

A Submission

from

The Irish Association of International Express
Carriers (IAIEC)

to

The Commission for Aviation Regulation

re

The Draft Determination for the Maximum
Levels of Airport Charges at Dublin, Shannon
and Cork Airports
CP6/2001

26th July 2001

SUBMISSION

This submission has been prepared by the Irish Association of International Express Carriers (IAIEC) on behalf of its members. The Association has considered the draft Determination on maximum levels of airport charges (CP6/2001) published on June 26th 2001 by the Commission for Aviation Regulation.

This document commences with a submission on the most important elements of the draft Determination for the IAIEC members. It then sets out the analysis and arguments that lie behind the submission. Finally a brief commentary is provided on each of the Statutory Factors.

The IAIEC's initial reaction was outlined at the Public Hearings held last week. The members have reflected upon the Commission's response to their representation, along with contributions made by the other parties who participated. The time span allowed by the legislation for this process is far less than the depth, complexity and importance of the issues need and deserve, especially for a group of international companies with worldwide operations such as the members of the IAIEC.

Notwithstanding these difficulties the members are very seriously concerned by the draft Determination's implications for their business. Therefore as their next step in a process the IAIEC now wishes to submit that the draft Determination does not meet its member's requirements in the following important respects:

- There is no transparency in regards to the costs to which the maximum permitted yield per work load unit (WLU) will apply nor evidence of alignment to user needs.

Remedy: The Commission publishes these costs in full in its first Determination.

- The proposed maximum permitted yield for each of the three regulated airports in Dublin, Shannon and Cork permits an increase in Aer Rianta Teo's (ART) revenue from cargo by a significant multiple of their current revenues.

Remedy: The maximum permitted yield is reduced to a level that eliminates this potential increase until the costs that objectively justify the need are made available to users.

- How ICAO's WLU ratio of 1 passenger to 100 kgs is proportionate, non-discriminatory and objectively justified for cargo in Dublin, Shannon and Cork has yet to be established, but the Association continues to strongly believe that it is not appropriate to the facilitation of cargo at the regulated airports.

Remedy: As the shortened consultation did not allow sufficient opportunity for either the Commission or the members of the IAIEC to consider the appropriateness of this ratio, this work remains to be done.

- There is no benchmarking data specific to cargo.

Remedy: The Commission provides this data so that cargo users have the required criteria and evaluation framework to benchmark its conclusions in an international context.

- An allowable rate of return of 9% is significantly higher than would have been reasonably anticipated for a monopoly state-owned provider, especially to avoid fatally undermining the whole process.

Remedy: The rate of return is reduced to a more appropriate level, such as 4 - 5%, which in turn must be directly and transparently linked to specific investments where the real return of enhanced operational efficiency and the cost-effectiveness for users is proven.

- There is insufficient transparency as to what the allowable CAPEX for cargo in Dublin and Shannon is precisely for and why it is objectively justified.

Remedy: This CAPEX is disallowed until cargo users, and indeed users generally, have agreed with ART that the expenditure is required to enhance ART's operational efficiency and cost effectiveness in facilitating their needs.

- How the Commission determined users require the proposed allowable CAPEX for cargo in Dublin and Shannon is not transparently explained.

Remedy: The first Determination provides a detailed background.

- The innovative decision to adopt ICAO's WLU mechanism to regulating airport charges is not sufficiently acknowledged, especially as it sets a European, and international, precedent.

Remedy: The Commission explains to users why the WLU is an appropriate, transparent, proportionate and non-discriminatory mechanism to adopt for this purpose.

- The 'envelope' of ART's regulated activities which will yield WLU revenue is not detailed sufficiently for cargo users to calculate the proposal's impact on their business and their clients.

Remedy: The Commission describes in its first Determination the general criteria which ART should take into account to ensure their proposed restructuring of airport charges meets the statutory objectives of the Act and in particular Sections 5(4) and 33(a) and the process by which they should meet users requirements.

- The IAIEC's understanding of the Act is that it requires that airport charges must not exceed the maximum allowable WLU revenue yield.

