



Final Decision
on
Ryanair complaint
on Airport Charges at Dublin Airport

03 September 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, 2009/12/EC (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 to apply from 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 Expenditure (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 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 We find there is merit in Ryanair’s complaint in respect of the four individual charges, c) to f) above, and agree with Ryanair that further assessment/work in relation to these charging modulations/differentiations is required, if the airport

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-EuropeanCommunities(DublinAirportCharges)Regulations2011.(irishstatutebook.ie))

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

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 We received 11 responses to our Draft Decision which was published in May 2024.³ The responses mainly focused on:
- The four charging modulations/differentiations which were the subject of the IAA review, following the Ryanair complaint.
 - The time period and deadline for when Dublin Airport should review the charges to address any issues identified.
 - Airport charges more broadly; whether they can be set on a basis other than cost relatedness and whether other airport charges, which were not the subject of the Ryanair complaint, might also not be justified in line with the 2011 Regulations.
- 1.7 Having considered the points raised in response to the Draft Decision, our substantive analysis and conclusions remain unchanged and are in line with those as outlined in the Draft Decision.⁴
- 1.8 In our Draft Decision we proposed to have Dublin Airport re-assess the charges in advance of the Winter 2024-2025 season. In light of responses received, the practical timelines involved (including that we extended the timeline for responses, having been requested to do so), and the timeline required under the 2011 Regulations, our Final Decision is that, rather than re-assessing the charges on an interim basis in time for Winter 2024-2025, Dublin Airport should review the charges as part of the annual consultation process to take effect in time for the Summer 2025 season, which commences on 30 March 2025.
- 1.9 The IAA will keep this matter under review over the coming months to assess whether appropriate steps are being taken in that regard and, if it appears to be necessary or appropriate to do so, will issue a direction to Dublin Airport under Article 45B of the Aviation Regulation Act of 2001, as amended.

³ IAG is the parent company of British Airways, Iberia, Vueling, Aer Lingus.

⁴ [Draft Decision on Ryanair complaint on Airport Charges at Dublin Airport](#)

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 grounds of Ryanair's complaint.
 - (d) The IAA's approach to the investigation.
- 2.2 Sections 4,5,6, and 7 summarise the charges that are contested by Ryanair, and provide our assessment of whether Dublin Airport has met its obligations under the 2011 Regulations in setting the charges:
- (a) Section 4 covers the passenger charges differentiation/modulation.
 - (b) Section 5 addresses the two-banded runway movement charges.
 - (c) Section 6 assesses the Low Emissions Aircraft Discount (LEAD) scheme.
 - (d) Section 7 addresses the Nitrogen Oxide (NOx) charge on aircraft movements.
- 2.3 Finally, Section 8 concludes the assessment, outlines the remedy options available to the IAA and ultimately sets out our Final 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 direction 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 on 26 September 2023, when 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 2022.⁵
- 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.⁶ 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

⁵ [final-decision-on-the-maximum-levels-of-airport-charges-at-dublin-airport-2023-2026.pdf \(iaa.ie\)](#)

⁶ 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.

2.22 On 24 May 2024 the IAA published its Draft Decision on the Ryanair Complaint on Airport Charges at Dublin Airport (the “*Draft Decision*”). Interested parties were afforded 5 weeks to submit responses to the Draft Decision. We have considered the points made in all of the responses received which are reflected in this Final Decision.

Ryanair’s Complaint

2.23 Ryanair’s complaint contains various criticisms and allegations. In our Draft Decision, we divided the complaint 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.

2.24 We considered that the alleged lack of transparency on Capex, and criticism of the overall increase in the level of airport charges, were 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.

2.25 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 (TPC), the runway movement charge (RWMC), the Low Emissions Aircraft Discount (LEAD) scheme, and the Nitrogen Oxide (NOx) charge.

2.26 Ryanair claimed that Dublin Airport provided insufficient transparency to demonstrate the cost differential between transfer and non-transfer passengers

which justifies the differentiated charges. Ryanair alleged that the charge is discriminatory against point-to-point airlines, who are cross-subsidising transfer passengers.

- 2.27 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 claimed 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.
- 2.28 Ryanair argued 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 claimed that Dublin Airport did not meaningfully engage with Ryanair's alternative proposals submitted during the consultation process.
- 2.29 Finally, Ryanair disputed the NO_x charge. The airline argued that in the absence of any evidence of a NO_x problem at Dublin Airport, there is no basis for this charge. Ryanair claimed that a NO_x charge would deter environmentally friendly aircraft from Dublin Airport, given trade-offs with other pollutants.
- 2.30 In assessing these complaints, we considered if the four charging modulations/differentiations outlined above met the standards of Transparency, Objectivity and Relevance as required under the ACD. In addition to the legislation, we also reviewed the guidance papers of the Thessaloniki Forum of European airport charges regulators, of which the IAA is a member.

