



Draft Decision
on
Ryanair complaint
on Airport Charges at Dublin Airport

28 May 2024

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1. Executive Summary

- 1.1 The IAA is the Independent Supervisory Authority (ISA) in Ireland for the purposes of the Airport Charges Directive (the “ACD”), which has been transposed into Irish law by the European Communities (Dublin Airport Charges) Regulations of 2011 (the “2011 Regulations”).¹ The ACD establishes a common framework for regulating the essential features of airport charges, and the way they are set, at each community airport which has more than 5 million annual passengers and/or is the largest airport in a Member State. The ACD requires, in particular, that airport charges do not discriminate among airport users, and are set through a transparent and consultative process which is overseen by the ISA.
- 1.2 In September 2023, daa plc, the operator of Dublin Airport, set out its proposed menu of airport charges for March 2024 to March 2025 in a consultation document distributed to airport users. Following the conclusion of the consultation process, on 15 December 2023, we received a formal complaint from Ryanair alleging that Dublin Airport had not fully complied with its obligations under the 2011 Regulations in setting the revised airport charges.²
- 1.3 Ryanair’s complaints can be grouped into six categories as follows:
- a) The overall charge increases, whereby Dublin Airport has increased airport charges to maximise its revenues subject to the overall limitation of the price caps set by the IAA in December 2022.
 - b) Dublin Airport’s Capital Investment (Capex) plans.
 - c) Differentiation of the passenger charges between transfer and point-to-point passengers.
 - d) The structure of the runway movement charges.
 - e) The Low Emissions Aircraft Discount (LEAD).
 - f) The Nitrogen Oxide (NOx) charges.
- 1.4 Complaints a) and b) above relate to the 2019 Determination on the maximum level of airport charges, as amended in December 2022, which amendment was not appealed by Ryanair. The overall maximum level of average airport charges per passenger at Dublin Airport is set by the IAA, separately from the annual consultation process. Complaints a) and b) are therefore not relevant to the annual consultation process.
- 1.5 However, on the four specific charges in respect of which Ryanair has complained, our Draft Decision is that there is merit in the complaint, to varying degrees as outlined below. We agree with Ryanair that further assessment/work in relation to these charging modulations/differentiations is

¹ [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0012 S.I. No. 116/2011 - European Communities \(Dublin Airport Charges\) Regulations 2011. \(irishstatutebook.ie\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0012_S.I. No. 116/2011 - European Communities (Dublin Airport Charges) Regulations 2011. (irishstatutebook.ie))

² As per convention, we use the term ‘Dublin Airport’ to refer to the regulated entity within daa plc.

required, if the airport charges at Dublin Airport are to meet the standards of Transparency, Objectivity and Relevance set out by the ACD, so as to demonstrate non-discrimination.

- 1.6 Our Draft Decision is, therefore, that the airport charges should be reviewed by Dublin Airport in order to achieve compliance with the standards set out by the 2011 Regulations, in a timely manner. To balance this with allowing sufficient time for the charges to be reconsidered and consulted with airport users, our Draft Decision is that re-assessed charges should take effect in time for the Winter 2024-2025 season, i.e. from 27 October 2024.
- 1.7 We invite responses to this Draft Decision no later than 5pm, Tuesday 18 June 2024. Responses should be sent by email to consultation@iaa.ie.³

³ We may correspond with those who make submissions, seeking clarification or explanation of their submissions. Ordinarily, we place all submissions received on our website. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided. We do not ordinarily edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.

2. Introduction

- 2.1 This section sets out a summary of:
- (a) The key legislation relevant to this decision.
 - (b) The factual background to Dublin Airport's 2024-2025 charges and timeline of events leading to Ryanair's complaint.
 - (c) The basis for Ryanair's complaint.
 - (d) The IAA's approach to the investigation.
- 2.2 Sections 3, 4, 5, and 6 summarise the charges that are contested by Ryanair, and provide our draft assessment of whether Dublin Airport has met its obligations under the 2011 Regulations in setting the charges:
- (a) Section 3 covers the passenger charges differentiation/modulation.
 - (b) Section 4 addresses the two-banded runway movement charges.
 - (c) Section 5 assesses the Low Emissions Aircraft Discount (LEAD) scheme.
 - (d) Section 6 addresses the Nitrogen Oxide (NOx) charge on aircraft movements.
- 2.3 Finally, section 7 concludes the draft assessment, outlines the remedy options available to the IAA and ultimately sets out our Draft Decision in this case.

The ACD and the 2011 Regulations

- 2.4 The 2011 Regulations transpose the ACD into Irish law. The objective of the ACD is to establish a framework with common principles for the levying of airport charges at EU airports with an annual passenger throughput of over 5 million passengers. In Ireland, the 2011 Regulations apply to Dublin Airport only. Articles of the ACD with particular relevance to this decision include those addressing Non-discrimination (Article 3), Consultation and remedy (Article 6), Transparency (Article 7) and Differentiation of services (Article 10).
- 2.5 Article 3 of the ACD states that airport charges must not discriminate among airport users, but that this does not prevent the modulation of airport charges for issues of general and public interest. The criteria used for any such modulation must be Relevant, Objective and Transparent.
- 2.6 Regulation 6 (1)(c) of the 2011 Regulations thus states that Dublin Airport "*shall be non-discriminatory as among airlines*". Regulation 6(1)(d) states that Dublin Airport "*shall, where it modulates charges for issues of public and general interest (including environmental issues), do so using Relevant, Objective and Transparent criteria*". Regulation 10 sets out the process for Dublin Airport to follow when modifying charges, including giving reasons for decisions on areas of disagreement, after taking account of the views of airlines.

- 2.7 Article 6 of the ACD mandates an annual consultation process between the airport managing bodies and airport users. The article sets out that where the airport managing body intends to make changes to the system or the level of airport charges, it must submit a proposal to the airport users, together with the reasons for the proposed changes, no later than four months before they enter into force, unless there are exceptional circumstances (which need to be justified to airport users). The airport managing body must hold consultations on the proposed changes with the airport users and take their views into account before a decision is taken.
- 2.8 Regulation 9 of the 2011 Regulations thus requires Dublin Airport to consult at least once a year with airlines on:
- a) The operation of the system of charges.
 - b) The level of charges.
 - c) The quality of service provided.
- 2.9 Article 7 of the ACD mandates the exchange of information between airport managing bodies and airport users in advance of any consultation regarding airport charges (as per Article 6(1)). This is reflected in Article 6(1)(b) of the 2011 Regulations, where Dublin Airport is required to *“provide each airline with information on the components serving as a basis for determining the system or the level of all charges”*.
- 2.10 Regulation 6(2) requires that, at a minimum, the following would be included:
- a) A list of the various services and infrastructure provided in return for the airport charges.
 - b) The methodology used for setting airport charges.
 - c) The overall cost structure with regard to the facilities and services which airport charges relate to.
 - d) The revenue of the different charges and the total cost of the services covered by them.
 - e) Any financing from public authorities of the facilities and services which airport charges relate to.
 - f) Forecasts of the situation at the airport as regards the charges, traffic growth and proposed investments.
 - g) The actual use of airport infrastructure and equipment over a given period.
 - h) The predicted outcome of any major proposed investments in terms of their effects on airport capacity.
- 2.11 As per Regulation 7(1), airlines should submit:

- a) Traffic forecasts.
 - b) Forecasts as to the composition and envisaged use of their fleet.
 - c) Their “*development projects*” at the airport concerned.
 - d) Their requirements at the airport concerned.
- 2.12 Article 10 of the ACD allows the airport operator to vary the quality and scope of particular airport services. The level of airport charges may be differentiated to reflect this difference in quality and scope of such services and their costs, or any other Objective and Transparent justification. With due regard to Article 3, airport managing bodies shall remain free to set any such differentiated airport charges. Regulation 11 of the 2011 Regulations consequently provides for the differentiation of charges at Dublin Airport provided that, in particular, such differentiation is based on a Transparent and Objective justification(s).

Aviation Regulation Act, 2001

- 2.13 Under Section 45B of the 2001 Aviation Regulation Act, as amended, (the “*2001 Act*”), the IAA, in its role as the ISA, can issue a directive in writing to daa if the IAA is of the opinion that it has failed to comply with Regulation 6, 9, 10 or 11 of the Regulations of 2011 as set out above. We may issue such a direction either on our own initiative, or following a complaint.

- 2.14 Article 45B (2) provides as follows:

“The direction shall—

- a) state that the {IAA} is of the opinion that daa has failed to comply with Regulation 6, 9, 10 or 11 of the Regulations of 2011 and state the reason for that opinion,*
 - b) specify the steps or measures to be taken by daa to remedy the failure concerned,*
 - c) specify a period (ending not earlier than the end of the period within which an appeal may be made under subsection (7)) within which those steps or measures shall be taken,*
 - d) include information regarding the making of an appeal under subsection (7), and*
 - e) state that a failure to comply with the direction is an offence under subsection (12).”*
- 2.15 Under Section 45B(12), where daa fails to comply with such a direction, it is deemed to commit an offence and is liable:
- a) on summary conviction, to a class A fine,
 - b) on conviction on indictment, to a fine not exceeding €150,000.

Factual Background and Timeline

- 2.16 The consultation process specifically for Dublin Airport's 2024-2025 airport charges began in September 2023. On 26 September 2023, Dublin Airport issued a consultation document which outlined the proposed airport charges for March 2024 to March 2025. As usual, the menu of airport charges was proposed with reference to complying with the overall maximum permitted level of airport charges per passenger set by the IAA, as per the 2019 Determination, as amended, on 23rd December 2022.⁴
- 2.17 Ryanair wrote to Dublin Airport on 6 October 2023, criticising both the proposed increases to airport charges, and what Ryanair alleged to be inadequate and unclear consultation documents. Dublin Airport responded to Ryanair on 11 October 2023, stating that the aeronautical charges set by the airport have always followed the movement in annual price caps and that it had provided "*extensive consultation materials to support the airport charges process*".
- 2.18 On 12 October 2023, Dublin Airport held a consultation meeting on the proposed airport charges. The meeting was attended by representatives of ten airport users, including representatives from the International Air Transport Association (IATA). As usual, the IAA attended as an observer. Later that week, Dublin Airport issued the minutes of the meeting and provided responses to any outstanding clarification questions.
- 2.19 Dublin Airport set the deadline for submissions in response to the consultation document as 27 October 2023. Seven submissions from airport users were received. In its response, Ryanair reiterated the points made in the earlier letter and highlighted its concerns around the cost-relatedness of many aspects of the Dublin Airport proposals, and the manner in which Dublin Airport conducted the consultation process.
- 2.20 On 24 November 2023, Dublin Airport issued its decision paper on airport charges for 2024 ("*Dublin Airport's Decision Paper*"), thus completing the consultation process. Ryanair subsequently wrote to Dublin Airport on 4 December, alleging that its letters of 6 October and 27 October were unanswered by Dublin Airport, and that many of the consultation comments and questions were excluded from Dublin Airport's "*Summary of Consultation Responses*" in Dublin Airports Decision Paper.⁵ On 15 December 2023, Ryanair formally submitted a complaint to the IAA against Dublin Airport's 2024 airport charges and consultation process, and requested that the IAA "*issue a suitable direction*" to Dublin Airport pursuant to section 45B(2) of The 2001 Act.
- 2.21 The IAA wrote to Dublin Airport on 20 December 2023, requesting information to assist in the investigation of Ryanair's complaint. We sought Dublin Airport's 2023 and 2024 actual or budgeted costs and revenues along with any additional modelling or analysis that Dublin Airport may have conducted in respect of cost relatedness of the individual charges, or any other Objective justification for the

⁴ [final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf \(iaa.ie\)](#)

⁵ Responding to Ryanair's letter on 04 December, Dublin Airport included a copy of the reply issued to Ryanair's initial letter on 11 October 2023.

charging modulations/differentiations other than cost relatedness. Dublin Airport responded to this request on 17 January 2024. It further stated that it considered the Ryanair complaint to be frivolous and unsubstantiated.