Remedy: The Commission unambiguously asserts this fundamental requirement by assuring users that its maximum yield will be precisely that – the maximum – and that it will use Section 32(6) to enforce this requirement if and as necessary.

- The evidence is not provided as to how the proposed WLU maximum revenue yield will fairly allocate the costs incurred by ART's in facilitating cargo.

Remedy: The first Determination should include details of how the Commission determined its proposal to be fair and proportionate.

- The IAIEC wishes to observe that all of its members are experiencing unexpectedly acute declines in their business, and there is no reliable evidence indicating when and where (in terms of volumes) this decline will end.

Remedy: The Commission determines that it is commensurate with its responsibilities and fully within its powers, especially under Section 33(d), (g) and (h) when read together, to use the allowable CAPEX and rate of return to direct ART towards users requirements for their own strategic enhanced competitiveness and cut costs to be matched by ART.

- It is unclear to what a WLU will apply in practice.

Remedy: The Commission's Determination specifies this critical detail as how WLU's will be applied in practice.

- The exclusion of revenue from ART and the GSH Group from the Single Till is surely not correct, as the respective acquisitions and developments involved were funded from income generated by airport users.

Remedy: The first Determination provides a detailed explanation as to the basis for this exclusion.

THE JUSTIFICATION FOR THIS SUBMISSION

The members of the IAIEC believe this to be a critical regulatory process.

It is worth repeating that the IAIEC is actively involved in this process because the Association represents the major international express carriers operating in Ireland, DHL, FedEx, TNT, and UPS. All are major movers of goods and physical information through Dublin Shannon and Cork airports using their own or contracted third party aircraft. They all require groundhandling services and either already or aspire to self-handle at all of these airports.

IAIEC members operate some of the world's largest all cargo aircraft fleets and use hundreds of airports every day as the key hubs and links in their highly integrated global transportation and delivery networks. Each of these airports plays a pivotal role in facilitating the provision of what their clients want and need: the fastest possible cost effective and reliable global distribution of their goods and physical information.

The cost of providing air services and using airports is such that these charges are a significant element of their overheads. Therefore the Commission's Determination could have a significant impact on both their business and their clients in Ireland, and the IAIEC has been mandated to put forward their collective response to the draft Determination and especially their requirements as users of this process.

The requirements of users are paramount

The IAIEC compliments the Commission, along with everyone else who participated, on the most instructive and informative public hearings held last week. Reflecting upon the many representations that were made the IAIEC drew two principle lessons as to how its requirements as a user were not being met:

- The absence from the ART'S representation of any acknowledgement or recognition that airport users have begun to suffer a very serious downturn in revenue and that the proposed WLU maximum yield would be a significant additional burden for them while giving the airport manager the possibility to immediately secure significant increases in their current revenue from cargo via airport charges
- **As a result it is abundantly clear that unless the Commission significantly reduces its proposed WLU maximum yield at each airport that the most basic requirement of users, to be competitive, will not be met.**

This would be a most serious and significant set back for both users and the Commission. The integrity of a regulatory process once undermined can rarely be quickly re-established. Such a loss is most likely to occur when a regulator loses the confidence and trust of those whose interest they were established to serve.

One of the most positive outcomes of the Public Hearings was the extent to which it highlighted that it is **the requirements of users** along with their current and prospective needs that are in fact paramount in the Aviation Act 2001. Not every representation by an airport user understood how their interests should be protected but most are now convinced that the draft determination does not do so. In fact, whether they understand

or not is arguably irrelevant as the spirit and content of Section 33's introductory paragraph along with sub-section (a) unquestionably make this the Commission's paramount and pre-dominant responsibility.

Therefore the Commission **MUST** thoroughly and rigorously protect users interests by ensuring that the maximum WLU revenue yield mechanism **WILL** in practice, and not just in theory, *regulate airport charges* (Section 7) that are *objectively justified non-discriminatory proportionate and transparent* (Section 4 (4)) and aligned to users needs and requirements. As Ireland is now leading the world in regulating airport charges this is clearly quite a challenge for the Commission but one the Association is confident it has the remit, capability and opportunity to achieve.