Thessaloniki Forum

- 2.31 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.⁷
- 2.32 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*").⁸
 - b) The 2018 Thessaloniki Forum 'Non-Discrimination under the Airport Charges Directive' paper ("*TF Non-Discrimination*").⁹
 - c) The 2023 Thessaloniki Forum paper on Airport charges and environmental variations ("*TF Environment*"), which updated and

⁷ [Thessaloniki Forum](#)

⁸ [2016 Thessaloniki Forum Recommendations on Consultation and Transparency](#)

⁹ [2018 Thessaloniki Forum Non-Discrimination under the Airport Charges Directive](#)

supplemented a 2021 paper on the same topic.¹⁰

2.33 *TF Transparency* interprets and explains the consultation and Transparency requirements of the ACD. Paragraph 24 sets out the recommended level of 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.”

2.34 *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”*.

2.35 *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.

2.36 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 if 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

¹⁰ [2023 Thessaloniki Forum paper on Airport charges and environmental variations](#)

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 externalities 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. Responses to the Draft Decision on the IAA's approach

- 3.1 In this section, we address submissions received in respect of our investigation approach which led to the Draft Decision. We also detail comments on the standard of review we applied and how we assessed compliance with the 2011 Regulations.
- 3.2 Dublin Airport's response to the Draft Decision was summarised in the form of a series of questions. In this section, and in the sections below, we have sought to address these questions by providing reasons and responses in the same form, where practicable.

General Approach

Commercial Discretion

- 3.3 ACI Europe, Aer Lingus and Dublin Airport submit that the IAA had not paid sufficient regard to Dublin Airport's commercial discretion in setting its charges to best meet its business objective needs and aligning with the National Aviation Policy for Ireland (NAP).
- 3.4 Dublin Airport has commercial discretion to set charges within the bounds of complying with regulatory requirements. Thus, any charges that it sets must comply specifically with the price cap, and the 2011 Regulations. In this case, we have investigated whether the charges which were the subject of the Ryanair complaint (transfer passenger charge, runway movement charge, LEAD, NOx) were set in compliance with the 2011 Regulations.

The role of the IAA in the consultation process

- 3.5 Dublin Airport noted how *"The IAA were participants in the airport charges consultation process, attending the consultation meeting and had full visibility of all consultation material"*, and stated that it is concerning *"that no comments, compliance concerns, or queries were raised by the IAA representatives during the process. However, on receipt of a tactical Ryanair complaint motivated by anti-competitive cost reductions, allusions of noncompliance are raised"*.
- 3.6 This is not correct. The IAA and Dublin Airport held a number of meetings during 2023 in which the IAA explained the challenges in relation to, in particular, justifying certain forms of environmental related modulations under the ACD, and provided references to the relevant Thessaloniki Forum guidelines, and provided the emerging position on environmental modulations generally. We note that Dublin Airport did not then set its charges with sufficient reference to its obligations under the 2011 Regulations, nor follow that guidance material. Dublin Airport is required to comply with the 2011 Regulations and should be in a position to demonstrate such compliance. The interpretations, regulations, and guidelines upon which the IAA has based its investigation have been published, including by the IAA, precisely for the purpose of assisting

stakeholders such as Dublin Airport in discharging their obligations.¹¹¹²

- 3.7 Additionally, it should be noted that the IAA attends the consultation meetings held by Dublin Airport in an observer capacity. Unless we have completed a review, such as following a complaint, we will not generally provide opinions on whether there may be non-compliance in a particular case. To do so may prejudice our formal role in deciding whether there has been a breach of the 2011 Regulations in the event that any such complaint is made to us.