Ryanair's Complaint

2.22 Ryanair's complaint contains various criticisms and allegations. In our view, the complaint can be divided into six categories as follows:

- a) The overall charge increases, whereby Dublin Airport has increased airport charges to maximise its revenues subject to the overall limitation of the price caps set by the IAA in December 2022.
- b) Dublin Airport's Capex plans.
- c) Differentiation of the passenger charges between transfer and point-to-point passengers.
- d) The structure of the runway movement charges.
- e) The Low Emissions Aircraft Discount (LEAD).
- f) The Nitrogen Oxide (NOx) charges.

2.23 We note that the alleged lack of transparency on Capex, and criticism of the overall increase in the level of airport charges, are criticisms of the 2019 Determination on the maximum level of airport charges, as amended in December 2022. This decision on the overall price cap, including the recovery of capital costs, was not appealed by Ryanair. Dublin Airport is entitled to set airport charges so as to maximise its overall level of revenue, provided that it complies with the annual price cap. The overall level of charges per passenger is not determined through the annual consultation process, but rather through the multiannual process under national law where the maximum level of airport charges is set by the IAA.

2.24 The focus of the annual consultation is therefore on the individual tariffs and whether any differentiation or modulation has been justified as non-discriminatory in the manner required by the 2011 Regulations, rather than the overall level of airport charges per passenger which the charges will generate. Consequently, the complaints which are relevant in principle are those which relate to the transfer passenger charge, the runway movement charge (RWMC), the Low Emissions Aircraft Discount (LEAD) scheme, and the Nitrogen Oxide (NOx) charge.

2.25 Ryanair says that Dublin Airport has provided insufficient Transparency to demonstrate the cost differential between transfer and non-transfer passengers which justifies the differentiated charges. Ryanair alleges that the charge is discriminatory against point-to-point airlines, who are cross-subsidising transfer passengers.

2.26 Dublin Airport's Runway Movement Charge (RWMC) is based on an aircraft's Maximum Take Off Weight (MTOW) where a lower rate per tonne applies above

136 tonnes. Ryanair claims that the charging differentiation is discriminatory in favour of larger aircraft, with a lack of Transparency shown by Dublin Airport to explain why larger aircraft are charged less per tonne.

- 2.27 Ryanair argues that the parameters and aircraft banding components of the LEAD scheme were not explained, and that the MTOW parameter is not a relevant factor on which to modulate charges as it is irrelevant to CO₂ emissions. The airline also claims that Dublin Airport did not meaningfully engage with Ryanair's alternative proposals submitted during the consultation process.
- 2.28 Finally, Ryanair disputes the NOx charge. The airline argues that in the absence of any evidence of a NOx problem at Dublin Airport, there is no basis for this charge. Ryanair claims that a NOx charge would deter environmentally friendly aircraft from Dublin Airport, given trade-offs with other pollutants.
- 2.29 Below, we consider if the four charging modulations/differentiations outlined above meet the standards of Transparency, Objectivity and Relevance as required under the ACD. In addition to the legislation, we have also reviewed the papers of the Thessaloniki Forum of European airport charges regulators, of which the IAA is a member.

Thessaloniki Forum

- 2.30 The Thessaloniki Forum is made up of the Independent Supervisory Authority (ISA) for the ACD in each member state. The forum provides guidance papers and advice intended to assist ISAs and industry stakeholders in meeting the requirements of the ACD through, where applicable, a harmonised interpretative approach, and/or to promote best practices in the economic regulation of airports.⁶
- 2.31 Given the content of Ryanair's complaint, the papers of particular relevance are:
- a) The 2016 Thessaloniki Forum Recommendations on Consultation and Transparency ("*TF Transparency*").⁷
 - b) The 2018 Thessaloniki Forum 'Non-Discrimination under the Airport Charges Directive' paper ("*TF Non-Discrimination*").⁸
 - c) The 2023 Thessaloniki Forum paper on Airport charges and environmental variations ("*TF Environment*"), which updated and supplemented a 2021 paper on the same topic.⁹
- 2.32 *TF Transparency* interprets and explains the consultation and Transparency requirements of the ACD. Paragraph 24 sets out the recommended level of

⁶ [Thessaloniki Forum](#)

⁷ [2016 Thessaloniki Forum Recommendations on Consultation and Transparency](#)

⁸ [2018 Thessaloniki Forum Non-Discrimination under the Airport Charges Directive](#)

⁹ [2023 Thessaloniki Forum paper on Airport charges and environmental variations](#)

Transparency from airports in the consultation process, most notably:

“The level of detail should be sufficient to allow airport users to analyse how charges are derived, assess whether they are based on costs and how they take account of the infrastructure and the quality of service required by airport users. The degree of transparency should be proportionate to the market power of the airport and the significance of any changes proposed.”

2.33 *TF Non-Discrimination* defines discrimination as “the application of dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage. To demonstrate non-discrimination, all elements of a charging strategy must be justifiable in accordance with the ACD. An unjustifiable lack of variation in a charging strategy may also be discriminatory.” The paper offers the following interpretations of the key ACD principles of Relevance, Objectivity, and Transparency:

- a) To be Relevant, “the factors set out are applicable to the circumstances in question. They are factors that should be rightly taken into consideration in justifying varied charges”.
- b) To be Objective, “the relevant factors have been assessed in a fair, balanced and repeatable way”.
- c) To be Transparent, “the reasons and analysis underlying the charging strategy and the level of charges are clear to all so that users can establish if there is a justifiable complaint”.

2.34 *TF Non-Discrimination* outlines that justifications for charging modulation/differentiation may be based on “issues of public or general interest (Article 3), a common charging system in certain circumstances (Articles 4 and 5), and differentiation according to the cost, quality, or scope of airport services provided (Article 10).” The role of the ISA is in assessing the validity of these justifications where doubt might arise.

2.35 While the broader subject of *TF Environment* is considered further in sections 5 and 6 below, the Forum recommends that airport operators consider the following when designing an environmental modulation:

- (a) Choose a tariff driver that is directly related to the level of pollution.
- (b) Avoid percentage coefficients to modulate existing charges.
- (c) The magnitude of the modulation should reflect the shadow value of the externality, providing a correct and objectively justifiable price signal. It should take into account external costs that airlines already pay through other measures.
- (d) Consider using the ratio of pollution level per passenger/cargo capacity of an aircraft as the tariff driver.
- (e) Use recognised standards to estimate the level of pollution of an aircraft on an objective basis. This should be supported by an

assessment of the likelihood of the modulation achieving its objective.

- (f) The price signal used for CO₂ modulations should be harmonized at the European or ideally global level.
- (g) Finally, the Forum recommends that environmental modulations may be better suited to reduce local external costs such as noise and NO_x. CO₂ related modulations present a risk of “*carbon leakage*” and should only be considered when the cost of CO₂ emissions is not yet fully internalized through other measures.

3. Passenger Charges

- 3.1 The passenger service charge (“PSC”) is levied on departing passengers, with a different charge for the different types of parking stands, and for transfer passengers. In Dublin Airport’s September 2023 consultation document, the transfer passenger charge (“TPC”) proposed was €2.65 for Summer 2024 and €2.10 for Winter 2024/2025. The proposed charges for departing passengers from a contact stand were €13.05 (summer) and €9.30 (winter), resulting in 80% and 77% transfer passenger discounts respectively.
- 3.2 As noted above, Ryanair responded to the consultation document via two submissions to Dublin Airport, raising concerns over the discount afforded to transfer passengers. In the first response (6 October 2023) Ryanair asked Dublin Airport to explain why “*transfer passengers receive such a heavily discounted charge versus all other passengers*”. Dublin Airport, in its reply, referred to consistent increases to the TPC, stating that in 2024, the TPC would be 33% higher compared to 2019.¹⁰ Dublin Airport gave three reasons why airports offer discounts to transfer passengers:
- a) a return transfer passenger will pay four sets of airport charges.
 - b) many transfer passengers do not enter the main terminal facilities and remain airside in a pier environment.
 - c) many capital city airports have a national strategic objective to develop as an inter-continental hub, which requires competing with other airports for transfer passengers.
- 3.3 Ryanair sent a second submission to Dublin Airport on 27 October 2023. As part of the submission, Ryanair provided analysis to illustrate its position that Dublin Airport’s transfer passenger discount is “*among the highest in any European airport*”. Ryanair called on Dublin Airport to increase the TPC and reduce the other passenger charges correspondingly.
- 3.4 Based on Dublin Airport’s Decision Paper, we understand that other airport users were concerned that the proposed increase to the transfer passenger charge was not “*proportional*” as transfer passengers require less services and infrastructure compared to passengers originating at Dublin. The same users raised concerns over the impact the increase would have on the strategy to develop Dublin Airport as a hub, as outlined in Ireland’s National Aviation Policy (NAP).¹¹
- 3.5 Ultimately, Dublin Airport revised both the TPC and point-to-point passenger charges downwards for summer 2024. The TPC was reduced to €2.60 for the summer season and maintained at €2.10 for winter. The charge for passengers departing from a contact stand was reduced to €12.90 in summer and €9.20 in winter, maintaining a summer and winter transfer passenger discount of 80% and 77% respectively. Dublin Airport said that it refuted Ryanair’s claim that the

¹⁰ We note that the S24 TPC was proposed to be 33% higher than S19. The W24/25 TPC was proposed to be 5% higher.