Unfortunately the Commission has not been helped by ART's whole approach and attitude throughout this process and again at the Public Hearings. Their stance has made it abundantly clear that it will not be enough in adequately discharging the mandate and responsibilities given to it by the Oireachtas for the Commission to trust ART to be fair, proportional and objective in re-structuring their charges well below the proposed maximum WLU revenue yield.

Therefore having heard from users that they believe the draft Determination does not meet the Aviation Act 2001's primary test it should now be radically altered in tone content and direction.

Airport charges must not be regulated in isolation from macro economic realities

The IAIEC acknowledges the yield driven approach as indicating an intent to recover a proportionate balance of contributions from passenger and cargo and an implied intent for the resulting cost allocation to be equitable in relation to costs incurred.

The proposed maxima are unacceptable because they equate to an increase on current charges by a multiple of at least two to three times current revenues from regulated airport charges.

The Commission must surely appreciate that a mechanism can only meet the requirement of users and thus be acceptable to IAIEC members where the resultant maxima is in itself acceptable.

In the current economic climate, with downward pressures on exports and mounting redundancies across many of the major multi-nationals who are the largest users of air express and air cargo services, it is inconceivable that such cost increases could be recovered through pricing and in a highly competitive market they could not and would not be borne by the carriers.

We believe that the Commission has accepted that the WLU ratio of cargo to passengers needs more work.

ICAO have informed the IAIEC that the WLU method applied to provide a basis of equivalent units has not been used before to regulate airport charges. The WLU ratio, therefore, does not represent a thoroughly researched and thus objectively justified

attempt to derive a proportional relationship between the cost of services consumed by passengers and the cost of services consumed by cargo. This is particularly important because ICAO strongly recommends the users should not pay for services they do not use. This position is strongly supported by the European express industry's European and global representative organisations.

However, as stressed in the IAIEC representation, the time constraints on the Commission are fully appreciated, the need for a mechanism incorporating cargo fully supported and the validity of the WLU per se is not being challenged. Nevertheless common sense, that wise criteria relied upon by the Commission when defining airport users, clearly supports the contention that facilities for passenger are in stark contrast to those required for cargo. The former utilizes an extensive, air-conditioned, highly specified building, shops, parking, toilets etc. The latter receives a vehicle to transfer material into the carrier's compound, the costs for which are recovered through existing rents.

As the Association does not have access to ART's costs, it cannot for the purpose of this submission make a specific recommendation as to an appropriate alternative. Neither in the very short time available can it prepare and submit a substantial and sustainable case for that alternative, which would meet the high standards of economic analysis the Commission has set for itself and thus for others. The Association however is mindful of the importance of this issue and so members have begun work on a credible and more appropriate alternative.

Nevertheless the intuitive reaction of members is that the contribution sought from cargo is overstated by a significant multiple.

A maximum revenue yield must be exactly that

Most unfortunately the Commission did not say if charges or fees related to groundhandling will be included or excluded from the 'envelope' of charges to be covered by the maximum WLU yield. Nor did the Commission feel able to clarify what precise operational activities in the movement of goods to and from an airport nor to which landing parking and take-offs a WLU would apply.

For the Association's members this is totally unsatisfactory in the extreme, and certainly means the draft Determination is far from transparent. For, fundamentally, it suggests **the Commission's maximum will in fact not be a maximum?**

This is a most unsatisfactory situation. IAIEC members as airport users require this predictability and stability as a fundamental necessity of doing business, especially to protect their costs and competitiveness in this rapidly escalating economic slowdown. In addition, without this information it is impossible to benchmark the impact of the Commission's proposal against international comparisons (airport charges being the only option for doing so because, as stated above, there is no comparable WLU yield benchmark for regulating airport charges).