Cost relatedness

- 3.8 ACI Europe, Aer Lingus, and Dublin Airport stated that the IAA had put too much emphasis on cost relatedness and not allowed for non-cost drivers to make charging decisions based on public and general interest. ACI Europe claimed that the IAA had turned Transparency into a cost-relatedness standard, while Dublin Airport was of the view that the IAA imposed an incorrect standard on pricing (based on the 2011 Regulations) that rejects a justification that is built on anything less than a scientific basis.
- 3.9 The Draft Decision does not define Transparency as providing cost related definitions; the referenced paragraphs in ACI Europe's response do not contain definitions. However, where the justification provided by the airport operator is in fact cost-relatedness, in that case it is indeed necessary to provide the associated cost-related information/analysis. Only in that case can an airline, as suggested by ACI, have a clear understanding of the charge and/or the differentiation. Notwithstanding that the contrary was set out in the Draft Decision, ACI appears to have inferred that it is our view *'that any price differentiation must have a calculable cost-driver at its root'*. That is not the case.
- 3.10 More broadly, upon receipt of a complaint from Ryanair that certain charges had not been properly justified in accordance with the 2011 Regulations, whether in relation to cost relatedness or non-cost drivers, we investigated and concluded that this was the case. The parties setting out detail on why, for example, they think a significant discount for transfer passengers is justified, or what the appropriate structure of runway charges ought to be (Aer Lingus for example suggested that all aircraft movements might be charged a single movement charge), is more for the upcoming consultation process. The IAA has made no decision to alter the charging structure, as suggested by a number of respondents.
- 3.11 We note also that Dublin Airport has set out various new or revised interpretations and justifications in relation to the requirements of the 2011 Regulations. While such analysis in relation to modulations/differentiations may be useful, as above, it is also more relevant in the context of the upcoming consultation. The IAA's assessment has focused, as it must, on the consultation and decision-making process run by Dublin Airport in respect of the charges for Summer 2024 and Winter 2024. Dublin Airport cannot retrospectively add new

¹¹ [Thessaloniki Forum guidelines](#)

¹² [2011 Regulations](#)

reasons/analysis to seek to justify the charges it has already set and/or the decisions it already made in 2023.

Price cap compliance and cost relatedness

- 3.12 Dublin Airport referred to the multiannual price determination framework and stated that, until now *'it has been broadly accepted that compliance with this annual price cap is sufficient evidence of the cost-relatedness of the various charges.'*
- 3.13 It is not correct that price cap compliance alone implies the cost-relatedness of each individual charge, nor has it ever been accepted as such. Compliance with the annual price cap ensures overall cost relatedness but does not support any justification that individual charges have been differentiated on the basis of cost-relatedness. As Dublin Airport separately stated, there is no requirement that each individual charge must be solely cost related.
- 3.14 In relation to the above point on price cap compliance, Dublin Airport further argued that *"this logic should, and historically has been applied to all airport charges levied at Dublin Airport"*. It noted how *"There are a wide range of outcomes, that are not considered in the tests applied by the IAA, such as higher commercial revenues in certain markets subsidising aeronautical charges. Application of a strict cost-relatedness test to individual charges such as the passenger and runway charges is crude and does not account for the wide range of outcomes when considering a single till model."*
- 3.15 The tests applied by the IAA were seeking to validate the cost relatedness justifications being advanced by Dublin Airport, which, it can be noted, do not appear to be based on any assessment of higher commercial revenues in certain markets. The purpose of our investigation was not to develop our own cost relatedness model. We agree with Dublin Airport that, within a single till model, commercial revenues may also be of relevance to any justification of cost-related differential charging. It is not sufficient on the part of Dublin Airport to assert cost-relatedness with no specific analysis in support of this assertion, nor in support of the extent of the cost differential which has been converted to a charging differential.

Other

- 3.16 Delta, IATA and Lufthansa found it appropriate that the IAA is evaluating Dublin Airport's charges scheme using a structured approach with reference to the Transparent, Relevant, Objective criteria.
- 3.17 In its response, various criticisms and allegations are made by Dublin Airport on the motivations of the IAA and/or Ryanair in respect of the complaints raised and the draft findings. We do not find it necessary or appropriate to address such material directly here, but confirm, for the avoidance of doubt, that these are rejected on the part of the IAA.