¹¹ [National Aviation Policy](#)

charge differentiation allows airlines enjoying transfer passenger discounts to cross-subsidise routes where it competes with airlines who do not avail of the transfer passenger discount. Dublin Airport said that even a significant increase in the TPC would be immaterial, due to the relatively small number of transfer passengers compared to point-to-point passengers.

Ryanair's complaint on passenger charges

3.6 Ryanair's position is that the charging differentiation/modulation is in breach of:

- (a) Regulation 6(1)(b) of the 2011 Regulations, in that Dublin Airport has failed to provide sufficient information about the reasons behind the different treatment of transfer passengers.
- (b) Regulation 6(1)(c) of the 2011 Regulations, being discriminatory between airlines.
- (c) Regulation 6(1)(d) of the 2011 Regulations, in that to the extent that the modulation is alleged to be for an issue of public and general interest, Dublin Airport has not justified that using Relevant, Objective and Transparent criteria.

3.7 Ryanair further claims that an alleged "*deliberate decision to ignore Ryanair's questions and comments*" constitutes a breach of the Transparency requirements under the 2011 Regulations.

Transparency

3.8 In this subsection, we consider the question of Transparency in respect of the passenger charges differentiation/modulation. First, we consider the Transparency requirements of the 2011 Regulations, together with the guidelines from the Thessaloniki Forum. We then outline the material which Dublin Airport provided, before considering whether this was sufficient to meet the requirements.

Relevant legal provisions and guidelines

3.9 Under Regulation 6(1)(b) of the 2011 Regulations, Dublin Airport must consult with airlines as provided for by Regulation 9 and, as part of this consultation process, provide each airline with information on the components serving as a basis for determining the system or the level of all charges. Regulation 6(2) requires this to include, amongst other elements:

- a) A list of the various services and infrastructure provided by Dublin Airport Authority in return for the charges.
- b) The methodology used for setting charges.
- c) The overall cost structure with regard to the facilities and services which charges relate to.
- d) The revenue of the different charges and the total cost of the services

covered by them.

- 3.10 Regulation 6(1)(d) requires Dublin Airport, where it modulates charges for issues of public and general interest, to do so *“using Relevant, Objective, and Transparent criteria”*. Under Regulation 11(1) and 11(2)(a), Dublin Airport is entitled to vary the quality and scope of airport services or terminals to provide tailored services. Where differentiation of charges occurs, 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”*.
- 3.11 Regulation 10 provides that, where Dublin Airport wishes to modify the system or level of charges, it must take the views expressed by airlines into account. Where an airline does not agree to the decision ultimately arrived at, Dublin Airport *“shall give reasons for its decision”*.
- 3.12 As noted above, paragraph 24 of *TF Transparency* recommends that *“airports should provide historical and forecast data of airport charges... as well as a detailed explanation as to how the proposed charges are derived. The level of detail should be sufficient to allow airport users to analyse how charges are derived, assess whether they are based on costs and how they take account of the infrastructure and the quality of service required by airport users.”*¹²
- 3.13 While the ACD does not define Transparency, *TF Non-Discrimination* defines Transparency as *“The reasons and analysis underlying the charging strategy and the level of charges are clear to all so that users can establish if there is a justifiable complaint. The justification and criteria are made obvious and bear scrutiny in all elements, including any Terms and Conditions attached to elements of the strategy.”*¹³

Material provided to airport users

- 3.14 Dublin Airport set out the proposed passenger service charge for each departing passenger type in the consultation document of September 2023. The proposed charges were presented in a table alongside the equivalent 2023 charges. The year-on-year summary provided by Dublin Airport showed an across the board increase of 6% for each passenger charge in each season for 2024 compared to 2023.¹⁴ At that time, no other information or justification was provided.
- 3.15 In its first response, Ryanair wrote to Dublin Airport requesting:
- a) Detail on the justification for the proposed differentiated charges between transfer and point-to-point passengers.
 - b) An amendment to the proposal to increase the transfer passenger charge and correspondingly lower the passenger charge for other

¹² [2016 Thessaloniki Forum Recommendations on Consultation and Transparency](#)

¹³ [Incentives and Discounts \(iaa.ie\)](#)

¹⁴ We note that the increases varied from 5% (the transfer passenger charge for winter) to 6.35% (the point-to-point remote stand charge for winter).

passengers.

3.16 Dublin Airport responded to Ryanair's submission on 11 October 2023, offering three reasons why, in its view, a differential exists for transfer passengers:

- a) A return transfer passenger will pay four sets of airport charges.
- b) Many transfer passengers do not enter the main terminal facilities.
- c) Many capital city airports have a national strategic objective to develop as an inter-continental hub, which requires Dublin Airport to compete with other airports for transfer passengers.

3.17 Dublin Airport's response also mentioned that the transfer charge increased by 25% year-on-year in 2023.¹⁵

3.18 After the consultation meeting, on 19 October 2023, Dublin Airport issued written answers to questions that arose during the consultation meeting ("*Clarification Questions*"). In this document, Dublin Airport stated that transfer passengers require fewer processors than point-to-point passengers and should therefore pay a lower charge. Dublin Airport included a visual illustrating the facilities used by transfer passengers compared to point-to-point passengers. Dublin Airport stated that it did not believe a charge greater than €2.65 for transfer passengers was appropriate, although it did not provide any modelling results or quantitative analysis to support this conclusion.

3.19 After the consultation meeting and receipt of the response to the clarification questions, Ryanair, in its second submission, criticised Dublin Airport for an alleged failure to provide sufficient Transparency on the underlying cost differences between transfer passengers and non-transfer passengers. Ryanair asked Dublin Airport to:

- a) Provide further detail on the charging differential between transfer passengers and point-to-point passengers.
- b) Confirm when Dublin Airport last reviewed the underlying cost difference between transfer passengers and non-transfer passenger charges and revenues.
- c) Share any reports/studies by Dublin Airport (or commissioned by Dublin Airport) that examine the price/cost differential between transfer and non-transfer passengers.
- d) Increase the transfer passenger charge and reduce the passenger charges correspondingly.

3.20 Dublin Airport's Decision Paper of 24 November 2023 did not fully/directly address these questions or submissions raised by Ryanair. Dublin Airport revised downward the passenger service charges relative to the consultation proposal, such that the year-on-year increase would now range from 4% to

¹⁵ We note that this 25% increase relates to the summer season only, the winter charge for transfer passengers remained at €2.

5.26%, rather than 5% to 6.35%. It appears that this was to offset an increase in the passenger forecast, where Dublin Airport increased its passenger forecast to 33.6m, now in line with the IAA's forecast of December 2022. It does not appear that any other changes were made.

- 3.21 Following receipt of Ryanair's complaint on 15 December 2023, we asked Dublin Airport to provide us with any further material it had on modelling or analysis in respect of cost relatedness or any other justification for the planned 2024 charges. Dublin Airport noted in its response to us that the PSC is differentiated using the type of stand utilised by the passenger and included a table recording what facilities (terminal & stand) were used by contact, satellite, and remote passengers.

Whether the Transparency standard was met

- 3.22 Ryanair's complaints on Transparency of the passenger charge differentiation can be summarised as follows:

- Dublin Airport did not provide sufficient Transparency on how the transfer passenger discount has been calculated, in particular by not providing any cost detail or quantification of the cost differential between transfer and point-to-point passengers, where the justification for the differentiated charges was said to be cost relatedness. In addition, to the extent that the justification is also said to be related to a matter of public and general interest, this has not been shown in line with the 2011 Regulations.
- Dublin Airport did not respond to a number of Ryanair's questions and comments, thus not meeting its obligations to have regard to the views of airlines and, where agreement is not reached, to provide reasons for the decision ultimately made.

- 3.23 On the first point, we note that despite repeated requests from Ryanair to substantiate the cost-related differential with quantitative or other objective analysis, Dublin Airport did not do so. As set out above, the *TF Non-Discrimination* paper defines Transparency to mean that the reasons and analysis underlying the charging strategy and the level of charges are clear to all so that users can establish if there is a justifiable complaint. The *TF Transparency* paper further states that the level of detail should be sufficient to allow airport users to analyse how charges are derived and assess whether they are based on costs. In this case, cost-relatedness appears to be the primary justification for the charging differential. However, without providing detail or analysis on the extent of the variation in the costs of servicing transfer as opposed to point-to-point passengers, it is not possible for airport users to assess whether the charging differential is based on costs. Nor, as noted below, is it possible for them to assess whether the charges are Objectively differentiated/modulated, and to interrogate any associated analysis.

- 3.24 Similarly, we agree with Ryanair that Dublin Airport must give the reasons for its decisions on the issues on which there is disagreement. Where a submission is made seeking the rationale for an input assumption or proposing an

alternative or amended approach, and where Dublin Airport does not follow this proposal, it must provide a logically coherent rationale with reference to, and showing how its approach complies with, the 2011 Regulations. It is necessary to engage meaningfully with submissions made. Where relevant questions or submissions are not addressed at all, it is not possible to conclude that the airport operator has taken account of the associated airline views.

- 3.25 We conclude that the Transparency requirements have not been met in the manner required by Regulation 10, and Regulation 6 and/or Regulation 11.

Relevance

- 3.26 In the case of the passenger charges, we note that there does not appear to be a complaint on the relevance in principle of this differentiation/modulation.

Relevant legal provisions and guidelines

- 3.27 Regulation 6(1)(d) of the 2011 Regulations requires that Dublin Airport “*shall, where it modulates charges for issues of public and general interest (including environmental issues), do so using Relevant, Objective and Transparent criteria.*”
- 3.28 Dublin Airport is also entitled under Regulation 11(2) of the 2011 Regulations to set differentiated charges “*according to the quality and scope of such services and their costs or any other Objective and Transparent justification.*”
- 3.29 Paragraph 4.3 of *TF Non-Discrimination* states that “*a grounding in stated government policy is required in order to justify an element of a charging strategy on the grounds of public or general interest under Article 3. Beyond this, it is for individual ISAs to determine the allowed scope of Article 3 based justifications, such as whether a grounding in any government policy is sufficient or whether it must relate specifically to an element of government aviation policy.*”
- 3.30 As noted in section 2.37, while the ACD does not define what is meant by Relevance, *TF Non-Discrimination* interprets the term under the ACD as meaning that “*The factors set out are applicable to the circumstances in question. They are factors that should be rightly taken into consideration in justifying varied charges.*”

Dublin Airport’s justification

- 3.31 In the responses to the Clarification Questions, Dublin Airport highlighted the cost relatedness of the TPC, indicating that transfer passengers reduced use of airport services should be reflected in a reduced charge compared to point-to-point passengers. In the material shared following the consultation meeting, Dublin Airport also stated that there is a strategic policy obligation in relation to the transfer passenger charge, whereby the National Aviation Policy (NAP) for Ireland details aspirations to grow Dublin Airport as a hub.
- 3.32 The Relevance/justification for the transfer passenger charge therefore

appears to lie in:

- a) Cost relatedness.
- b) A strategic policy goal in the NAP.