The allowable CAPEX for Cargo has not been agreed as required by users

Despite frequent requests the Commission did not clarify what the allowable CAPEX for cargo in Dublin Airport will be spent on. Nevertheless following its representation the Association was requested to focus on this issue in more detail. That is a little hard to do in the circumstances of having no details of what precisely is being allowed, except to suggest that:

- An all cargo aircraft uses the runway, taxiway and parking apron
- Depending on the aircraft type, the equipment used to load and unload may vary
- This equipment is always owned by either the company if self handling or the third party groundhandler if not.
- The goods are moved straight from airside to landside, and vice versa, and the costs of facilities outside the regulated area are recovered in rent.

Beyond these basics the Association would refer the Commission to its submission in response to CP2/2001 which included an appendix setting out the, few, airport services utilized by its members.

In addition, the movement of goods continues to take place at all three airports in a manner that has not, to the members' knowledge, been considered to be unsafe or insecure.

ART itself has recently introduced some uncertainty at Dublin Airport with their announcement that they intend moving the 'cargo area' to another location.

There is a demand from some members of the IAIEC for this move, but there is no indication that this £9m of recoverable CAP-EX is required and necessary for this task. As a matter of principle the IAIEC proposes that the WLU should not include revenue that is recovered by rent. Otherwise it would be double charging.

More importantly the draft Determination does not objectively justify the CAP-EX with a statement of users' requirements. Consequently members are not aware to what the proposed £9m relates and so cannot make informed judgements as to whether or not it meets their requirements. **The Commission is therefore requested to disallow completely the proposed recoverable CAPEX for cargo at Dublin and Shannon.**

How the Commission interpret their legislative remit is vital.

As most of the above points highlight, and the Commission itself fully appreciates, how Aviation Act 2001 is interpreted and applied is fundamental to the integrity and effectiveness of this regulatory framework.

During the very useful and informative Public Hearings some important differences of interpretation were highlighted:

- While the Commission consistently emphasises the Statutory Factors that it must adhere to, users believe they are and should be considered as subsidiary to the overarching obligation of the first paragraph of Article 33 to *meet the requirements of users*
- A strong and consistent theme of representations from users was the conviction based upon experience that ART would seek to recover the maximum allowable revenue no matter how their charges were re-structured and therefore can only meet users requirements if the maximum charge is itself acceptable
- ART provided no evidence or indication to suggest this belief is not objectively justified
- Therefore a strong requirement emerged from users that the Commission in its first Determination provide:
 - Explanatory guidelines as to what would constitute the *substantial grounds* cited in Article 32 (14) (a) (ii) of the Aviation Regulation Act 2001 as being necessary for it to accept a request from users to review and amend its decision
 - Criteria as to how it anticipates ART will translate its maximum recoverable yield via WLU's into a restructured set of airport charges
 - A clear and unambiguous statement that it means precisely what it says when setting a *maximum* yield per WLU and that ART must not exceed this irrespective of the outcome of Ryanair's High Court challenge to the groundhandling S.I.
 - An invitation to users to make immediate representations where they have grounds, acceptable under the Act and the Determination, for believing that this maximum may have been exceeded
 - An unambiguous assertion of the Commission's willingness to use its powers to intervene in the setting of airport charges and in particular under Article 32 (1) (6) (b) to *restrict increases in any such charges* or to *require (further) reductions whether by reference to any formula or otherwise.*

In interpreting the Act, however, the IAIEC also recognises that:

- The legislative requirement to reach a determination within six months (two of which being in the peak holiday period) has prevented a thorough, detailed and carefully considered exchange with users as to their requirements regarding the implications of the application of its innovative mechanisms, especially once applied in practice
- That this very restricted time span further denied users themselves sufficient opportunity to develop and evolve the Commission's proposals or to prepare a substantial and sustainable case for any alternative proposals.

Other factors which impact upon the Commission's statutory remit.

The Association has noted the following additional factors not mentioned by the Commission which in the Association's experience are relevant and impact in a very real way on its statutory remit:

- The impact on airport cost competitiveness of the signal given by the maximum allowable WLU yield to ART enabling such a significant increase in cargo charges at a time when each day brings more announcements about cut backs in the very sectors which are amongst the biggest users of air cargo when moving their goods.
- In particular, the impact of this signal on the cost competitiveness of the airports as distribution hubs and gateways for moving goods in a period when operators are experiencing rapidly escalating pressure from their customers to be more competitive.
- In response to these pressures at least some IAIEC members are likely to be giving more serious consideration to diverting the movement of goods from the jurisdiction from the air to surface transport mode.