Questions from Dublin Airport submission

- 1) *Other ISAs have a series of 'steps' that are taken before a formal complaint can be submitted such as meetings, advisement of dialogue between the airport authority and airport user and to encourage the airport user to gather further information. Were any of these steps taken with Ryanair? If not, why?*
- 3.18 All of the referenced steps were taken. Ryanair issued three letters to Dublin Airport, including on the advice of the IAA to engage in further dialogue, before submitting a formal complaint to the IAA. Within these letters, which were also provided to the IAA, Ryanair requested additional information from the airport operator which was not provided.
- 2) *The IAA requested daa to provide detailed aeronautical revenue, which daa provided. Was this used? And if so, how did this influence the IAA's Draft Decision?*
- 3.19 We requested Dublin Airport to provide us with detailed 2023 and 2024 actual/budgeted costs and revenues. We also asked for the analysis in support of the justifications provided during the consultation process in respect of cost relatedness of the individual charges, where applicable. As stated at the time, this information was requested with a view to assessing the consistency between Dublin Airport's costs/revenues, and cost relatedness-based justifications. In the event, as set out in the Draft Decision, there was no quantified supporting analysis on cost relatedness provided, meaning that there was no analysis for the IAA to assess in terms of substantive cost relatedness.
- 3) *In its assessment, why have the IAA not assessed whether there was an actual impact on the consumer or competition which the Regulations are there to protect?*
- 3.20 The purpose of the IAA's investigation was to assess whether the requirements of the 2011 Regulations had been met. In line with the ACD, the 2011 Regulations require that modulated or differentiated charges can be justified on the basis of Relevant, Objective and Transparent criteria. The 2011 Regulations do not allow Dublin Airport and/or the IAA to waive these requirements on the basis of an assessment of whether or not any actual impact on consumers can be identified. Such an assessment could of course only be undertaken with reference to what the properly justified/modelled charging structure would be. Complying with these requirements is a safeguard against the risk of distorting fair competition through arbitrary or unjustified price discrimination.
- 4) *Why was there no Formal Notice of Investigation issued as described in the 2018 Thessaloniki Forum paper?*
- 3.21 The 2018 Thessaloniki Forum paper (a paper which was chaired by the IAA, then the Commission for Aviation Regulation, and contributed to by the UK CAA) does not recommend publishing a Formal Notice of Investigation; instead, it provides an example of a process, which might be modified to take account of national legislation and/or the specific circumstances. The IAA decided, in this case, to instead publish a Draft Decision to allow all interested parties to

make submissions (see next question). The IAA notified Dublin Airport that it was conducting an investigation following receipt of the formal complaint, provided Dublin Airport with the complaint, and provided Dublin Airport with an overview of the planned form of the investigation. Dublin Airport did not request that any 'Formal Notice of Investigation' would also be published by the IAA and has set out no basis for why it might have been prejudiced by the absence of such a notice, which would have contained information already known to Dublin Airport.

5) *It appears only the view of Ryanair was considered, why were other users not consulted?*

3.22 That is the purpose of issuing a Draft Decision. The only party to issue a complaint to the IAA in respect of alleged non-compliance with the 2011 Regulations was Ryanair.

Application of the 2011 Regulations and Standard of Review

The IAA's interpretation of the 2011 Regulations

3.23 Dublin Airport explained that its users are protected from "*unfair airport charges*" by three regulatory regimes: (i) economic regulation (price caps) under national legislation, the Aviation Regulation Act 2001 (ii) competition laws, including EU laws against discrimination under the Competition Act 2002, and (iii) general EU law principles prescribed by the Airport Charges Regulations 2011 ("the Regulations"). It stressed the need for the 2011 Regulations to be interpreted in the regulatory context in which they exist in Ireland and added that (i) "*the objective of the Regulations can be achieved by construing them narrowly rather than by stretching them and creating excess regulation*" and (ii) "*the Regulations must be interpreted as only prohibiting discrimination which may distort competition*".

3.24 Dublin Airport expressed concern that we did not accurately take account of this context and found the IAA's application of the 2011 Regulations' non-discrimination principles (e.g., 'Objective', 'Relevant', 'Transparent') "*more restrictive than the equivalent EU competition principles*". Dublin Airport stated that the IAA imposed an "*incorrect standard which... creates a new industry in consulting and producing scientific dossiers to justify common sense pricing*". Dublin Airport claimed that the IAA's interpretation of the 2011 Regulations would not only adversely affect it but would also have "*unintended consequences for the wider public*" which included, it stated, "*(i) additional compliance costs which would be ultimately passed onto passengers and (ii) stakeholder frustration on lack of certainty on charges.*"

3.25 Our interpretation of the ACD and the 2011 Regulations remains consistent with those set out previously, such as by CAR in 2017, and in the Thessaloniki Forum papers. The assessment in the case of the current complaint from Ryanair has been based on the specific consultation and decision-making process undertaken by Dublin Airport in relation to the charges for Summer 2024 and Winter 2024. The four charging differentiations/modulations which are the subject of the complaint were all changed from the previous year, and,

in the case of two of the four charges (LEAD and NOx), are of an entirely new nature to the charging differentiations/modulations at Dublin Airport in any previous year and appear to have led to the complaint being made.