Objectivity

3.33 In this subsection, we consider Ryanair's complaint on the passenger charges insofar as it relates to Objectivity.

Relevant legal provisions and Guidelines

- 3.34 Regulation 6(1)(b) of the 2011 Regulations requires Dublin Airport to "*consult with airlines as provided in Regulation 9 and, as part of such consultation process, provide each airline with information on the components serving as a basis for determining the system or the level of all charges.*" Regulation 6(1)(d) requires that where Dublin Airport modulates charges for "*issues of public and general interest (including environmental issues)*", it should "*do so using Relevant, Objective and Transparent criteria.*" Regulation 6(2) sets out the minimum information required by 6(1)(b).
- 3.35 Regulation 11(2) of the 2011 Regulations allows Dublin Airport to differentiate the charges according to "*the quality and scope of such services and their costs or any other Objective and Transparent justification*".
- 3.36 *TF Non-Discrimination* considers Objectivity to mean that "*The relevant factors have been assessed in a fair, balanced and repeatable way*". The paper also outlines that for a discount to be Objective it should be "*demonstrable that the magnitude of the discount is proportionate and that this has been assessed fairly and reasonably*".
- 3.37 It is therefore clear that whether the justification is said to be cost-related (or other) differentiation under Regulation 11, or public and general interest under Regulation 6, the charges must be differentiated/modulated Objectively.

Whether the Objectivity standard was met

- 3.38 To satisfy the Objectivity requirement, the relevant justification or justifications for the charges must therefore be assessed in a fair, balanced and repeatable way so as to demonstrate that the discount generated by the charging differentiation/modulation is proportionate.
- 3.39 For example, where the justification is cost-relatedness, the charging differential should be Objectively justifiable on the basis of an assessment of the cost differential. As noted above, in the absence of any Objective assessment of the cost differential, it is not possible for airport users (or the IAA) to assess whether it is Objective. The rationale provided in Dublin Airport's Decision Paper, in response to submissions, essentially says that:
- The impact of changing the transfer charge is relatively small. We note that this is a restatement of the complaint made by Ryanair and is

circular; if the relative level of the transfer charge were to be reduced further, then the impact of changing it would be lesser again.

- Passenger charges at Dublin Airport form a smaller share of total turnaround charges than most comparator airports, and therefore transfer charges as a proportion of total turnaround charges are broadly in line with comparator airports.

3.40 These are not Objective justifications for the levels of differentiated passenger charges set. As noted above, Dublin Airport appears to identify two different Relevant justifications, but does not provide any Objective assessment of how these drive the differential, how much weight is assigned to each justification, etc.

3.41 While the absence of Objective analysis means that it is not possible to fully assess Objectivity, we have reviewed the transfer passenger discount over the last number of seasons. If the differentiated charging structure was based on an Objective analysis, the discount should be stable over time where the Relevant justification(s) is stable (i.e. the concept of repeatability outlined by the Thessaloniki Forum). Table 3.1 below shows that it has not generally been consistent.

Table 3.1: Transfer passenger discount at Dublin Airport

Passenger type	Relative Transfer passenger discount											
	W18-19	S19	W19-20	S20	W20-21	S21	W21-22	S22	W22-23	S23	W23-24	S24
Contact	81%	84%	81%	80%	72%	80%	100%	81%	74%	80%	77%	80%
Remote	74%	79%	74%	62%	25%	62%	100%	62%	27%	58%	37%	58%
Satellite	80%	83%	80%	77%	68%	77%	100%	79%	70%	78%	74%	78%

Source: IAA calculations on Dublin Airport charges decisions

3.42 In conclusion, we note that the criteria for differentiation within the passenger charges has not been supported by an Objective analysis, as required by Regulation 6 and/or Regulation 11 of the 2011 Regulations.

4. Runway Charges

- 4.1 In the consultation document of September 2023, Dublin Airport proposed a two-banded runway movement charge (RWMC) for the 2024 summer and winter seasons. The charges are payable on the basis of an aircraft's Maximum Take-Off Weight (MTOW). In the proposal, Band 1 would apply to tonnage up to 175 tonnes, and Band 2 to tonnage above 175 tonnes. The consultation proposal set out a Band 1 summer charge of €7.45 per tonne and a winter charge of €2.70 per tonne, and a band 2 summer and winter charge of €2.10 and €0 respectively.
- 4.2 In Ryanair's response dated 6 October 2023, it claimed that the proposed charging differentiation was discriminatory, as it favoured larger aircraft. Ryanair questioned why weight above 175 tonnes should have no charge during winter and a significant discount in summer. On 11 October 2023, Dublin Airport maintained that, without the banded approach, long-haul aircraft could be charged up to three times more per seat to use the runway than short-haul aircraft, and this variance is what led to the airport introducing a second runway charging band in the first place.
- 4.3 In its second submission to the consultation process, Ryanair reiterated its view that the proposed structure of the RWMC was discriminatory. Ryanair questioned why the RWMC for aircraft weight above 175 tonnes would be free during winter, and not during summer. Ryanair contended that there is no justification for why costs would fall after the banding threshold is reached, as this charging structure would suggest. Ryanair asked Dublin Airport to:
- a) Provide detail on the cost base for Runway Movement Charges which would justify the two-banded approach and charging less per tonne for heavier aircraft.
 - b) Provide detail on the "*cost usage*".
 - c) Explain why the zero charge/100% discount is not included as an incentive scheme.
- 4.4 In Dublin Airport's Decision Paper, both the charge per tonne and the tonnage bands were altered. Noting the criticism of the proposed banding structure, Dublin Airport amended it to align the banding threshold to the ICAO definition of a Heavy aircraft (so that the upper band would then apply to tonnage above 136 rather than 175). It also set the Band 2 charge per tonne at 50% of Band 1 rates, meaning that the charge for Band 2 tonnage in winter would no longer be zero.
- 4.5 Dublin Airport stated that this provides a better justification for having banded runway charges which are also "*fair and equitable*". Dublin Airport also noted that the banded approach had previously been introduced in response to airline requests. It did not otherwise directly respond to the questions/submissions from Ryanair, nor explain why the discount was to be set at 50%.

Ryanair's complaint on Runway Movement Charges

- 4.6 Ryanair now submits to the IAA that Dublin Airport has not provided an Objective and Transparent justification for the two-banded approach to the RWMC, such as, to the extent it is differentiated on the basis of cost-relatedness, the cost differential which would justify the approach. It is Ryanair's position that this is in breach of Regulations 6 and 11 of the 2011 Regulations.
- 4.7 Ryanair presented a table illustrating the implications of the two-band RWMC approach. In the example, an Airbus A330-300 with an MTOW of 242 tonnes would pay a lower charge per tonne (€5.75) compared to a Boeing 737-800 with an MTOW of 75 tonnes (€7.35). Ryanair repeated that it had asked for information to understand the relationship between the costs and the charging approach to aircraft above 136 tonnes, but Dublin Airport did not furnish same.

Transparency

- 4.8 As in the previous section, we have considered this complaint from the perspective of the Transparency requirements under the 2011 Regulations and associated guidelines, as outlined in Section 3 above. Below, we outline the material provided by Dublin Airport in respect of the RWMC, and then consider whether it met those requirements.

Material provided to airport users

- 4.9 Similar to the presentation of the passenger charges as described in Section 3, the consultation document of September 2023 set out the proposed RWMC (including Band 1 and 2 ranges) for 2024 with reference to the equivalent charges in 2023. The proposals showed year-on-year increases for each season of 8%, save for the Band 2 winter charge which was maintained at €0. Dublin Airport provided no further information at this point.
- 4.10 In Ryanair's first response to the consultation document, dated 6 October 2023, the airline requested Dublin Airport to increase the RWMC for Band 2 by more than 8% and 0% as proposed in the consultation document. Ryanair also claimed that Dublin Airport presented no reason why an aircraft's weight above 175 tonnes would have no charge in winter and a heavily reduced charge in summer.
- 4.11 When asked in the consultation meeting of 12 October if the zero fee in winter for Band 2 was cost-related, Dublin Airport responded that the turnaround cost of Band 2 aircraft is multiple times higher than Band 1. Dublin Airport also stated that widebody aircraft pay multiple times more per movement and per seat when compared with a narrowbody aircraft.
- 4.12 In Ryanair's second response to the consultation, the airline claimed that airport charges must be cost related under the ACD. Ryanair claimed that Dublin Airport had not provided transparency on the underlying cost detail to explain why tonnage above 175 is free during winter, and heavily discounted during summer. In this reply, Ryanair asked Dublin Airport to:

- a) Provide detail on the cost base for Runway Movement Charges.
 - b) Provide detail on the “cost usage”.
 - c) Explain why the zero charge/100% discount is not included as an incentive scheme.
- 4.13 In Dublin Airport’s Decision Paper, it altered both the thresholds for bands 1 and 2 and amended all four charges. Dublin Airport did not include any explanations around how it arrived at the new rates per tonne, save for stating that Band 2 rates would be 50% of Band 1. Dublin Airport does not appear to have directly addressed the requests put to them by Ryanair to, in particular, provide detail on the underlying cost differential, if this charging differential is cost-related, or to clarify definitively that the justification is not cost-relatedness. No further material was provided to users at this point.

Whether the Transparency standard was met

- 4.14 It appears that Ryanair’s complaint can be summarised as an alleged failure to provide sufficient information on the components serving as a basis for determining the system or the level of the RWMC in two respects:
- First, clarity on the justification, in principle, for having the two banded runway charging system. To the extent that the justification is cost-related differentiation, no Objective analysis has been provided in support of the differentiated charges.
 - Second, Transparency in respect of how the discount (with Band 2 tonnage to be charged at 50% of Band 1 tonnage) has been set.
- 4.15 We note that, when Dublin Airport was asked whether the Relevant justification for the two-banded approach was cost relatedness, it referred to the total turnaround cost to operators of Band 2 aircraft being much higher than Band 1 aircraft, and also being higher per seat. We agree with Ryanair that it is not clear what the Relevant justification for the differentiated charging bands is said to be. This is addressed further below on the topic of Relevance. Consequently, there is an absence of Objective evidence in relation to any such justification.
- 4.16 Taking the meaning of Transparency as set out in *TF Non-Discrimination*, Dublin Airport’s justification and criteria for the charging structure of the RWMC should be made clear and be able to bear scrutiny in all elements. As highlighted above, the justification for the banded charging system is not clear. The associated parameters, such as the 50% differential ultimately settled upon by Dublin Airport, lack an Objective basis. We conclude that this does not align with the requirement under Regulation 6 and/or Regulation 11 of the 2011 Regulations to provide Transparent justification.

