

## **ACI EUROPE submission to the Irish Aviation Authority regarding the Draft Decision on Ryanair complaint on Airport Charges at Dublin Airport**

ACI EUROPE is the trade association of the European airport industry. Our members operate 500 airports in 55 countries. ACI EUROPE is submitting this response to the Irish Aviation Authority's *Draft Decision on Ryanair complaint on Airport Charges at Dublin Airport* to provide information based on ACI EUROPE's work with airports, authorities and governments across Europe.

We thank the Irish Aviation Authority for seeking industry views, and look forward to engaging in this process, as it relates to appeals regarding annual setting of airport charges under Irish legislation and the EU's Airport Charges Directive.

In the first section, ACI EUROPE addresses the relevance of modulations of airport charges based on aircraft CO<sub>2</sub> emissions. In the second section, ACI EUROPE addresses the contradiction that the IAA Draft Decision in theory allows for differentiations that are not based on cost drivers, but then rejects such proposals in the final analysis for lacking transparent information about the cost driver, turning transparency into a cost-relatedness standard.

### **1. Enabling airport action on reducing contribution of climate change**

ACI EUROPE reads that the IAA has rejected Dublin Airport's proposed Low Emissions Aircraft Discount (LEAD) by upholding Ryanair's complaint about the transparency, relevance and objectivity of the discount. The Draft Decision challenges the justifications, citing from a paper of the Forum of EU Airport Charges Regulators, known as the Thessaloniki Forum. The Irish authority was a rapporteur for this paper.

#### **a. *Modulations of airport charges based on aircraft emissions are objective and proportionate***

ACI EUROPE recognises that aircraft CO<sub>2</sub> emissions, with current aircraft technologies, do not have direct short-term cost impacts on the airport. However, as stated in ACI EUROPE's position paper on the environmental modulation of airport charges<sup>1</sup>, it is essential that airports are allowed to use their pricing to nudge consumer behaviour. By using pricing structures to align aeronautical revenue with more environmentally-sustainable behaviour by users, this can have indirect cost impacts, for example through opening up access to green financing. Indeed, this is the aim of the [EU's taxonomy for sustainable activities](#) and the disclosure obligations.

The IAA's Draft Decision reveals a strong scepticism of the effectiveness and purpose of modulating or differentiating airport charges based on the CO<sub>2</sub> emissions

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<sup>1</sup> <https://www.aci-europe.org/downloads/resources/ACI%20EUROPE%20Paper%20on%20Environmental%20Modulations%20of%20Charges.pdf>.

performance of airline's flight operations to and from an airport. The Draft Decision cites the Thessaloniki Forum's paper on Airport Charges and Environmental Considerations (2023) that questions the effectiveness and the economic efficiency of the price signal produced. The Draft Decision gives credence in paragraph 5.6 to the legacy airline associations view that airports "*stay within the remit of their role as infrastructure and services providers*".<sup>2</sup> By accepting this argumentation, the regulator is failing to facilitate an airports' efforts to address its Scope 3 emissions, and in the process harming airports' strategic decarbonisation efforts.

The Draft Decision in paragraph 5.31 cites the Thessaloniki Forum paper on environment to say that airports charges are not the right tool to internalise aviation's external CO<sub>2</sub> costs, and in 5.32 states, "*Given that airport charges are, at least at the total airport level, cost related, it is also noted that modulations cannot properly internalise a global externality such as CO<sub>2</sub>, as they cannot change the total charges being paid by all airport users at the airport.*" The Draft Decision continues that "*it is necessary to consider the mechanisms already in place to internalise the externality, and to avoid double counting/undermining the global initiatives...*". This logic chain is valid from the airline perspective exclusively. But the assessment should focus on the consumer or the perspective of the regulated entity, and not take the airline perspective. It is irrelevant and incorrect to consider the level of invoices for each take-off and landing charges, and to claim that the modulation in any way double-counts or undermines global initiatives. Already there are significant variations in how each traffic movement faces regulatory costs, depending on the share of free allowances that the airline receives and the destination of the route. The differentiation of aircraft landing charges based on aircraft CO<sub>2</sub> emissions is not intended to internalise the CO<sub>2</sub> externality at all, it is meant to nudge aggregate behaviour.