- 3.26 The standard of analysis and decision-making which the IAA expects Dublin Airport to provide in order to comply with the 2011 Regulations is not unduly onerous nor exceptional. It is common, for example, to set differentiated charges for different services based on an analysis of the unit cost differential for providing the different services. In fact, this is the approach specified in the Single European Sky (SES) Regulations and the approach followed by the IAA in respect of setting its own fees and charges.¹³ In that regard, the SES Regulations require a granular cost-allocation based differentiation between En Route, Terminal, and other services. We note that cost allocation is a commonly undertaken analysis and any airport operating under a dual or hybrid till will typically have a granular cost allocation model underlying this.
- 3.27 To the extent that Dublin Airport is suggesting that it is sufficient under the 2011 Regulations to set charging differentiations on the basis of what it might assert to be ‘common sense pricing’, that is not the case. The IAA would not set the price caps at Dublin Airport on the basis of what the IAA might assert to be ‘common sense’, rather than calculating a price cap based on a set of inputs which can be interrogated/challenged/supported by stakeholders, thereby allowing for a meaningful consultation on what the appropriate price caps should be. Such an approach to administrative decision-making of this nature would be, rightly, not accepted by Dublin Airport or other stakeholders.

The Standards of Relevant, Objective, Transparent

- 3.28 Dublin Airport stated that we wrongly interpreted the meaning of the terms “Relevant, Objective, Transparent” under the 2011 Regulations. In its own view, it is the “*user group definition, according to which it determines entitlement to a charge rate*” that Dublin Airport needs to be in compliance with. Dublin Airport remarked “*there is nothing in the text of the Regulation to support the IAA’s alternative interpretation that the magnitude of the modulation or the methodology by which it is done is instead what must be compliant*”.
- 3.29 This is not the correct nor a sustainable interpretation of the 2011 Regulations/ACD, and does not, contrary to Dublin Airport’s response, align with the interpretation of the UK CAA, the Thessaloniki Forum, nor, to our knowledge, any European ISA, and would mean that there is no basis or requirement for any meaningful consultation on any reasons/analysis underlying the levels of the charges to be calculated/set. This newly proposed interpretation means that, for example, if Dublin Airport sets out that the user group ‘transfer passengers’ are a Relevant, Objective, Transparent criterion, it has met this obligation of the 2011 Regulations and can then decide to apply a transfer passenger discount of anywhere from 99% (or 100%) to 1%.
- 3.30 This approach does not follow from a literal interpretation of the wording of Regulation 6(1)(d), as suggested by Dublin Airport. The clear meaning of the

¹³ [2004 SES Regulation](#), [2019 SES Regulation](#), [IAA Fees](#)

words used in Regulation 6(1)(d), read together with the other provisions of the 2011 Regulations and the ACD, is that, if Dublin Airport seeks to set different charges for otherwise equivalent services on the basis of some issue of public and general interest, it must justify those different charges using a methodology in which the charging/modulating criteria are Relevant, Objective, and Transparent, with reference to that issue of public and general interest.

- 3.31 Dublin Airport's interpretation is inconsistent with the assessment of the European Court of Justice, which, in *Deutsche Lufthansa AG v Land Berlin* noted the relevance of the question of '*proportionality between the costs of the service provided and the price (charge)*', and that the criteria used for such a modulation must be "*Relevant, Objective, and Transparent*".¹⁴ It is similarly inconsistent with the recitals to the ACD, which, for example, note that it is '*vital for airport users to obtain from the airport managing body, on a regular basis, information on how and on what basis airport charges are calculated.*' There would be little point in providing information on, for example, the revenue from the various charges and the cost of the services covered by them, as per Regulation 6 of the 2011 SI, if all of that were then to be ignored and dispensed with when it came to setting the actual charges.
- 3.32 Dublin Airport's interpretation would require no analysis/reasons underlying the level of charges, merely analysis/reasons underlying the decision to modulate them in principle on the basis of a single criterion, e.g. transfer passengers. Dublin Airport did not refer to this interpretation of the 2011 Regulations at any point during the consultation/decision-making process and did not, for example, rely on it to reject the submissions made by Ryanair that transfer passengers were being subsidised by point-to-point passengers on the ground that this is irrelevant. It can also be noted that this interpretation would not meet the standards of ICAO doc. 9082, which requires that no users shall be burdened with costs not properly allocable to them.¹⁵