Relevance

- 4.17 As in the previous section, we have considered this complaint from the perspective of the Relevance requirements under the 2011 Regulations and

associated guidelines, as outlined in Section 3 above.

Dublin Airport's Justification

- 4.18 In replying to Ryanair on 11 October 2023, Dublin Airport stated that the introduction of the two-banded RWMC arose from previous consultations with airport users. It noted that, without the two-banded approach, the runway charge per seat could be up to three times higher for long haul aircraft compared to short haul aircraft.
- 4.19 In the consultation meeting and in Dublin Airport's Decision Paper, Dublin Airport again suggested that the reason for the banded runway charges is to offset a perceived inequity due to widebody aircraft having relatively fewer seats per tonne of MTOW, and the total turnaround cost of a widebody being multiple times higher than a narrowbody. Dublin Airport also highlighted that other airport users supported the banded approach on the basis that it supported the development of Dublin Airport as a hub airport as per the NAP, as well as supporting winter season operations where economics are more suited to narrowbody aircraft.

Whether the Relevance standard was met

- 4.20 The primary justification for the two-banded approach therefore appears to be to offset what Dublin Airport and certain airlines perceive to be an inequitable result, from the perspective of flown seats and/or total turnaround costs, of applying the same runway charge per tonne of MTOW for all aircraft. To the extent that Ryanair is suggesting that cost-relatedness is the only permissible basis for differentiated/modulated charges under the 2011 Regulations, we do not agree with this position.
- 4.21 However, while seeking to promote Dublin Airport as a hub airport in line with the NAP may be a permissible justification under the 2011 Regulations, we note that this is the same justification already provided in respect of the discounted transfer passenger charge, to which hub operations are more directly relevant. Then there are various incentive schemes also justified on the same or a similar basis, such as the Grow Transfer Incentive scheme, the Long-Haul Remote Discount Scheme, and the New Route Support Scheme.
- 4.22 We also note that Band 2 has now been aligned with the ICAO definition of Heavy aircraft, defined as such on the basis of required minimum aircraft separations due to wake turbulence. Consequently, this is a Heavy aircraft discount. The use of tonnes of MTOW as a tariff driver which can take account of factors such as ability/willingness to pay is seen in both airport and air navigation services charging, but it is not the only tariff driver which can take account of such factors. If, despite the incentive schemes and discounts already available in respect of passenger charges and long-haul operations, MTOW is still considered to produce inequitable results, we note that it would be possible to reconsider the use of the tariff driver itself, and/or reconsider other aspects of the charging strategy more directly relevant to creating the desired incentive, compared to a Heavy aircraft discount. It may be simpler to justify such an approach, rather than using MTOW as a tariff driver but introducing a

discontinuity within the tariff driver. This discontinuity means that different volumes of the same tariff driver are charged at different rates to airport users, depending on whether or not they have, for example, operated a single Heavy aircraft, or two aircraft in a lower wake turbulence category with equivalent total MTOW.

- 4.23 In conclusion, we suggest that the structure of the RWMC be reconsidered. We have some doubts over whether it is an appropriate/optimal way to achieve the referenced objectives, and consequently it is challenging to justify in line with the 2011 Regulations. At a minimum, it is necessary to provide clarity on the justification/Relevance of the two-banded approach, and how this interacts with the other aspects of the charging strategy such that double counting is avoided.

Objectivity

- 4.24 Next, we consider Objectivity, again based on the requirements and guidelines outlined in Section 3. As noted above, whether the justification is said to be cost-related (or other) differentiation under Regulation 11, or public and general interest under Regulation 6, the charges must be differentiated/modulated on an Objectively justifiable basis.

Whether the Objectivity standard was met

- 4.25 *TF Non-Discrimination* states that for a discount to be Objective, it should be “*demonstrable that the magnitude of the discount is proportionate and that this has been assessed fairly and reasonably*”. The RWMC has now been set so that the Band 2 rates are 50% of Band 1, without providing any Objective basis for the magnitude of the discount for heavy aircraft. Consequently, and aside from the question of whether a heavy aircraft discount is Relevant at all as described above, it cannot be said to be demonstrably proportionate.
- 4.26 As noted above, the discount appears to have been set due to a subjective perception of unfairness rather than on the basis of an Objective analysis in support of a Relevant justification.

5. Low Emissions Aircraft Discount

- 5.1 In the consultation document of September 2023, Dublin Airport proposed a new incentive scheme titled the Low Emissions Aircraft Discount (LEAD), which was said to offer a combined 25% discount on passenger and runway charges. The proposed discount was to be based on a two-banded approach, with separate qualifying Landing Take-off cycle (LTO) fuel burn thresholds in each band. The stated aim was to encourage the transition from higher emission aircraft fleets to newer, lower emission fleets. Dublin Airport set out the eligibility criteria for the scheme, and provided a list of aircraft it assessed to be eligible. An eligible aircraft would receive the discount, and ineligible aircraft would not.
- 5.2 In Ryanair's first response to the consultation, of 6 October 2023, the airline claimed that Dublin Airport had misstated the discount offered by the LEAD scheme as 25% rather than 12.5%, and that this should be corrected, or the parameters amended such that it would actually generate the 25% discount. Ryanair submitted that the proposal would see heavier aircraft which are responsible for more CO₂ emissions benefit from a larger discount, while ignoring efforts by airlines to adopt operational procedures to reduce actual CO₂ emissions. The airline also criticised the proposal to separate aircraft into two categories based on MTOW. Ryanair asked Dublin Airport to:
- a) Explain how the LTO fuel burn thresholds of 380kg and 955kg were calculated and how they relate to average CO₂ emission levels.
 - b) Provide data on the distribution of all flight emissions to/from Dublin Airport in 2023.
 - c) Confirm the quantum of money which Dublin Airport expects to issue via discounts as a result of the LEAD scheme.
- 5.3 In the consultation meeting, Ryanair asked for clarification on how the 25% discount would be calculated, and for an explanation on why it took no account of winglets or the use of Sustainable Aviation Fuel (SAF). Dublin Airport explained that, initially, the 25% discount was to be applied on runway charges, but this was since revised such that it would be split between runway and passenger charges. The amended proposal, Dublin Airport said, results in a higher absolute level of discounts. While Dublin Airport acknowledged that winglets and SAF can reduce emissions, it said that there was little evidence available to support this, and so the airport proceeded only on the basis of engine fuel efficiency which is available from the emissions databank produced by ICAO. In response to the Clarification Questions, Dublin Airport issued further information on the LEAD scheme, detailing why it considered that the proposed approach was the best option and that it offered *"the highest refund available to users"*.
- 5.4 In Ryanair's second written submission, the airline again criticised the fact that the proposed LEAD scheme would exclusively look at engine emissions from the LTO cycle, obtained from the ICAO emissions databank. Ryanair asked Dublin Airport to explain:

- a) Why the proposal does not take account of load factors.
 - b) Why heavier aircraft will receive a greater nominal discount despite emitting more CO₂.
 - c) The separation of aircraft into two categories based on tonnage.
 - d) How Dublin Airport has calculated the fuel burn thresholds.
 - e) Provide data on the distribution of flight emissions to/from Dublin Airport in 2023.
- 5.5 Ryanair submitted that any such modulation which fails to incentivise higher load factors and draws upon allegedly arbitrary criteria for environmental modulations, such as MTOW, is not Relevant to achieve the aim of environmental efficiency and is not Objective in its application, as required by Article 3 of the ACD.
- 5.6 Dublin Airport received responses from several users on the LEAD scheme, which it included in Dublin Airport's Decision Paper in November 2023. Based on the summary of responses provided by Dublin Airport, other users also opposed the proposed LEAD scheme, including citing the Thessaloniki Forum stance that CO₂ is a global issue and there are already a range of mechanisms in place such as CORSIA and ETS to address it. IATA submitted that LEAD is, in practice, equivalent to a CO₂ modulation scheme and reiterated that ICAO member states have unanimously endorsed the principle that CO₂ emissions should only be accounted for once. It noted that CO₂ emissions from international aviation are unrelated to recovering costs of the provision of specific airport infrastructure.

Ryanair's complaint on the LEAD scheme

- 5.7 Ryanair thus challenges the LEAD scheme on a range of grounds. The airline alleges that:
- a) The discount is based on a parameter (MTOW) which is irrelevant to reducing emissions.
 - b) The modulation is not Objective.
 - c) There has been insufficient Transparency on the criteria, including the fuel burn thresholds and the tonnage bands.
 - d) The scheme ignores environmental efficiency (such as load factors), as well as aircraft retrofits and operational procedures that modulate actual CO₂ emission levels relative to the levels set out in the ICAO engine test databank.
 - e) The scheme is discriminatory in favour of aircraft with larger MTOW.
- 5.8 In summary, Ryanair says that the scheme is not Relevant or based on objectively set/justified parameters, it discriminates between airlines, and

Dublin Airport has failed in its duty of Transparency around the scheme, in particular by not providing any basis for the qualifying thresholds, and the reasoning behind the banded categorisation of aircraft by tonnage. Ryanair also proposed an alternative approach to reducing CO₂ emissions based on CO₂ per passenger. Ryanair complains that Dublin Airport failed to engage with this suggestion or give adequate reasons for why it was rejected.

