

WILLIAM FRY
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Our Ref 015970.0001 JH

20 August 2001

By Courier

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

Attn: Ms Louise O'Dwyer



Menzies World Cargo

Dear Sir

We are writing to you, as invited, to make submissions regarding AerRianta's letter to the Commission for Aviation Regulation (the "Commission") of 7 August 2001.

In that letter, AerRianta commented:

"AerRianta believes that the decision which prompted this appeal was not a decision governed by the European Communities (Access to the Ground Handling Market at Community Airports) Regulations, 1998 (S.I. 505 of 1998) ("the Regulations"). We contend that a cargo warehouse facility is not an "airport installation" as referred to in Section 14 of the Regulations."

We submit that this argument is fundamentally flawed and has no basis under either the Regulations or the Ground Handling Directive 96/67/EC (the "Directive"), which the Regulations are intended to implement.

We would draw your attention to our client's appeal of 25 July 2001, which states:

"Regulation (2) establishes 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

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND.

Tel: +353-1-639 5000 Fax: +353-1-639 5333 DX 23 Dublin Email: central.mail@williamfry.ie
Website: www.williamfry.ie

Partners: Houghton Fry, Francis E. Sweeney, Edmund Fry, Neville R. O'Byrne, Alvin E.M. Price, Michael T. O'Connor, Daniel Morrissey, Owen O'Connell, Brendan Cahill, Myra Garrett, Elaine Hanly, Nora White, Michael Wolfe, Boyce Shulohman, Patricia Taylor, Brendan Heneghan, Aidan O'Farrell, John Larkin, Michael Quinn, Edward Spain, John Handoll, Owen O'Sullivan, Ken Casey, Bryan Bourke, Daragh Bohan, Declan O'Sullivan, Liam McCabe, Patricia Kenna.

Consultants: Oliver G. Fry, Martin Phelan, Sean Wallace, Janet Tarrant.

Associates: Kenneth Morgan, Alicia Compton, Sonia Price, Tara O'Reilly, Greg Hoffingsworth, Patricia Connellan, Mark Traynor, David Cullen, John Gaffney, Jonathan Brannon, Lisa Maloney, Cormac Commins, June O'Connell, Eiva Mulheene, Barbara Cantwell, Fiona Barry, Maura Roe, Barry Conway, Rod McDonough.

Dublin Airport is essential to our client's plan 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 decision and individual measures taken by AerRianta."

The Directive is principally intended to ensure access to the ground handling markets at Community Airports by existing operators and new entrants, which necessitated establishing a set of rules intended to maintain fair competition in the area of ground handling services.

In the Explanatory Memorandum to the Directive, the European Commission noted that because:

"Efficient and market oriented ground handling services at airports make an important contribution to the efficient utilisation of the air transport infrastructure, they should thus be offered on a non-discriminatory, transparent and cost effective basis."

Accordingly, the Directive lays down measures to ensure fair and sustainable competition in the provision of ground handling services and to allow for the efficient management of airport installations. The use of a cargo handling premises is clearly integral to providing ground handling services and, therefore, to achieving efficiency in the provision of such services. As a result, it does not make sense to argue that such premises are not covered by the Directive and the implementing Regulations.

In relation to airport installations, in particular, the Directive stipulates that:

"Member States shall take the necessary measures to ensure that suppliers of ground handling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities."

"Airport installations" are not defined by the Directive or the implementing Regulations and nowhere in the Directive the implementing Regulations, or in any relevant Commission Decision is it stated that cargo handling premises, such as the premises which is the subject matter of the contested decision and individual measures, do not constitute an airport installation. Similarly, nowhere is it stated in the Directive, the implementing Regulations or in any relevant Commission Decision that a cargo handling premises does not fall within the category of "space available for ground handling".

"Airport" is defined in the Directive as:

"Any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of air traffic and services including installations needed to assist commercial air services."

It is reasonable to conclude, therefore, the reference to "airport installations" in the Directive is intended to refer to all "ancillary installations" located on an airport, which are necessary to

assist commercial air services. On that basis, it is clear that cargo handling premises, such as that the subject of the contested decision and individual measures, constitutes an "airport installation" and/or "space available for ground handling" under the Directive and implementing Regulations.

AerRianta also state in the letter of 7 August 2001:

"It is possible for a cargo handling company to operate from a site remote to the airport. A cargo operator does, however, require access to the apron areas and to the aircraft it serves and such access would be granted by AerRianta provided all the necessary criteria including relevant security and customs requirements have been satisfied by the company proposing to carry out ground handling activities."

Without prejudice to our client's submission that the contested decision and individual measures are governed by the Regulations for the reasons set out above, we also wish to make a submission in relation to this particular argument.

AerRianta's argument that our client can provide ground handling services from an "off-site" location is entirely at odds with the intention of the Directive and the implementing Regulations to ensure "efficient and market oriented ground handling services" and "fair and sustainable competition" in the provision of ground handling services at airports, including Dublin Airport.

To require our clients to operate from an "off-site" or a remote location would mean in practice that cargo would need to be loaded first onto fully-taxed road worthy vehicles, driven through traffic to Dublin Airport and delivered via a transit shed or security gate to the aircraft.

In Commission Decision 2000/122 (OJ L039 of 14 February 2000), the European Commission reviewed the issue of whether such off-site facilities were such as to allow a service supplier to operate or self-handle at Düsseldorf Airport. The Decision related to an application by the German State for an exemption under Article 9(2) of the Directive based on specified constraints on available space or capacity. The Commission was satisfied that old military huts which were located outside the airport boundary did not alleviate the specified constraints on available space or capacity at the airport. The Commission found that the vehicles and equipment required for the services in question would have had to cross a very busy road, which would have been inconceivable for such heavy, slow equipment, such as "pusher tugs".

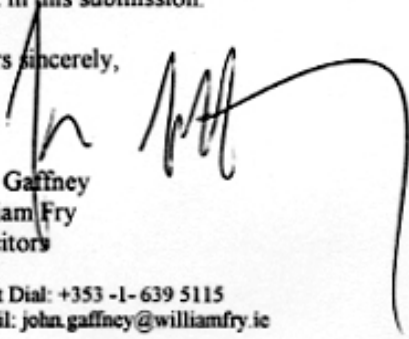
Accordingly, it is unreasonable of AerRianta to expect our clients to provide ground handling services from an "off-site" location, which would require them to engage in the costly and time consuming logistics of transporting cargo from a remote location over a busy road and through a transit shed or security gate to the airport. This would contrast with the position of ground handling services providers located on-site who can simply transport cargo on "dollies" directly from the warehouse to the aircraft in a matter of minutes.

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Furthermore, AerRianta's suggestion, if accepted, would place our client, as a new entrant to the market for ground handling services at Dublin Airport at a serious competitive disadvantage compared with its competitors due to the additional transit time and handling that would be needed between the aircraft and the warehouse.

We are at the Commission's disposal should it require clarification or elaboration of any point in this submission.

Yours sincerely,



John Gaffney
William Fry
Solicitors

Direct Dial: +353 -1- 639 5115
E-Mail: john.gaffney@williamfry.ie

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