Relevant

- 3.33 In reference to the IAA's reliance on the Thessaloniki Forum definition of Relevant, Dublin Airport stated that "*the correct interpretation of "relevant" (and "applicable" (in the Thessaloniki Forum definition)) is a similar standard to the established legal concept of unreasonableness or irrationality and the Draft Decision is wrong in suggesting the standard is much higher and is not met where for example the IAA thinks there may be better alternatives*".
- 3.34 Our working definition of Relevant remains as it was set out in the Draft Decision and as defined in *TF Non-Discrimination*. Contrary to Dublin Airport's submission, the Draft Decision did not say that a modulation/differentiation will not be Relevant because the IAA thinks that there may be better alternatives. Instead, we confirmed that a mere difference of opinion between the IAA and Dublin Airport on a particular issue does not mean that Dublin Airport has failed to comply with the 2011 Regulations. Where the IAA has also, in the Draft Decision, provided suggestions/guidance as to which approaches, in its view,

¹⁴ [CURIA - Documents \(europa.eu\)](https://eur-lex.europa.eu/curia/doclist/curia.do?method=docsList&docid=62013CJ0104)

¹⁵ [ICAO 9082](https://www.icao.int/DocLibrary/9082/9082.pdf)

might be relatively more or less readily justifiable under the 2011 Regulations, this was simply with a view to assisting the stakeholders, and particularly Dublin Airport, in relation to how these issues might be addressed going forward. Dublin Airport has itself sought such guidance from the IAA on various points elsewhere within its response to the Draft Decision.

- 3.35 It is not the case, as Dublin Airport has suggested, that the appropriate standard of review by the IAA is that of irrationality/unreasonableness, such as would apply in judicial review proceedings. The standard to be applied is that of ‘error’, similar to that which we previously advocated to, and was adopted by, the aviation appeals panel convened to consider appeals of our decisions on the maximum level of airport charges.¹⁶ This standard is consistent with the role of the ISA as envisaged in the 2011 Regulations, the ACD, and the Thessaloniki Forum papers.
- 3.36 As set out in the Draft Decision, and consistent with the Thessaloniki Forum (and also the UK CAA) guidelines, where the justification of a behavioural modulation/differentiation is that it will lead to behavioural change (such as LEAD and NOx), it is necessary to provide evidence/analysis in relation to why the modulation/differentiation can be expected to lead to the intended behaviour change, and what the specific goal is in that regard.

Objective

- 3.37 Dublin Airport has claimed that “*The correct interpretation of “Objective” is the most obvious and simple one, namely that it prohibits criteria which allow an airport to exercise discretion and therefore requires all criteria to be measurable so that uniform and fair application to all users is ensured*”. It does not agree with the IAA’s application that the Objective criterion requires the “*magnitude of the discount to be proportionate*”, rather it refers to the “*question of whether the criteria for grant of a discount is Objective*”.
- 3.38 As with Relevance, we continue to apply the *TF Non-Discrimination* definition of Objective as followed in the Draft Decision. What the Thessaloniki Forum definition means in practice will depend on what the Relevant justification is. Essentially, it requires that the Relevant justification is converted to a specific charging differential, through the application of a cogent analytical assessment aimed at generating a proportionate differential with reference to that Relevant justification. For example, where the justification is cost relatedness, the differentiation must be underpinned by an Objectively derived cost differential analysis. We agree with the UK CAA’s view in that regard, as outlined below. The alternative interpretation now proposed by Dublin Airport would see the requirement limited to anything which is fully defined on an ex-ante basis, such that it would not permit the subsequent exercise of discretion.
- 3.39 Dublin Airport’s proposed interpretation, which flows from its broader new interpretation that it is not required to justify the actual charges it proposes to set, is not the correct interpretation, as noted above, and would render the consultation process substantively meaningless. A charging differential which

¹⁶ [Aviation Appeals Panel 2020 \(Paragraph 8-14\)](#)

is fully defined ex-ante but where the magnitude of the discount has not been set with reference to any specific analysis or reason does not preclude discriminatory charging and/or unwarranted cross-subsidisation. For example, if the estimated cost-related differential between point-to-point and transfer passengers was 70%, a discount of 90% could still be justified solely on the basis of cost-relatedness using Dublin Airport's proposed definitions of Relevance and Objectivity.

- 3.40 We also note that, in certain cases, the modulations do in fact purport to allow Dublin Airport to subsequently exercise discretion, which, even on Dublin Airport's own proposed interpretation of the meaning of Objective, does not comply with the 2011 Regulations. For example, the Terms & Conditions of the LEAD scheme provide that *'Dublin Airport will complete periodic reviews of the Scheme. Dublin Airport reserves the right to withdraw the Scheme or amend the terms, eligibility or conditions document at any time in respect of any qualifying individual operator. If Dublin Airport makes any amendment, it shall publish the amended Scheme on its website. Operators should refer on a regular basis to the Dublin Airport website to be aware of any changes made to the Scheme.'* While not the subject of this complaint, any such unilateral withdrawal, denial, or change in airport charges in this manner would of course also be a breach of the 2011 Regulations.

