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30th August, 2004

Mr William Prasifka
Commissioner for Aviation Regulation
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Alexandra House
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Dublin 2

Dear Bill,

We refer to Commission Paper CP5/2004 wherein the Commission for Aviation Regulation invited the views of users on Access Fees to Airport Installations.

The fact that the CAR has already concluded that *"the proposed charges are below any reasonable view of costs that might be taken"* renders this so-called "consultation" a complete nonsense as the CAR is rubber stamping further price increases by the Aer Rianta airport monopoly. Not only has Aer Rianta failed to demonstrate that these increases are *"relevant, objective, transparent and non-discriminatory"*, as required under Regulation 14(3) of S.I. No. 505 of 1998, but the CAR has failed once again to control the abusive pricing policies of Aer Rianta. No objective justification has been provided to users by either Aer Rianta or the CAR to justify these increases. The whole starting point used by Aer Rianta for its proposed price increase is the doubling of costs it forced onto users in 2001 (adjusted for inflation), an increase which has since been overturned by the Supreme Court.

We oppose any increase in Aer Rianta's already excessive charges until there has been actual consultation with users and until Aer Rianta has demonstrated the real costs of providing check-in desks, not some fictitious costs of building gold plated terminal facilities and other costs that users are already paying for through airport charges. We also oppose any attempt by Aer Rianta to seek retrospective approval of these increases (footnote 1 of CP5/2004) given that Regulation 14(3) clearly requires that approval must be sought in advance of any fee being imposed.

1. Background

Immediately prior to the establishment of the CAR in 2001, Aer Rianta pushed through an unprecedented level of price increases, including the doubling of airport charges in Dublin Airport by unwinding long established discounts on airport charges for the promotion of traffic growth on new and existing routes and the use of the inferior Pier A facilities; the doubling of check-in desk charges (which are now the subject of this "consultation"); and the introduction of a "groundhandling administrative fee" under the guise of implementing the Groundhandling Directive (which was enacted for the purpose of reducing groundhandling costs).

Aer Rianta informed users at a meeting in October 2000 that it was increasing its check-in desk charges. At that meeting, users questioned the basis for the almost doubling of the existing charges and were told that the prices had been established with reference to similar charges at "other comparable airports". When challenged on which airports had been used as comparators, users were advised that most of the airports had provided this information on a confidential basis and that the information therefore could not be given to users. Ryanair also pointed out to Aer Rianta that it was illegal to bundle the cost of CUTE into the price for the check-in desk given that Ryanair did not use this service. Although Aer Rianta are now admitting in this application that the proposed charge in Dublin does in fact include a charge for CUTE, they misled the Supreme Court having submitted that CUTE was not included in the charge.

Despite unanimous user opposition regarding the extent of these price increases and the fact that Aer Rianta failed to justify and refused to seek prior approval from the then Minister of Public Enterprise, Aer Rianta nevertheless imposed the increased charges on users in January 2001. Ryanair challenged these increases in the High Court (along with the "groundhandling administration fee"). In February 2004, the Supreme Court found that these increases were unlawful and required Aer Rianta to repay them with interest.

The Supreme Court's ruling and that of the European Court of Justice in the Hannover case (Case C-363/01) apply to all installations necessary for airlines and handlers to carry out their activities. This is the standard that the CAR should have been applying in the last 3 years during which Aer Rianta has continued to push through abusive access fees while the CAR has sat idly by. Aer Rianta has imposed numerous "miscellaneous charges" (some 20 new and increased charges in all) on airlines and handlers for access to installations, including its so-called "groundhandling administrative fee", various increases in charges for access passes, vehicle permits, fire service, etc.

More recently, Aer Rianta has attempted to impose exorbitant price increases on the rental of other essential airport facilities. Under threat of eviction, Aer Rianta is trying to force Ryanair to pay a 312% increase in the lease rate for its airside baggage office and storage facilities. Aer Rianta has confirmed that it has not sought approval from the CAR for any such increase and continues to refuse to provide any cost justification for the increase or details of rates being charged to our competitors at Dublin Airport.