5.9 We note that the question of aligning environment-related modulation of airport charges with the ACD and ICAO principles, in the case of schemes which relate to global issues such as CO₂ rather than local issues such as noise pollution, is complex. This is reflected in the most recent *TF Environment* paper which, in the context of such schemes being introduced at more European airports and generating a high level of disagreement, provided a number of recommendations on a more standardised approach. The recommendations include the following:

- ISAs can assess the justification for the modulation, with a view to considering whether it is proportionate to achieving the stated objective. The paper notes that, where a modulation is not likely to be effective in achieving a particular objective, it may simply distort the market without achieving a proportionate benefit in respect of environmental impacts.
- Aside from the question of effectiveness, when it comes to assessing the economic efficiency of environmental modulations in terms of the price signal produced, the Forum recommends comparing the price signal produced with the shadow value of the relevant pollutant, taking into account potential other internalization mechanisms (such as ETS and CORSIA). In this way, it is possible to objectively calculate justifiable parameters for such a modulation, while avoiding duplication or double counting across various measures.
- Tariff drivers should be directly related to the level of pollution. The use of percentage coefficients to modulate existing charges should be avoided where this has the effect of 'baking in' irrelevant parameters (such as MTOW) as a tariff driver for an environmental modulation.
- CO₂ related modulations of airport charges may not be an effective tool to mitigate emissions from aviation, because of the risk of 'carbon leakage' in the case of heterogeneous CO₂ related modulations across airports, and the fact that such a modulation will not properly internalize the societal costs of emissions associated with aviation.¹⁶ CO₂ emissions from aircraft are not directly related to the airport local environment and should be addressed at the European or global level. Nevertheless, a CO₂ modulation could be considered when the cost of

¹⁶ Carbon leakage, in the context of a global pollutant such as CO₂, refers to the observation that if one airport provides a CO₂ modulation scheme, airlines may simply operate the more polluting aircraft to other airports with no overall impact on global CO₂ emissions. As noted above, given that overall airport charges are set with reference to the cost of providing the airport infrastructure, CO₂ modulations must be revenue neutral. This means that, unlike other mechanisms such as taxation or emissions permit schemes, they cannot fully internalise the social impact of the pollutant to incentivise a socially optimal level of aviation.

CO₂ emissions is not yet fully internalized through other measures.

- In that context, in particular, it is important to avoid a patchwork of ad-hoc CO₂ related measures being designed at individual airports, in isolation of each other and/or in isolation of price signals already provided by other internalisation mechanisms such as EU-ETS and CORSIA.

Transparency

5.10 We have again considered this complaint from the perspective of the Transparency requirements under the 2011 Regulations and associated guidelines. Below, we outline the material provided by Dublin Airport in respect of the LEAD scheme, and then consider whether it met those requirements.

Material provided to airport users

5.11 In the consultation document, Dublin Airport stated that the LEAD scheme proposal was developed following the ICAO principles of non-discrimination, cost-relatedness, and Transparency. The airport said that it followed the approach from the European Environment Agency (EEA) and used the ICAO emissions databank to determine aircraft eligibility. It proposed to calculate CO₂ based on fuel burn, using the EEA's fuel-based methodology in the landing, taxi, take-off and climb out phase (LTO). Aircraft which met the eligibility criteria would receive a discount of 12.5%. We note that, given that the annual price cap set by the IAA will ensure overall cost-relatedness regardless of whether or not such a scheme is in place, the discount does not change the total aeronautical revenues to be collected by Dublin Airport, but rather redistributes some of the burden away from eligible aircraft and towards non-eligible aircraft.

5.12 Dublin Airport proposed the following eligibility criteria:

- a) Aircraft with an MTOW of less than 105 tonnes must display an LTO fuel consumption of less than or equal to 380kg and/or demonstrate fuel consumption 15% lower than "*similar sized aircraft*".
- b) Aircraft with an MTOW of greater than or equal to 105 tonnes must display an LTO fuel consumption of less than or equal to 955kg and/or demonstrate fuel consumption 15% lower than "*similar sized aircraft*".

5.13 Dublin Airport did not, at this point, set out why 105 tonnes was chosen as a cut-off point between bands, nor did it provide detail on how it set the maximum eligible levels of LTO fuel consumption. Nor did it, as far as we are aware, define what is meant by "*similar sized aircraft*".

5.14 As noted above, Ryanair disputed the banded approach, asked Dublin Airport to explain how the fuel burn thresholds were calculated, and asked how they relate to the average CO₂ emission level, both by band and the average of all flights to Dublin Airport. While the material issued following the consultation meeting contained some reasoning from Dublin Airport on why the LEAD scheme was chosen ahead of the other options the airport considered, we note

that Dublin Airport did not provide any information on:

- a) How the fuel burn thresholds were calculated.
- b) How the 105 tonnes threshold was calculated/decided.

5.15 In Ryanair's second response to the consultation, the airline again asked Dublin Airport to explain the reasoning for banding aircraft by MTOW, and to explain how the fuel burn thresholds were calculated. It again criticised the proposal on the grounds that, because the discount is to be applied to an MTOW based charge, heavier aircraft will receive a larger discount, despite heavier aircraft allegedly emitting relatively more CO₂.

5.16 In Dublin Airport's Decision Paper, it confirmed the proposed approach to the LEAD scheme, and addressed the submissions received by making the following points:

- The LEAD scheme is a *"simple standalone incentive scheme to encourage the deployment of a quieter, cleaner more fuel-efficient fleet when airport users are making fleet allocation decisions"*.
- While there are other initiatives to address global emissions issues, Dublin Airport also needs to be proactive in its approach to environmental issues by differentiating charges for lower emissions aircraft.
- While many factors influence fuel burn, including the environmental conditions when data is collected, the EEA is the *"most impartial source of engine efficiency data, and many other airports use this databank for the same purpose"*.
- The *"scheme does not use coefficients to adjust up or down airport charges"*, but is instead a *"simple and effective incentive, using absolute fuel burn"*.
- In response to Ryanair's submission showing that a heavier aircraft emitting higher levels of CO₂ (B787-8 with 234 seats) would receive a larger LEAD discount than a B737-8200 (197 seats), stated that the *"heavier aircraft would still have a total turnaround cost of more than double the lighter aircraft"*.
- The LEAD scheme is not a CO₂ modulation, but a *"standalone incentive scheme aimed at incentivising the use of more fuel-efficient aircraft at Dublin Airport"*.

Whether the Transparency standard was met

5.17 In addressing the Transparency aspect of the complaint, we consider only the provision of material in respect of the LEAD scheme. The substantive complaints in relation to Relevance and Objectivity are addressed below. We note that Ryanair's complaints in respect of Transparency can be summarised as follows:

- Dublin Airport did not provide any explanation for separating aircraft into two MTOW categories, nor explain how the fuel burn thresholds were calculated.
- Dublin Airport failed to meaningfully engage with Ryanair's proposals for amendments to the LEAD scheme parameters such that it would instead be based on CO₂ emissions per passenger, thereby also taking account of elements such as investing in aircraft retrofits such as winglets and using Sustainable Aviation Fuels (SAF).

5.18 On the first complaint, we agree with Ryanair that Dublin Airport is required, by Regulation 6 and/or Regulation 11, to provide Transparency on the basis for the fuel burn thresholds proposed, and on the basis for categorising aircraft with reference to whether or not they are above 105 tonnes in MTOW. In addition, we note the apparent absence of an explanation for the discount coefficient being set at 12.5%. Without providing any Objective justification or explanation for the components, the resulting modulation cannot be distinguished from a situation where a subset of aircraft are handpicked and given an arbitrary discount. This leads to a high risk of discriminatory charging and is not in line with the 2011 Regulations or the ACD. Despite requests from Ryanair, the reasons underlying the parameters of the incentive scheme were (and remain) unexplained, meaning that it was not possible to assess whether they were set based on Objective analysis, or otherwise.

5.19 On the second complaint, Regulation 10 of the 2011 Regulations requires Dublin Airport to take the views of airlines into account, and give reasons for its decisions where an airline is not in agreement. Ryanair, in its submissions, proposed an alternative CO₂ modulation scheme. We note that, in the response letter to Ryanair of 11 October 2023, Dublin Airport explained that, in its view, it would be premature to incorporate a SAF element. At the consultation meeting on 12 October, Dublin Airport acknowledged that initiatives such as retrofits and SAF reduce emissions, but stated that evidence to support this is limited, and, with an established emissions databank published by ICAO, engine fuel efficiency was only being considered for the time being. In respect of Ryanair's overarching proposal that the key parameter for the scheme should be a CO₂ per passenger metric, we note that this was also the subject of discussion at the consultation meeting and appears to have been addressed in Dublin Airport's Decision Paper where Dublin Airport stated that it is "*refraining from the use of coefficients to adjust up or down airport charges*". We note that refraining from the use of coefficients in this manner would align with the *TF Environment* paper recommendation outlined above.

5.20 Thus, it is apparent that Ryanair's proposals were taken into account to a certain extent by Dublin Airport and, to a certain extent, reasons were provided for not adopting those proposals. We also do not consider that Ryanair, either, provided full detail on how its proposal would operate in practice. For example, based on the material available to us, it did not identify a source of CO₂ emissions data for aircraft which could be used to establish a precise and widely accepted comparison of aircraft CO₂ emissions per passenger performance which would take account of all of the factors referenced by Ryanair.

- 5.21 However, it is not apparent to us that Ryanair's proposal was limited to using coefficients to modulate the existing airport charges. That issue relates to the technical construction of the modulation formula, rather than the metric upon which the modulation is based. It appears to us that Ryanair's submissions were primarily making the case that the metric on which the modulation is based should be estimated CO₂ emissions per passenger, as opposed to estimated (banded) LTO fuel burn per (banded) aircraft engine. As also explained below, we consider Dublin Airport's statement that the LEAD scheme does not use coefficients to adjust up or down airport charges to be incorrect. However, we note that whether the reasons provided by Dublin Airport were reasonable/sufficient in this case goes more to the question of the Objectivity/Relevance of the LEAD modulation, as addressed below.
- 5.22 Dublin Airport is not required to incorporate all of the suggestions put forward by airport users. There is, however, an obligation to provide, with particular reference to the requirements of 2011 Regulations on Relevance and Objectivity, a cogent rationale for the approach it decides upon and why it has rejected other proposed approaches. Where it does so, Dublin Airport will have satisfied the Transparency obligation under the 2011 Regulations, even if the IAA, as ISA, might itself have arrived at a different conclusion on the merits of proposed approaches.

Relevance

- 5.23 We next consider the question of Relevance. We do so with reference to Ryanair's complaint, but also, given the general level of contention and disagreement over the Relevance/justification for the LEAD scheme, consider it more broadly with particular reference to the Thessaloniki Forum guidelines. Ryanair is of the view that the LEAD scheme is in breach of Article 6(1)(d) of the 2011 Regulations. Ryanair states that:
- a) MTOW is not a Relevant parameter on which to modulate, as it has no impact on reducing emissions.
 - b) The bands used to separate aircraft into categories are irrelevant.
 - c) By ignoring aircraft retrofits and procedures which work to reduce CO₂ emissions/fuel burn, the modulation is irrelevant.