#### ***b. Modulations of airport charges based on aircraft emissions are relevant***

Airport charge modulations based on aircraft emissions are relevant. This is clearly demonstrated by the implementation of CO<sub>2</sub> price adjustments by airports in Sweden, France and the United Kingdom. These airports have proposed, consulted and implemented modulations of airport charges based on aircraft CO<sub>2</sub> emissions, under the oversight or supervision of their economic regulators.

Additionally, it should be noted that the many airlines see such modulations as relevant. Indeed, the complaining airline is a proponent of environmental modulation of airport charges. In a June 2024 government committee hearing, Ryanair Group's CEO alleged that "*Ryanair was forced to move its 19 greener Gamechanger aircraft out of Dublin to other lower cost EU airports that incentivise growth.*"<sup>3</sup>

Airports compete not only economically but also on environmental factors. This is because airports, as fixed, immobile, long-run infrastructure have to ensure the environmental characteristics of the airport and of its users are adequate to allow the granting of operational and environmental permits long into the future. An airport will design a pricing scheme to attract the quietest and least-emitting aircraft that it can, because it allows for the possibility of long-term growth.

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<sup>2</sup> <https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-sheet--aviation-charges-fees-taxes/>

<sup>3</sup> [Committee on Transport and Communications – 33rd Dáil, 26th Seanad – Houses of the Oireachtas](#)

**c. The effectiveness of such modulations can only be known over time**

The Draft Decision cites IATA's opposition and views that CO<sub>2</sub> modulations are ineffective. In paragraph 5.30, the Draft Decision states that "*it is not aware of any evidence to suggest that such airport charge modulation schemes are an effective or proportionate mechanism to address CO<sub>2</sub> emissions from aviation.*" This standard is a Catch-22. Any novel pricing aspect will be unknown in its impact until it is allowed to be tried. Evidence of the effectiveness can only be collected if the modulation is allowed to be introduced. However there are indications from other environmental modulations that they can support and accompany emissions reductions.

ACI EUROPE has at meetings of the Thessaloniki Forum stated its views that CO<sub>2</sub> modulations can be effective to accelerate marginal fleet replacement. Empirical data presented from the introduction of charges based on aircraft emissions of hydrocarbon and NO<sub>x</sub> demonstrate that such landing charges modifications can help enable industry change.<sup>4</sup> Zurich Airport increased the movements of aircraft with least emitting engines from 60% (1997) to 85% (2009) with its charge.

**d. Sustainability strategies for airports benefit from pricing flexibilities**

In December 2023, the *Airport Carbon Accreditation* programme established a Level 5, setting high standards for airports to significantly reduce their absolute carbon emissions. Airports at this level must collaborate with their entire ecosystem, including employees, suppliers, business partners, and airlines. To achieve this level of accreditation an airport must submit a verified carbon footprint for Scope 1 and 2 emissions and all relevant categories of Scope 3 emissions as per requirements of the GHG Protocol Scope 3 Guidance, it must reach and maintain ≥ 90% absolute CO<sub>2</sub> emissions reductions in Scope 1 and 2, and commit to Net Zero in Scope 3 by 2050.

Importantly, the airport must develop a Stakeholder Partnership Plan to achieve Net Zero for Scope 3 emissions by engaging with the value chain and actively drive third parties at the airport towards delivering emissions reductions themselves with regular milestones in line with their sectors Net Zero frameworks and commitments.

In this final step, the possibility for airports to modulate or differentiate airport charges based on aircraft CO<sub>2</sub> emissions performance is important.

Beyond industry-led accreditation schemes, investors and financial lenders are now asking airports to provide evidence of alignment of their revenue structure and operations with sustainability taxonomies,<sup>5</sup> such as the EU's taxonomy for sustainable activities, which themselves support the use of pricing that integrates environmental efficiency aspects.