The IAIEC submits that in the context of sustaining the *level of income of the airport authority from airport charges and underpinning the cost competitiveness and operational efficiency of airport services* the implication of the signal given by the Commission's WLU to the market is at least as important as its impact on ART.

Finally, the IAIEC wishes to once again make clear that it supports:

- Independent regulation of all airport charges.
- The development and operation of *cost effective* airports.
- Facilitation which is specific and proven necessary for cargo.
- Charges for such facilitation that is cost-based, transparent, relevant, objectively justified, proportional and non-discriminatory.

Questions the Commission is requested to answer.

In the spirit of transparency, there are important questions in regard to the practical implementation of the Commission's statutory remit to regulate airport charges, answers to which IAIEC require in order to develop their understanding of, and confidence in, this new regulatory framework. Therefore the Commission is requested to include in its first Determination the answers to the following questions:

- Why the proposed WLU yield is relevant and objectively justified?
- The appropriateness at Dublin, Shannon and Cork of the passenger to cargo WLU ratio proposed?

- The data and computations used to calculate the anticipated impact of the proposed maximum permitted revenue per WLU on cargo?
- The reasons for the apparently contradictory approach to past and future recoverable cap-ex and its calculation for different airports?
- How the Commission believes that its determination creates the conditions whereby ART may enhance the competitiveness and operational efficiency of their airports as economic growth is halved in Ireland and the global economy moves towards recession and rapidly falling demand especially for exports?
- The relationship between the Draft Determination and SI 505 of 1998 in defining the 'envelope' of regulated charges and activities to which the WLU applies?
- The regulatory factors that need to be taken in to account in any consideration of a request to alter the WLU ratio of 1 passenger to 100 kgs.?
- The evidence that would need to be provided in devising a mechanism to calculate the relative costs of the very different and much more limited use that cargo makes of the airport and its facilities?
- That a kilo travelling as a shipment from Dublin to Shannon to Cork will not be three separate WLU's?
- To ensure such double and/or treble charging does not take place, that the Commission will require that the principle of the current exemption from ART's tariff for transit passengers apply?
- The WLU will not apply to an empty aircraft being positioned or one that is arriving for maintenance?
- The WLU will not be calculated for cargo on an aircraft separately and in addition to the calculations made for passengers?
- Is the Commission fully satisfied that the data ART supplied on the cargo movements by air through their airports by weight, volume, variety and type is sufficiently comprehensive relevant transparent and reliable to accurately underpin these crucial assumptions and calculations?
- Will the WLU apply to each kilo as it takes off **AND** lands at each airport?
- Does the Commission believe it is fair that the same WLU ratio and charges apply to a cargo self-handler as to a third party groundhandler, especially as the former is unable to recover these additional costs through passing them on to 'inbound' customers as virtually all express shipments are paid for on a door to door basis with no immediate facility to add additional airport charges?
- That in calculating the potential impact of the draft determination on their costs at each airport IAIEC members can presume that a WLU includes:

- Landing charges?
- ramp access fees, parking fees etc.?
- any other regulated charge such as a security fee?
- That charges must be proportionate and varied according to uses such as:
 - Landing and take-offs?
 - Landing and take-offs only?
 - Landing, take-offs and parking?
 - Movements of empty cargo aircraft, or ones arriving for maintenance?

Concerns the Commission is asked to address.