Dublin Airport's justification for the LEAD scheme

- 5.24 Dublin Airport appears to have provided two justifications for the LEAD scheme:
- a) Cost relatedness, as provided for by Regulation 11 of the 2011 Regulations. Cost relatedness was referenced in the consultation document, but not further explained/developed. We are not aware that Dublin Airport incurs any reduced cost as a result of processing aircraft with engines which burn relatively less fuel in the LTO cycle.
 - b) Behavioural incentivisation. The stated aim of the LEAD scheme is to encourage a quieter, cleaner fleet at Dublin Airport, in line with the

airport's sustainability policy. We note that it is not made entirely clear whether Dublin Airport considers it to be a modulation of charges for issues of public and general interest under Regulation 6, or a charging differentiation based on "*any other Objective and Transparent justification*" as per Regulation 11(2)(a). As noted above, in either case, a Relevant justification is required.

- 5.25 Based on the materials provided, it appears that the only justifications provided relate to b), behavioural incentivisation, and we proceed on the assumption that this is the intended justification.
- 5.26 Article 10 of the ACD states that "*The level of airport charges may be differentiated according to the quality and scope of such services and their costs or any other Objective and Transparent justification*". As per *TF Non-Discrimination*, behavioural or efficiency incentivisation should also be considered as a potentially valid justification under Article 10 of the ACD (an article which is in turn reflected in Regulation 11(2)(a) of the 2011 Regulations). For behavioural or efficiency-based justifications, the Forum recommends that the ISA should, with reference to the evidence provided, consider whether: "
- i. *Efficiencies have been, or are likely to be, realised as a result of the charging strategy.*
 - ii. *The strategy is indispensable to the realisation of the efficiencies.*
 - iii. *The likely efficiencies outweigh any likely negative effects on competition and consumer welfare.*
 - iv. *The strategy does not eliminate effective competition by removing all or most existing sources of actual or potential competition."*

Objectives of the LEAD scheme

- 5.27 As per *TF Environment* and *TF Non-Discrimination*, it is appropriate to assess the Relevance/justification for a modulation/differentiation such as the LEAD scheme from the perspective of considering whether it is proportionate to achieving the stated objective. As noted above, the *TF Environment* paper states that, where a modulation is not likely to be effective in achieving a particular objective, it may simply distort the market.
- 5.28 Despite submissions seeking it, we note the absence of an assessment of the actual effect which Dublin Airport expects the LEAD scheme to have on airport user behaviour, compared to a counterfactual scenario where there is no such modulation. It refers only to influencing fleet allocation decisions to Dublin Airport in general terms, and described the scheme as "*effective*", and also claimed that it would make a meaningful contribution to making Irish aviation greener and more sustainable.
- 5.29 In that context, it cannot be concluded that there is likely to be a material causative reduction in CO₂ emissions/fuel burn among airlines operating to Dublin Airport, much less a causative impact on global CO₂ emissions/transition

to more modern aircraft, which is likely to outweigh any effects on competition. In the absence of a specific objective, it is not possible for Dublin Airport to assess or demonstrate whether the modulation is likely to be effective or proportionate in achieving any such objective. We note that Dublin Airport's Decision Paper then claimed that the LEAD scheme is not a CO₂ modulation scheme. This is not consistent with the presentation of the proposal in the consultation documents of September 2023, nor in earlier media releases.¹⁷ We do not understand why fuel burn would be considered as an appropriate metric unless it is being used as a proxy to measure CO₂ emissions, which is clearly the case here, as stated in the September 2023 document.

- 5.30 We are not aware of any evidence to suggest that such airport charge modulation schemes are an effective or proportionate mechanism to address CO₂ emissions from aviation. In that regard, as far as we are aware, the only stakeholder to address the question of effectiveness as part of this process was IATA, which set out why, in its view, such schemes are not effective.

Addressing CO₂ emissions on a global level

- 5.31 As summarised above, Paragraph 4.31 of *TF Environment* suggests that the modulation of airport charges may not be the “*optimal way to internalise the external costs of CO₂ emissions*”. The paper highlights the risk that environmental modulations related to global pollutants could lead to fleet reallocation and carbon leakage.
- 5.32 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 CO₂, as they cannot change the total charges being paid by all airport users at the airport. At a minimum, where such mechanisms are being considered, it is necessary to consider the mechanisms already in place to internalise the externality, and to avoid double counting/undermining the global initiatives already developed for the purpose of addressing this issue. Otherwise, there will be a patchwork of uncoordinated, duplicative, and ad hoc measures. The Forum therefore recommends that CO₂ emissions from aircraft should be addressed at European or preferably global level, primarily through mechanisms such as CORSIA or ETS.
- 5.33 We note that this position is further reinforced by ICAO, of which Ireland is a contracting state:
- ICAO assembly resolution A40-18 provides that “*Market Based Measures should not be duplicative and international aviation CO₂ emissions should be accounted for only once*”, and that “*Market Based Measures should minimize carbon leakage and market distortions*”.¹⁸
 - ICAO assembly resolution A40-19 provides that the assembly “[d]etermines that the CORSIA is the only global market-based

¹⁷ <https://www.dublinairport.com/latest-news/2023/05/19/daa-incentivises-airlines-to-reduce-co-emissions-with-new-sustainability-measures>

¹⁸ https://www.icao.int/environmental-protection/Documents/Assembly/Resolution_A40-18_Climate_Change.pdf

*measure applying to CO₂ emissions from international aviation so as to avoid a possible patchwork of duplicative State or regional Market Based Measures, thus ensuring that international aviation CO₂ emissions should be accounted for only once.*¹⁹

MTOW as a component of the LEAD scheme

- 5.34 Ryanair alleges that MTOW is not a Relevant parameter, as it does not define the level of emissions. This concern is addressed at Paragraph 4.16 of *TF Environment*, which states that “*The most frequently used aircraft related charging parameter (by tonne of weight) may not correlate with the level of pollution*”²⁰. Paragraphs 4.17 and 4.18 of the paper therefore recommend that, when designing environmental modulations, airport managing bodies should choose tariff drivers directly related to the level of pollution, which means that the driver will differentiate aircraft based on their relevant environmental performance only.
- 5.35 Dublin Airport has suggested that the LEAD scheme is not a discount on emissions per tonne of aircraft, but rather MTOW is solely used to differentiate between widebody and narrowbody aircraft. However, the discount arising from the LEAD scheme is to be applied as a percentage of MTOW and passenger-based charges, which is equivalent to a modulation based on these two parameters.
- 5.36 For that reason, it is not a standalone incentive scheme as described by Dublin Airport, but a scheme which modulates existing airport charges up or down through the application of a coefficient. Ryanair, in its submissions, pointed out that the level of discount for qualifying aircraft would vary based on MTOW, a non-relevant parameter to CO₂/fuel burn. This is exactly the pitfall pointed out in the worked example at Paragraph 4.16 of *TF Environment*, which illustrates that, for two aircraft which emit the same levels of pollution, one of the aircraft would pay a higher pollution charge because of higher MTOW, not because it is more polluting. The inverse is the case here, where higher MTOW aircraft receive a higher discount. The Forum agrees that “*If well designed, a modulation penalizes the more polluting aircraft and benefits the less polluting ones*”.

Using LTO fuel burn estimates

- 5.37 Ryanair complains that the LEAD scheme considers only engine emissions from the ICAO emissions databank. IATA also criticised not only using LTO cycle estimates in the modulation, but also using the ICAO databank as a data source. IATA cited the EASA guidelines on this databank, which appear to suggest that this data should not be used for such a purpose: “*These fuel flows cannot necessarily be related to fuel efficiency at different power settings, higher forward speeds, and at altitudes above sea level. As a consequence, the reported fuel flows and other information in the ICAO emissions databank*

¹⁹ https://www.icao.int/environmental-protection/Documents/Assembly/Resolution_A40-19_CORSLA.pdf

²⁰ [environmental-modulations-paper_final-\(1\).pdf \(iaa.ie\)](https://www.icao.int/environmental-protection/Documents/Assembly/Resolution_A40-19_CORSLA.pdf)

*should not be used for comparing the fuel efficiency of different engines”.*²¹

- 5.38 We note that using LTO cycle engine fuel flow results for aircraft CO₂/fuel burn modulations may not properly reflect the overall fuel efficiency differential because they do not reflect the airframe (as pointed out by Ryanair) or real-life flying conditions, but also because it does not capture the cruise phase of flight. The LTO cycle databank only assesses emissions below Flight Level 030. An aircraft receiving a LEAD discount due to LTO performance may actually be no more fuel efficient than an aircraft not receiving such a discount when the cruise phase, and/or the different average distances flown by these aircraft, is taken into account.

Exclusion of other CO₂ related criteria

- 5.39 Ryanair argues that by “*ignoring*” airline retrofits and other CO₂ reducing mechanisms (e.g. SAF), the modulation is irrelevant. As stated above, we note that Dublin Airport is not obliged to design a scheme such that it would take account of all possible criteria that might relate to reduced CO₂ emissions. The airport is however obliged under Article 10 of the 2011 Regulations to consider suggestions from airport users on the design of the schemes and, where the suggestions are not implemented, give cogent reasons why that decision was reached.

Whether the Relevance/justification standard was met

- 5.40 In summary, there are a significant number of issues which would need to be addressed to show that a scheme such as LEAD relates to factors which should rightly be taken into consideration in justifying varied airport charges as being non-discriminatory. To achieve a charging strategy which is compliant with the 2011 Regulations, the basis for such a scheme should be carefully reviewed by Dublin Airport with reference to the 2011 Regulations, the Thessaloniki Forum guidelines, and the challenges identified above in relation to the existing LEAD scheme. If Dublin Airport is to propose charging modulation in relation to CO₂ emissions, and/or fuel burn as a proxy for same, it must be justified on the basis of Relevant, Objective, and Transparent criteria.
- 5.41 We agree with Ryanair that, as per the *TF Environment* paper recommendations, MTOW is not a Relevant parameter and should therefore not drive the level of the LEAD discount, as explained above. We consider that Ryanair’s other allegations of irrelevance, in relation to the banded approach and not taking account of fuel burn/ CO₂ reducing measures such as aircraft retrofits, go more to Objectivity and Transparency.

Objectivity

- 5.42 Next, we consider Objectivity. As noted above, whether the justification is said to be cost-related (or other) differentiation under Regulation 11, or public and general interest under Regulation 6, the charges must be

²¹ [ICAO engine emissions databank](#)

differentiated/modulated on an objectively justifiable basis.

