the current situation. They were assured by Mr Flood that there was "nothing going on" and they should "sit tight" until Mr Flood contacted them.

On 18 July 2001, to our client's astonishment and deep disappointment, Mr Flood wrote to them referring to previous correspondence and telephone communications, and informed them that AerRianta had agreed to lease the Premises to another company, whose identity he did not reveal. He further confirmed that there were no warehouses at Dublin Airport available at that time. In this regard, he invited our client to outline their precise requirements to him on the basis that if any suitable accommodation become available he would be pleased to contact them.

*Legal framework for access by ground handling service providers at Dublin Airport*

As you will be aware, Council Directive 96/67/EC of October 1996 (the "Directive") provides for open access to airports by ground handling service providers subject to the conditions set out in the Directive. The Directive is implemented into Irish law by the 1998 Regulations, which apply in their entirety to Dublin Airport and, to the managing body of that airport, AerRianta.

Regulation 7(2) of the 1998 Regulations provides that subject to Paragraph (3) of that Regulation (concerning the entitlement of the managing body of an airport to apply in writing to the Commission to limit the number of approved suppliers):

*"there shall be free access to approved suppliers, established in the Community, to provide at an airport any of the ground handling services mentioned in Schedules I and II".*

Regulation 14 of the 1998 Regulations further provides as follows:

*"(1) Subject to the provisions of Regulation 7, 8, 9, 10 and 12, suppliers and self handlers shall have access to airport installations to the extent necessary for them to carry out their activities. If the managing body of an airport places conditions upon such access, those conditions shall be relevant, objective,*

*transparent and non-discriminatory. The Minister shall be informed in writing of these conditions prior to their imposition.*

- (2) *The space available for ground handling at an airport shall be allocated by the managing body of the airport among the various suppliers and self handlers, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on the basis of relevant, objective, transparent and non-discriminatory rules and criteria.*
- (3) *Where access to airport installations gives rise to the collection of a fee, the latter shall be determined by the managing body of the airport and approved by the Minister in advance in accordance with relevant, objective, transparent and non-discriminatory criteria."*

Regulations 15 and 16 of the 1998 Regulations provide for a right of appeal against a decision or individuals measures taken by AerRianta pursuant to the Regulations within one month from the date on which grounds for such appeal first arose.

#### *Submissions*

Our client hereby appeals the decision and individual measures taken by AerRianta to allocate the Premises to another company, which were confirmed in writing by AerRianta to our client on 18 July 2001.

The manner in which AerRianta arrived at the contested decision and individual measures is a clear breach of provisions of the 1998 Regulations. In particular, in failing to give our clients an opportunity to submit a bid for the premises, AerRianta have failed to observe and comply with their duties under the 1998 Regulations.

Regulation 7(2) established the principle of free access to ground handling services under Irish law, while Regulation 14 gives effect to that principle by stipulating the duties of AerRianta with regard to access to "airport installations" and allocation of "space available for ground handling". Access to suitable cargo handling premises at Dublin Airport is essential to our client's plans to access the market for ground handling services at Dublin Airport. Hence, it is submitted that the references in Regulation 14 to "airport installations" and/or "space available for ground handling" must have been intended and, therefore, should be interpreted to include cargo handling premises, such as that the subject of the contested decisions and individual measures taken by AerRianta.

Allocation by AerRianta of the Premises among the various suppliers at Dublin Airport, including our client, as a new entrant in the field, should therefore have been made:

- On the basis of relevant, objective, transparent and non-discriminatory rules and criteria;
- To the extent necessary for the exercise by our client of their rights under the Regulations; and

- In a way that allowed effective and fair competition in the provision of ground handling services at Dublin Airport.

In taking the contested decision and individual measures, AerRianta failed to comply with any of these requirements.

Without prejudice to the generality of the foregoing:

1. The criteria for the allocation of the Premises cannot be regarded as transparent. AerRianta have failed to publish or inform our clients in writing of the criteria on which cargo holding premises are allocated to suppliers at Dublin Airport nor have they specified how existing and new suppliers should apply for allocation of ground handling premises at Dublin Airport. Moreover, in its communication of 18 July 2001, AerRianta failed to disclose why it had allocated this premises to another supplier. In the present case, our client was informed informally by officers in the Property and Cargo Handling sections of AerRianta that the decision to allocate the premises to another company was based on the assertions that this other company had expressed an interest in the premises before our client and was an existing supplier at Dublin Airport.
2. If these are indeed the criteria on which the decision and individual measures of AerRianta are based, clearly they cannot be regarded as being relevant, objective or non-discriminatory. Indeed, the decision to allocate the premises to another company on that basis discriminates against new entrants in the field and serves to prevent or restrict effective and fair competition in ground handling services at Dublin Airport.
3. The only appropriate way in which the criteria stipulated under Regulation 14 can be observed in the allocation of cargo holding premises is through a competitive bidding process for access to such premises. Among other things, the criteria for selection, the duration for which the premises shall be allocated and the latest date for submission of completed tenders should be specified. The specified selection criteria should be relevant, objective, transparent and non-discriminatory.
4. The adoption of such a procedure and the allocation of the Premises by AerRianta in strict accordance with the selection of criteria specified in the invitation to tender would enable the allocation by AerRianta of the Premises in an objective, transparent and non-discriminatory manner. Clearly, any such decision should be informed by the need to allow effective and fair competition.

The exact date of the contested decisions is not made clear by AerRianta, but given that AerRianta did not formally confirm its decision to our client until 18 July 2001 it is submitted that this is the date from which the period for appeals stipulated in Regulation 16 should commence.

Our client requests the Commission for Aviation Regulation to make a Direction in relation to the contested decision and individual measures taken by AerRianta to allocate the Premises to another company, such that the decision is annulled and AerRianta is directed to engage in a competitive bidding process (as suggested above) and such other direction(s) as the Commission may think fit.

*Restrictions on Access to Dublin Airport*

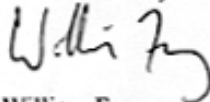
Without prejudice to the matters set out in the foregoing appeal and request for a Direction:

1. In the event that our client was forced (as a result of the contested decision and individual measures) to seek an "off-airport" cargo handling premises, it has been informed by AerRianta that it could only access the ramp area of Dublin (and Shannon) Airport through a competitor's transit shed. We are instructed that AerRianta has also indicated that it would refuse to permit Menzies access through a security gate. If implemented, this would effectively restrict free access by Menzies to ground handling services contrary to the 1998 Regulations by making it dependent on the operational capabilities and commercial will of its competitors.
2. In the event that Menzies is ultimately forced to obtain an "off-airport" cargo handling premises and AerRianta decides that Menzies may only gain access through a competitor's transit shed, Menzies reserves the right to appeal such a decision or individual measures and to request the Commission to issue a direction to AerRianta to grant it for all types of licensed and insured vehicles to be able to load and unload cargo on the ramp area (such as exists already at other EU airports) based on objective, transparent and non-discriminatory criteria and in a way that allows effective and fair competition in these premises of ground handling services.

Our client remains at your disposal should you require any further information or copies of any relevant correspondence or documentation. In this regard, you are requested to contact John Gaffney of this office in the first instance.

We await hearing from you.

Yours faithfully



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Solicitors

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cc. The Company Secretary, AerRianta cpt, Dublin Airport, Dublin.  
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