As airport users IAIEC members remain extremely concerned that their requirement that the following issues be addressed in detail in the first Determination be positively responded to by the Commission:

- The precise impact upon cargo charges while potentially severe remains very unclear and difficult to calculate in the short, medium or long term.
- Those calculations which were offered at the Hearing which suggested the result of the proposed maximum WLU yield would be a sharp increase (as put forward by the Irish Exporters Association) were not contradicted by the Commission
- Nor was the opportunity taken to reassure users that the translation by ART of the maximum allowable WLU yield into actual revenue by way of restructured charges would be carefully and closely monitored by the Commission
- That where the airport manager provides warehouse facilities the Commission rules that such costs are recovered as commercial rent, are not a regulated charge and so would be considered not included in a WLU.
- That the Commission's concern that Dublin airport is reaching the limits of its ability to add to capacity in a cost effective manner may not apply to cargo as processing, sorting and consolidation can and has moved off the airport.
- That it is common sense to include customers of IAIEC members as airport users and that dramatic price increases do not meet their requirements, especially in the current economic climate.

The Explanatory Memorandum needs further elaboration.

The IAIEC wishes to repeat the comments made during its representation at the Public Hearing in regard to the Explanatory Memorandum that:

- Individual WLU's for the three airports could, depending on how they are applied in practice seriously disadvantage goods producers outside of Dublin.
- There is no clarity as to ART's regulatory till nor the current or future facilitation to which that relates no the relationship between these charges and the total airport operations for cargo which is what cargo users really require to make sound, objectively justified and proportionate judgements in response to a Determination.
- There needs to be sufficient information to evaluate the feasibility of a cargo tariff basket or cargo within a wider tariff basket and sufficient time to prepare a substantial and sustainable case for one in response to the Commission's suggestions re '*such a tariff basket*'.
- Although implied as a possible option cargo is not the example given of a sub cap under active consideration so whether the Commission believes one may be objectively justified or not is unclear.
- Intuitively IAIEC members believe a cargo 'sub-cap' deserves consideration (for example flights do arrive off-peak early and mid morning). However, both the absence of cost data on which to base calculations and the very short timescale for this Submission have prevented the case being prepared and submitted to the required depth and detail.
- Even if the Association felt that was the best option going forward it is beyond the Association's capacity or resources to develop and argue a credible and objective case for one by the deadline.
- In particular, no data is provided as to the new book value of those assets used exclusively for the airside facilitation of cargo or shared between cargo and passengers.
- That value should be current written down historical cost as the cargo facilities have been there for decades without any significant investment.
- ART's input to the operational efficiency of cargo being minimal it is not specified what specifically the Commission understands their role to be in enhancing the cost competitiveness and operation efficiency of airport services for cargo.
- What proportion of ART's cost is to be borne by cargo is not specified and, as stated previously, this is clearly critical especially when the issue of the WLU ratio is considered
- The Commission should fully describe what it believes the impact of its first determination will be on cargo cost-effectiveness.

STATUTORY FACTORS

The following comments, which are necessarily brief, seek to respond to the Commission's specific comments in the Draft Determination on the statutory factors:

1. ***“the level of investment in airport facilities at an airport to which the determination relates, in line with safety requirements and commercial operations in order to meet current and prospective needs of those on whom the airport charges may be levied ”¹***

On the basis of the information supplied in the draft determination IAIEC members:

- Disagree that *both productive and allocative efficiency will be enhanced and encouraged*
- Believe *the current and prospective needs of (cargo) users* are not being met
- Do not agree with the Commission's *best estimate* of the CAPEX programme for cargo
- Do not know what is so unsafe or uncompliant about cargo currently at Dublin Airport that almost £9m of CAPEX needs to be recovered specifically from it
- Cannot identify the *commercial operations* that may also be justifying this very large amount.

As stated previously, the proposed WLU very definitely does not, especially in the current economic climate, *meet the current and prospective needs of those on whom the airport charges may be levied.*

2. ***“a reasonable rate of return on capital employed in the investment, in the context of the sustainable and profitable operation of the airport”²***

The IAIEC supports the Commission's top down approach to RAB

IAIEC would like to give the RAB the detailed attention requested but would need more guidance or detail as to what assets the Commission considers should be included in the regulatory base for cargo.

The IAIEC does not disagree with the Commission's reliance on the four factors mentioned – RAB, the value of the RAB ART's cost of capital and the appropriate rate of return to be allowed.