We also note that Aer Rianta's fuel levy, which is not relevant, objective, transparent or non-discriminatory, is also unlawful according to the Supreme Court and Hannover rulings and the CAR should therefore require Aer Rianta to withdraw this unlawful levy.

2. Aer Rianta's Application For Approval Of Increased Check-in Desk Charges

Following the Supreme Court's finding that Aer Rianta had unlawfully increased its check-in desk fees back in 2001, Aer Rianta now seeks to obtain approval from the CAR but has again failed to provide any objective justification for these increases. In fact, Aer Rianta has grossly exaggerated the costs of providing check-in desk facilities at the Aer Rianta airports, as will be demonstrated below, in order to mislead the CAR. This tactic has apparently been successful.

The CAR has made the following errors in approving Aer Rianta's exorbitant check-in desk rentals:

- (i) The charges of €15,237, updated for inflation in 2001 and 2002, have never been approved (as confirmed by the Supreme Court) and therefore cannot form a valid basis for its application to the CAR for increased check-in desk fees. Aer Rianta has never consulted users and has failed to demonstrate that the increases were based on relevant, objective, transparent and non-discriminatory criteria. The CAR has also failed to consult with users on Aer Rianta's claimed costs of providing check-in desks and has instead rubber stamped these further increases.
- (ii) Aer Rianta's estimate that full cost recovery in Dublin would require an annual rental charge of €64,751 per check-in desk is preposterously excessive. Assuming a 25 year depreciable life (which is the life span of the present check-in desks used by Ryanair) an annual rental charge of €64,751 equates to a "full cost" of €1.6m per check-in desk. Applying this figure to the 141 check-in desks at Dublin results in a total cost of check-in desks of **€228 million!** This exceeds the total cost of the entire original terminal and clearly shows that the Aer Rianta monopoly is over-charging users for these check-in desks in order to cross subsidise its excessive expenditure on the new terminal extension and other gold-plated facilities at Dublin Airport.
- (iii) Even at the "lower" figure proposed by Aer Rianta, Aer Rianta would be allowed to recover almost €60 million over a 25 year period from a terminal whose original cost was less than €50 million! Furthermore, users are already paying for these excessive capex costs in the form of inflated airport charges and the proposed check-in desk fees therefore amount to a double recovery.
- (iv) A similar situation exists in both Shannon and Cork where we repeat the above objections. In the case of Shannon, the annual rental charge of €43,687 per check-in desk multiplied by 40 check-in desks equates to an annual full cost recovery of €1.7 million and over a 25 year period will generate in excess of €42.5 million, which exceeds the entire cost of the new terminal building itself at Shannon. In the case of Cork Airport Aer Rianta claim that the full cost recovery would require an annual rental charge of €27,000 per check-in desk, which applied to the 21 check-in desks at Cork equates to an annual full cost recovery of €568,000, or €14.2 million over a 25 year life, which again exceeds the entire actual cost of the terminal building at Cork Airport. The figures highlight again that the Aer Rianta monopoly has misled the CAR in order to justify excessive check-in desk fees.
- (v) There is no justification whatsoever for the variance in the proposed annual rental charges at Cork, Dublin and Shannon airports. The alleged full cost recovery of the check-in desks in Cork would be €27,000, in Shannon it is almost double that at €43,687, and in Dublin it is almost three times the level of the Cork figure at €64,751. These figures merely confirm the hopeless inefficiency of the Aer Rianta monopoly in its profligate capex expenditure. The CAR should be obliging Aer Rianta to operate these airports more efficiently and to reduce costs in order to bring them into line with the cost efficiencies of the best of their peers.