Transparent

- 3.41 Dublin Airport stated that *"The Draft Decision is wrong in suggesting that "transparent" requires disclosure of many levels of detail beneath the overall methodology and cost structure."*
- 3.42 As above, we continue to apply the TF Non-Discrimination definition of Transparent as per the Draft Decision. In simple and applied terms, in respect of the proposed charges, Dublin Airport must provide sufficient detail on the Relevant and Objective basis, or bases, for the proposed charges to enable airport users to fully understand and engage on the specifics of what is being proposed, and therefore suggest adjustments to the approach/modelling, or assumptions, or suggest additional factors which ought to be taken into account, etc. Dublin Airport must then take into account the views expressed by airport users in relation to these proposals and must provide at least the main reasons as to why it agrees/disagrees in respect of at least the main issues raised.
- 3.43 ACI Europe stated that the IAA's interpretation of Transparency tends towards requiring cost-related information. ACI Europe claimed that this is *"not in line with the ACD where transparency is about information provided at aggregated levels and enough information for an airline to have a clear understanding of the charge and/or the differentiation and its impact on the total charges invoiced."*
- 3.44 We do not agree with ACI Europe's assertion that our Draft Decision has defined the Transparency requirement as mandating a cost assessment. However, where Dublin Airport itself claims that a charging differentiation reflects a difference in the costs it incurs, it is required under the 2011

Regulations to provide airport users with sufficient material to understand this difference in costs and how it has been reflected in the charging differential.

The UK CAA Guidelines

- 3.45 Dublin Airport outlined its view that “*the UK civil aviation regulator, the CAA’s interpretation of Relevant, Objective, Transparent align with daa’s*” and that it regretted that the “*IAA is considering an opposite approach*”. It referenced an ‘Initial Thinking’ document set out by the CAA in 2010.
- 3.46 Contrary to Dublin Airport’s submission, the UK CAA’s interpretation of the three requirements does not align with that set out by Dublin Airport. The UK CAA’s interpretation is actually contained in its 2015 guidelines, which expressly replace the ‘Initial Thinking’ document from 2010 from before the ACD was transposed in the UK, upon which Dublin Airport has relied (although Dublin Airport subsequently goes on to refer to the 2015 guidelines).¹⁷ The definitions in the Thessaloniki Forum paper which we have used in our investigation are similar to the UK CAA definitions as set out in 2015; the UK CAA indeed contributed significantly to the Thessaloniki Forum 2018 paper, including with reference to its own 2015 guidelines.
- 3.47 While it is important to take account of how the same or similar provisions are applied elsewhere, the IAA is not bound by any decisions or approaches adopted by the UK CAA. It can be noted, in any event, that the identified quotes (by Dublin Airport) from 2010 do not support the conclusions which Dublin Airport seeks to draw from them. In particular, the initial highlighted quote identifies that a concern of discrimination, which could harm competition, arises where the ‘*airport has taken a decision to discriminate between users or differentiate charges without reference to objective and transparent criteria.*’ This is consistent with the 2011 Regulations and the basis upon which the IAA has investigated Ryanair’s complaint.
- 3.48 The UK CAA document from 2010 was primarily considering, in advance of its transposition, how to harmonise the ACD principles with then-extant UK law and practice. In particular, in the context of the prevalence of bilateral deals between airport users and airport operators in the UK, the paper concluded that such deals are consistent with the ACD and that the negotiation of the terms of such deals need not be undertaken collectively/published by the airport for it to be compliant with the ACD. This interpretation has since been rejected by the ECJ in *Deutsche Lufthansa v Land Berlin* (referenced above).
- 3.49 The actual UK CAA guidelines from 2015, also referenced by Dublin Airport subsequently, in fact reflect a similar approach and similar standard of review to that applied by the IAA in investigating this complaint. In particular:
- The reasons/analysis must support the actual amount of the charges being set:

‘The ACRs require airport operators to provide information that

¹⁷ [2015 UK CAA guidelines](#)

enables users to understand the basis on which charges are calculated and ultimately the amount of the charges’, and ‘Transparency in the context of the ACRs requires that the reasons behind the prices charged, are clear to all so that charge payers can establish that they are being treated fairly.’