**The IAA should clarify that it is not establishing a position in Ireland nor via the Thessaloniki Forum which de facto prohibits charges differentiations based on CO<sub>2</sub> emissions performance of airport users.**

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<sup>4</sup> <https://www.aci-europe.org/downloads/resources/ACI%20EUROPE%20Paper%20on%20Environmental%20Modulations%20of%20Charges.pdf>.

<sup>5</sup> Global Airport Development Conference (GAD WORLD), 2023, Barcelona.

## 2. Reinforce the commercial role of the airport

The Draft Decision relies heavily on Regulation 11, itself which is very close to the EU Airport Charges Directive Article 10. The Draft Decision cites Regulation 11 for compliance of the charge differentiation 15 times in the Draft Decision, exclusively based on paragraph 2(a). It ignores paragraph 2(b) establishing that Dublin Airport Authority may set any such differentiated charges.

*S.I. No. 116/2011 - European Communities (Dublin Airport Charges) Regulations 2011.*

*Differentiation of services*

11. (1) Dublin Airport Authority may vary the quality and scope of particular airport services, terminals or parts of terminals, with the aim of providing tailored services or a dedicated terminal or part of a terminal.

(2)(a) The level of charges may be differentiated according to the quality and scope of such services and their costs or any other objective and transparent justification.

(b) Without prejudice to subparagraphs (c) and (d) of Regulation 6(1), Dublin Airport Authority may set any such differentiated charges.

### ***a. Objective and Transparent justifications do not have to be based on information about cost drivers***

The Draft Decision goes in the direction of defining Transparency as providing cost-related information. This definition is not line with the EU Airport Charges Directive, where transparency is about information provided at aggregated levels and enough information for an airline to have a clear understanding of the charge and/or the differentiation and its impact on the total charges invoiced.

The Draft Decision has defined “transparency” alternatively as:

- For transfer passenger discount, Transparency is “*providing detail or analysis on the extent of the variation in the costs of servicing*” (3.23)
- For the two-band runway charge, the Draft Decision defines Transparency being adequate when the airport “*provides[s] detail on the underlying cost differential*” (4.13). This is reinforced by the claim there is a “*lack [of] an Objective basis*” (4.16), which itself is later defined as a justification for the 50% discount for the magnitude of the discount for heavy aircraft (4.25). Read together, this means that because no cost assessment has been provided, the cost differential is not objective, and because it is not objective, it is not Transparent. Again, at the root, the Draft Decision defines Transparency as providing a cost-assessment or cost-differential.
- For the Low-Aircraft Emission charge, transparency is based on the view that there must be “*an explanation for the discount coefficient being set at 12.5%.*” (5.18)
- Fourthly, for the NOx charge, the “*absence of an explanation/information on the unit charge of €0.25*” (6.7) is a challenge to the Transparency standard. Once again, Transparency is defined in relation to a cost assessment.

The root in all the definitions above is to define transparency by the cost-basis of servicing varying airline needs. There are three primary problems with the view that any price differentiation must have a calculable cost-driver at its root.

Firstly, from the practical perspective, identifying individual marginal costs of services demanded by each airline, based on the costs imposed on the airport infrastructure by the airlines is not feasible. The individual cost of service is undiscoverable, within the total average cost of building, maintaining and operating an airport.

Secondly, such a definition of “*objective and transparent*” eliminates any meaning from the second part of the “OR” statement of Regulations 11(2)(a) which differentiates between cost and quality “OR” differentiations based on any other objective and transparent justification. If the only acceptable “objective and transparent” justification to the IAA is one based on a cost assessment and entailed about the underlying cost-differential, then both sides of the “OR” statement in Regulations 1(2)(a) are identical, and thus the second one is meaningless. Clearly, the second statement was included by the legislature because it is meant to have meaning.