- (vi) The cost of the CUTE system should be deducted from the check-in desk fees charged to those airlines, such as Ryanair, who do not use the system. The CUTE system was installed on Ryanair's check-in desks only following strong opposition from Ryanair and other airlines as to the need and cost effectiveness of this system. Ryanair sought and received the express agreement of Aer Rianta that it would not be charged for CUTE. However, as stated above, Aer Rianta nevertheless bundled this charge into to overall rental (and then proceeded to mislead the High Court by claiming that the cost was not included).
- (vii) It is clearly contrary to the principles of transparency and non-discrimination that CUTE is charged on a per embarking passenger basis at Shannon (where Ryanair will not be obliged to pay for it as we do not use CUTE), yet in Dublin Airport CUTE is being imposed as part of the annual desk rental charge, again in an attempt to force Ryanair to pay for something it neither needs nor uses.
- (viii) A one size fits all desk rental is clearly discriminatory when Ryanair and other airlines are using older facilities (including the old baggage hall facilities) which were constructed well over 25 years ago and have therefore been fully depreciated. The airlines should only be obliged to pay for the rental of a check-in desk that has some bearing on, or equates to, the historic cost of that check-in desk and the underlying terminal and baggage facilities.
- (ix) A post-tax return on capital employed of 10.5% is grossly excessive when deposit interest rates are at an all time low and are presently at circa. 2.5% - 3.5%. To permit a post tax return on capital employed of 10.5% implies a pre-tax return of over 14% which is indicative of Aer Rianta's excessive monopoly pricing power and the CAR's abject failure to regulate this abusive pricing in the interest of users and consumers. In fact, the CAR's determination on airport charges already took Aer Rianta's capex into account and applied an excessive return on capital. Aer Rianta is therefore seeking to double recover on its capital costs.
- (x) There is no justification for an annual inflationary increase. In fact, the annual rental should be reduced each year by the rate at which traffic has increased in the previous year in order to incentivise airline users for stimulating growth through lower fares. This would also incentivise more efficient use of the facilities.

3. Ryanair's Requirements

Section 33 of the Aviation Regulation Act 2001 obliges the CAR to "*facilitate the development and operation of cost-effective airports which meet the requirements of users*". The principal requirement of users (both airlines and passengers) is for lower costs and lower fare air travel. The following are Ryanair's requirements with respect to check-in desk charges:

- (i) That the annual check-in desk rentals relate to the actual cost of providing those check-in desks and not the total cost (or in this case inflated cost) of building entire terminal facilities. We reiterate that Ryanair occupies check-in desks in the old Dublin Airport terminal building and is using the old baggage hall, which has been in existence for over 25 years and has therefore been fully written down and the historical cost of providing a check-in desk is


therefore nothing remotely close to €1.6 million per desk.

- (ii) We require that the CAR disallow Aer Rianta's application for an excessive return on capital employed on the basis that they are already recovering this through airport charges.
- (iii) CUTE should only be charged on a user basis. Ryanair should not be forced to either use this service or to pay for it, either through a separate per passenger charge or by including it in the annual rental of the check-in desk.
- (iv) There should be some relationship between the full cost of check-in desk rentals at Dublin, Cork and Shannon airports. It is inexplicable for Aer Rianta to suggest that the historical cost of a desk in Shannon is almost twice that of a desk in Cork, and similarly that the historical cost of a desk in Dublin is three times that of a desk in Cork. Aer Rianta is again being rewarded for its inefficient capex and for ignoring the requirements of customers.
- (v) Ryanair also requires that the CAR finally does something about its own inefficiencies. We require that the annual budget of the CAR, which has exploded by over 200% in the past 2 years, be reduced by 50% in the next two years.

By merely rubber stamping increases proposed by Aer Rianta, which were only recently overturned by the Supreme Court, the CAR has once again failed to meet the requirements of users and to regulate this abusive monopoly. Users have been forced to pay abusive increases and new charges for access to airport installations because of the incompetence of the CAR and its failure to take any action to enforce the Groundhandling regulations.

This latest failure of the CAR to control Aer Rianta's abusive pricing practices lends further support to Ryanair's calls for the introduction of competing terminals at Dublin Airport and for the disbandment of the CAR.

Yours sincerely,


Jim Callaghan
Head of Regulatory Affairs and Company Secretary