Whether the Objectivity standard was met

- 5.43 As identified above, the components of the scheme in terms of the fuel burn thresholds, the discount coefficient, and the aircraft weight bands were not substantiated or explained. In the absence of an explained basis for the components of the scheme, it cannot be concluded that there is an objective basis for the components of the scheme such that the magnitude of the discount is proportionate and that this has been assessed fairly and reasonably.
- 5.44 As noted above, *TF Environment* recommends that, to generate an objectively justifiable modulation, the price signal produced by the modulation could be aligned with the shadow value of the relevant pollutant, taking into account potential other internalization mechanisms (such as, in this case, ETS and CORSIA). It was noted that this would align with the “*polluter pays*” principle.
- 5.45 We note the absence of such an assessment in respect of the LEAD scheme. The LEAD scheme as currently constructed could not provide a consistent price signal with respect to any shadow value given that, for example, the price signals produced by the scheme vary based on non-relevant parameters like MTOW and passenger numbers. As pointed out by Ryanair, the result is that a heavier aircraft would receive a larger discount than a lighter aircraft which emits the same level of pollution. The fact that the total turnaround cost for the heavier aircraft may still be higher when all of the other airport charges are also taken into account, as noted by Dublin Airport, is unrelated to any Relevant or Objective justification for the LEAD scheme.
- 5.46 In conclusion, we find that Dublin Airport has not provided material to demonstrate that the LEAD parameters were objectively set. Without this information, it was not possible for users to establish, and now is not possible for the IAA to establish, that the following were all objectively set criteria:
- a) The qualifying LTO fuel burn thresholds.
 - b) The discount rate coefficient of 12.5%.
 - c) The aircraft banding set at 105 tonnes.

6. Nitrogen Oxide Charges

- 6.1 Dublin Airport's September 2023 consultation document also proposed to introduce a Nitrogen Oxide (NOx) charge on each aircraft movement at Dublin Airport. It provided the following rationale:
- If current levels of NOx were to persist into 2030, this would be in breach of the new annual limits set out in the revised Directive 2008/50/EC. Dublin Airport explained that, following the EU Green Deal, the directive has been recast and enacted to come into effect as of 1 January 2030, with NOx limits to be reduced by 50%.
 - ICAO Doc. 9082 (Policies on Charges for Airports and Air Navigation Charges) stipulates that a charge on NOx emissions is "*prudent and appropriate*" where a defined local air quality problem exists.
 - It is imperative that Dublin Airport discharge its environmental obligations by applying a NOx surcharge for runway movements.
- 6.2 Dublin Airport set out the formula for the charge as: (number of engines x (NOx(kg/engine)) x €0.25), noting that this would result in a "*minimal*" charge. It noted that the charge would be based on absolute NOx emitted, in line with the 'polluter pays' principle. The ICAO emission data bank would be used as the data source.²² It gave an example of an A320 neo with total turnaround airport charges of €3,737, of which the NOx charges would comprise €11 or 0.3%.
- 6.3 Ryanair responded by highlighting the inverse relationship between NOx and CO₂ emissions, stating that NOx charges would lead to higher charges for aircraft with lower CO₂ emissions. Ryanair asked Dublin Airport to confirm how much revenue it expected to collect from the NOx charges in 2024. The airline asserted that there is no cost burden on Dublin Airport which would justify a NOx charge and states that Dublin Airport did not provide evidence that NOx is an issue at Dublin Airport or in Ireland more generally. It noted that most airports do not use NOx based charging modulation, and of those that do, many are legally mandated to do so.
- 6.4 Dublin Airport's Decision Paper acknowledged the absence of a current legal obligation in respect of any NOx problem, but stated that there may be such a problem by 2030. The airport stated that the proposal is aimed at addressing the impacts on the community surrounding Dublin Airport, and is aligned with its Sustainability Policy Statement.²³
- 6.5 As with the LEAD scheme, we note that this charge is revenue neutral, i.e. it does not change the total aeronautical revenues to be collected by Dublin Airport, but can rather re-distribute the charging burden between different airport users. We also note that, unlike the LEAD scheme, this is a standalone

²² <https://www.easa.europa.eu/en/domains/environment/icao-aircraft-engine-emissions-databank>

²³ [Sustainability at Dublin Airport](#)

charge, meaning that it does not ‘bake in’ irrelevant parameters such as MTOW.

Ryanair’s complaint on the NOx charges

6.6 Ryanair states that the inverse relationship between NOx and CO₂ emissions means that the modulation is not Relevant, in circumstances where Dublin Airport has provided no evidence of a NOx problem at the airport or any legal obligation to introduce NOx charges, but on the other hand where it is Irish Government policy to reduce CO₂ emissions. Ryanair also highlights the absence of any cost burden for Dublin Airport related to NOx emissions which would justify a charging differential on the basis of cost-relatedness. Ryanair states that the magnitude of the proposed charge is irrelevant, as airports can only introduce modulated charges if there are transparent, objective and relevant criteria for doing so.

Transparency

6.7 While Ryanair’s complaint in this case relates primarily to Relevance, for completeness we have reviewed it from the perspective of Transparency, and note the following challenges which are described further below:

- The absence of clarity on the justification for the modulation/differentiation.
- The absence of an explanation/information on the unit charge of €0.25.

Relevance

6.8 We have again considered this complaint from the perspective of the Relevance requirements under the 2011 Regulations and associated guidelines, as outlined in above.

Dublin Airport’s justification

6.9 Dublin Airport said that the purpose of the charge is to “*address[.] the local impacts on the surrounding community of Dublin Airport*”, and referenced an impending requirement to reduce NOx emissions below current levels from 2030. Dublin Airport also referred to ICAO Doc. 9082, which we note sets out the principle that where there is an air quality problem in relation to a local (as opposed to global) pollutant such as NOx, a charging modulation can be implemented which is linked with the costs, to the airport operator, of addressing that problem.

Whether the Relevance/justification standard was met

6.10 Again, we note that it is not entirely clear whether the NOx related charges are said to be a modulation for the purpose of public and general interest under Regulation 6, or a charging differentiation under Regulation 11. The latter could be based on cost-relatedness as per the referenced ICAO Doc. 9082, or alternatively a behavioural ground. In particular, it is not clear whether the purpose of the NOx modulation/differentiation is to:

- Reflect cost-relatedness, by reference to anticipated costs for Dublin Airport of required measures to comply with NOx emissions standards and/or otherwise address a NOx problem at the airport. This is the scenario in which the referenced ICAO Doc. 9082 suggests that such differentiated charges could be implemented.
- Drive a change in airport user behaviour, such that a NOx problem would be resolved, where otherwise it would not be resolved in the absence of the modulation.

6.11 If the former, we note, as highlighted by Ryanair, the absence of information on any current costs associated with meeting the future obligation. If the latter, similar to the LEAD scheme as set out in Section 5, it is again not possible to assess whether the modulation is proportionate to its stated objective, without a specific objective, or estimate of the effect which the modulation is expected to have, being set out.

6.12 We disagree with Ryanair that trade-offs between CO₂ and NOx emissions would make a NOx modulation irrelevant. As referenced in *TF Environment*, the risk with environmental modulation is that “*stronger incentives to lower one negative external effect can lead to an increase of another negative external effect*”. To mitigate this risk, paragraph 4.27 addresses the need for “*a full internalization of all externalities*”. Furthermore, “*With internalization mechanisms well calibrated, the resulting price signal reflects the shadow value of every externality and incentivizes airlines to use the best aircraft/engines – and the industry to improve the efficiency of aircrafts/engines – in the right direction from a collective point of view*”. It is therefore not the case that the inverse relationship between CO₂ and NOx means that airport managing bodies should choose between one or the other.

6.13 Additionally, if there were a specific cost to the airport operator of resolving a NOx problem, this would provide a justification for an associated charging differentiation based on the level of NOx emissions, notwithstanding any trade-off with CO₂ emissions.

6.14 In summary, however, we note that the NOx modulation/differentiation has not been established as currently having a Relevant justification, as required by Regulation 6 and/or Regulation 11 of the 2011 Regulations.

Objectivity

6.15 Next, we consider Objectivity. As noted above, whether the justification is said to be cost-related (or other) differentiation under Regulation 11, or public and general interest under Regulation 6, the charges must be differentiated/modulated on an objectively justifiable basis.

Whether the Objectivity standard was met

6.16 As the Relevant justification itself is not clear, it follows that there cannot be an objectively justifiable analysis to reflect that justification as a charging modulation/differentiation. If the Relevant justification is cost relatedness, there

should be an objective assessment linking the charging differential with the cost differential. If the justification is not cost-relatedness, then an objective analysis could be based on ensuring that the modulation would generate a correct price signal, as discussed above in relation to CO₂, or could also be set with reference to achieving the required behavioural changes such that any NO_x problem at the airport would be mitigated.

7. Conclusion and Remedy

- 7.1 In this section, we summarise our conclusions and set out our Draft Decision on the appropriate remedy and way forward.

Conclusion

- 7.2 Our Draft Decision on the four specific charging modulations/differentiations in respect of which Ryanair has complained is that they have not been sufficiently demonstrated as non-discriminatory and justified as being compliant with the 2011 Regulations. These charging modulations/differentiations need to be re-assessed by Dublin Airport, with a view to addressing the various issues of Transparency, Relevance, and Objectivity as outlined above, in order to achieve compliance with the 2011 Regulations.

Remedy

- 7.3 If, having considered the responses to this Draft Decision, our final assessment remains that some or all of these charges have not been set in line with the requirements of the 2011 Regulations, we will need to consider the appropriate remedy. Ryanair has requested that we issue a direction to daa pursuant to section 45B of the Aviation Regulation Act of 2001, as amended. However, such a direction may not be necessary if Dublin Airport agrees to review and consult on the airport charges, in a timely manner, taking account of the issues identified.
- 7.4 In relation to the timeline for such a review to be completed, we consider that a balance should be struck between addressing the above issues and achieving compliance with the 2011 Regulations in a timely manner, as against allowing reasonable time for Dublin Airport to consider and address the issues, including taking account of the views of users as part of a consultation process. In that regard, as set out above, Regulation 10 of the 2011 Regulations provides that a revised proposal should be issued by Dublin Airport no later than four months before it is planned to come into effect, with a decision issued no later than two months beforehand. In our view, the current circumstances would permit reducing those notice periods somewhat (which is permissible under Regulation 10), while still aligning as closely as possible to the standard periods.
- 7.5 Therefore, our Draft Decision is that re-assessed charges, which have been subject to consultation as per the 2011 Regulations, should come into effect in time for the **Winter 2024-2025 season, i.e. from 27 October 2024**. It is not proposed that there would be any retrospective action or adjustments in the meantime, in particular in relation to the charges currently in effect for Summer 2024.
- 7.6 Should Dublin Airport not agree to voluntarily remedy any issues in line with the final decision, we would then expect to issue a direction under Section 45B.