Thirdly, there are strong economic justifications for pricing to diverge from a pure cost-built up approach. The paper by Frontier Economics “*Price Differentiation in the Context of Airports*” provides theoretical and empirical evidence.<sup>6</sup> Importantly, the paper explains why third-degree price discrimination, with different customer segments paying different prices, is economically beneficial for all customers. Additionally, the Thessaloniki Forum itself recognises alternative pricing methods. Transparency could equally apply to the methodology for setting the costs, as stated in the “*Thessaloniki Forum of Airport Charges Regulators January 2021 Airport Till Structure and Cost Allocation*” paper paragraph 4.10 where Ramsey pricing is proposed as a cost allocation approach. If Ramsey Pricing is acceptable to the Thessaloniki Forum for cost allocation, it would be appropriate as well for price setting.

The economic considerations for long-term infrastructure with only a small number of potential growth clients also are important. Airports face a business challenge around ensuring a balanced network through their charging framework. The pricing will not suit the interests of each individual carrier. For Dublin Airport, this is compounded by the single till price control framework and regulatory oversight, which constrains its aeronautical business. It is economically justifiable for prices to diverge from the pure cost base, when it allows an airport to diversify its customer base and network and through that action mitigate counter-party risk.

The need for economic pricing and not pure accounting-based pricing is demanded also by airlines. In its submission in June 2024 to the European Commission’s call for evidence in the EU airport legislation fitness check, Ryanair highlights the need for the usage of pricing concepts of “*what the market can bear*” as used in the EU’s Single Railways Area Directive.

The points above call for the Draft Decision to be reversed, and the commercial discretion regarding design of differentiations protected for the airport operator, without time-consuming and expensive internal or external cost assessments.

**Economic regulators should ensure that the commercial responsibility and accountability remains with the airport manager, who is best placed to manage competing demands upon the airport.**

### **3. Regulation at its core is about consumer protection, not intervening between various airline interest**

European countries, following the European principles of subsidiarity and proportionality, have implemented a variety of legal frameworks for the setting of airport charges. The EU legislative framework states the preference for airport charges is for commercial agreement, and regulatory intervention only if there is a disagreement (Article 6(2)): “2. *Member States shall ensure that, wherever possible, changes to the system or the level of airport charges are made in agreement between the airport managing body and the airport users.*”

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<sup>6</sup> [https://www.aci-europe.org/downloads/resources/Frontier%20Economics Price%20Differentiation%20for%20Airports 2020.pdf](https://www.aci-europe.org/downloads/resources/Frontier%20Economics%20Price%20Differentiation%20for%20Airports%202020.pdf)

The large majority of countries – with the exception of selected airports in Italy, France and the United Kingdom – provide commercial discretion for the airport to devise the structure of charges, to suit the respective needs of the airport and its strategic objectives as well as national aviation policies. The Draft Decision would make Dublin Airport the outlier in facing a burden of proof for a detailed and full justification, based on cost drivers or cost assessments, for any discount to be transparent, relevant and objective.

ACI EUROPE calls on the Irish Aviation Authority to take the steps needed to facilitate, and not hinder, the airport's decarbonisation efforts, to reinforce the commercial grounds of the airport operator based on provide reasonable standards aligned with economic and business reality for pricing of airport services.



## ANNEX

“Thessaloniki Forum of Airport Charges Regulators January 2021 Airport Till Structure and Cost Allocation” paper.

### *Market Based Approach*

*4.10 In a market based approach, the allocation of common cost is basically determined by which buyers can bear the most costs. In a Ramsey pricing approach, common costs are inversely proportionally allocated in line with the price elasticity of demand, under the precondition that the total sum of charges is cost oriented. In this way, a given level of fixed costs is covered in the most efficient way. This can be explained as follows. If there are two groups of buyers with a different price elasticity of demand, the total demand of the buyers will decrease less when the cost are allocated to the group of buyers with the lowest price elasticity as opposed to when the costs are allocated to the group of buyers with the higher price elasticity.*

*4.11 The existence of economies of scope due the combined production of both aeronautical and non-aeronautical activities implies that both activities would be more expensive if they were produced on a standalone basis. This insight can be used to apply a commercial negotiation principle as a basis for cost allocation. Cost allocation would then be based on the result of a hypothetical commercial negotiation between two parties on a competitive market, that both know that they would be worse off if they were to produce their products standalone instead of together. This approach can be used as a sanity check for a Ramsey pricing method.*