However the draft does not make clear how the Commission's treatment of these factors will maximise the economic welfare of cargo users and on this basis the Association could not support this proposal.

¹ Section 33(a)

² Section 33(b)

More importantly the proposed rate of return is too high by any criteria which seeks to establish a proportionate relationship between what is allowed to ART and what airport users could expect or achieve.

3. “the efficient and effective use of all resources by the airport authority”³

The IAIEC has insufficient information to represent a view or judgement as to whether or not the Commissions calculations will ensure the efficient and effective use by ART of its resources for cargo.

However, it has absolutely no evidence that ART can or will use a doubling or trebling of its revenue from cargo to improve its efficient and effective use of those resources dedicated to the regulated facilitation of goods use and need at the three airports.

Nor is the IAIEC aware of any need or requirement amongst its members or their customers for this dramatic increase in revenue. In fact the opposite.

Indeed, the Commission should recognise the urgent need to quickly respond to the rapidly changing economic climate by re-defining *the efficient and effective use of all resources* as requiring a vigorous targeted and thorough programme of cost-reduction to be immediately launched by ART along with the elimination of unnecessary and wasteful overheads.

4. “the contribution of the airport to the region in which it is located”⁴

IAIEC is concerned that how the WLU yield it is applied in practice will significantly influence the contribution of the airport to the competitiveness of the region (and thus of the airport facility itself).

More fundamentally, as stated at the outset, the IAIEC requires the WLU maximum yield to be halved reduced to a level that eliminates this potential increase until the costs which objectively justify the need are made available to users, especially in the context of underpinning the cost-effectiveness of the services provided to enterprise in the regions where the airports are located.

5. “the level of income of the airport authority from airport charges at the airport and other revenue earned by the authority at the regulated airports or elsewhere”⁵

Capacity issues are for some members becoming acute but they are outside the regulated area.

³ Section 33(c)

⁴ Section 33 (d)

⁵ Section 33(e)

6. ***“the operating and other costs incurred by the airport authority at the airport”***⁶

What is the quality of service that the Commission based its calculations on for cargo? How is the Association to transparently evaluate this factor without such data? Especially when the Commission’s conclusions in the form of its proposed maximum WLU yield and allowable CAPEX are so in excess of current user requirements?

7. ***“the level and quality of services offered at the airport by the airport authority and the reasonable interests of the users of these services”***⁷

Goods move to and from Dublin Airport at a level and quality which is primarily determined by the user and their requirements. They use their own aircraft or another operators, they self-handle or third party groundhandle and decide to locate a facility on or off the airport.

Therefore these are all decisions that users not ART take. ART’s only role is to provide the core airport facilities which facilitate these decisions for cargo and to strive to do so in a timely and cost-effective fashion and to a safe and reliable quality.

8. ***“the cost competitiveness and operational efficiency of airport services at the airport with respect to international practice”***⁸

The IAIEC has noted that although they may be available to the Commission no benchmarking results were provided in the draft Determination for cargo. It is self-evident that the members of the IAIEC could facilitate such an exercise and that its conclusions would be helpful. However, without a detailed breakdown of the factors and criteria used by the Commission in their benchmarking exercise it would be of very limited value to the process.

9. ***“imposing the minimum restrictions on the airport authority consistent with the functions of the Commission”***⁹

The IAIEC cordially submit that in the draft Determination the Commission has given far more weight to this factor that either the legislation itself obliges it to or the reality of what users require objectively justifies for airport charges to be effectively regulated based upon the evidence of ART’s actions at the airports and the submissions of users to the Commission.

10. ***“such national and international obligations as are relevant to its functions”***¹⁰

It strikes the IAIEC that amongst the most important international obligations the Commission has is, as the first independent regulator of airport charges (and of the groundhandling Directive) in Europe, that it demonstrates how such regulation can effectively work for airport users by being truly independent of airport managers and effective in delivering better, more cost-effective airports.

⁶ Section 33(f)

⁷ Section 33(g)

⁸ Section 33(h)

⁹ Section 33(i)

¹⁰ Section 33(j)