- The general standard of analysis/coGENCY of decision making in respect of calculating the amounts of the charges:

‘Where an airport operator differentiates its charges, we would expect it to have robust evidence for doing so. Normally, we would expect the evidence to have a quantitative aspect. However, there may be qualitative justifications as well. However, precisely measuring the costs of providing a service to a specific user or, for example, the price elasticities of individual users, may not be straightforward. In the event that an airport was unable to reliably perform such an analysis, we consider that there would be less justification for differentiation of charges.’

- For behavioural or efficiency-based justifications (such as NOx or LEAD in the present case), the UK CAA sets out the same approach as the Thessaloniki Forum paper, as quoted at paragraph 5.26 of the Draft Decision:

‘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.’

- The topic of cost allocation:

‘It is recognised that using cost modelling can only approximate the different costs that users impose on airport operators and, therefore, an exact correlation between costs and charges may not be necessary. We would, however, expect allocation methodologies to be relevant, objectively derived and transparent.’

Cost Allocation and Cost Reflectiveness

- 3.50 We agree with much of the analysis in Section 2.5 of Dublin Airport’s response, particularly that there is not just one single correct way to allocate costs and/or to understand what is meant by the avoidance of cross-subsidisation; there is a range of approaches that could potentially be assessed. This is set out in the Thessaloniki Forum paper on cost allocation at airports.¹⁸ We also agree with the view of the UK CAA in the 2015 guidelines, quoted in full above but quoted partially by Dublin Airport at paragraph 2.5.4 of its response, in relation to the

¹⁸ [2021 Thessaloniki Forum paper on Airport Till Structure and Cost Allocation](#)

standard required of a cost allocation model in order for it to be fit for purpose. We further agree with Dublin Airport that, within a single till model, commercial revenues may also be of relevance to any justification of cost-related differential charging, if there was evidence of a differential in the level of commercial revenues which are generated within different categories of aeronautical services.

- 3.51 The IAA built its own cost allocation model for the new regulator on the basis of, broadly, firstly identifying each cost centre as either 'Direct' or 'Indirect'. Direct costs were allocated to each service product, and the Indirect costs were then split between the service products on the basis of the relative level of the Direct Cost. The primary problem for Dublin Airport in the case of this complaint is that the assertions of cost-relatedness on which it justified differentiated charges do not appear to have been supported with any analysis based on any of these approaches. The proposed approach(es) and the application of the same should form part of the statutory consultation under the 2011 Regulations.

Price Discrimination and Unbundling

- 3.52 Dublin Airport outlined its understanding of price discrimination and unbundling, detailing the three different degrees of price discrimination and how unbundling can recognise that different customer groups have different requirements. Dublin Airport stated that '*Price discrimination relates to charging different customers different amounts for the same underlying product or service*', while '*Unbundling relates to charging different customers different amounts for different products or services*'. It gave the example of airlines charging different prices for tickets based on when the ticket was purchased and the separation of the cost of a check-in bag, priority boarding and in-flight food as unbundling. Dublin Airport stated how '*Price discrimination and unbundling help to intensify competition*' and allow firms to "serve more demand". It stressed how unbundling can promote the user pays principle, where airlines do not pay for services or infrastructure they do not use. Equally, price discrimination can help to lower average costs by "*increasing demand leading to greater utilisation of airport infrastructure*".
- 3.53 Dublin Airport submitted that '*The IAA must consider the precedent setting impacts of this investigation, whereby any incentives, even when supported by airlines, will be considered impossible to introduce due to the burden of requirements. Should the IAA not support the application of charging modulation they should be explicit in this regard, so that all users have a comprehensive understanding.*'
- 3.54 We agree with much of the content submitted by Dublin Airport on this topic, in particular regarding the benefits that can arise from unbundling and from modulated/differentiated charging, which can be justifiable for many different reasons. Dublin Airport must, however, be able to justify the charges in a manner which is compliant with the 2011 Regulations. We do not accept that compliance with the requirements of the 2011 Regulations in the manner set out in this paper means that modulations/differentiations (whether in the form of an incentive scheme or otherwise) are '*impossible*' to introduce, as claimed by Dublin Airport.

- 3.55 The IAA would expect that the specific charging structure of a major airport should be the result of a detailed applied analysis in any case. Provided that the goals of the charging structure are based on Relevant justifications, undertaking such analysis (to the extent that Dublin Airport does not already undertake it) to support the charges setting process should not only lead to compliance with the 2011 Regulations, but also a charging structure which can be made more effective. That is because the differentiations/modulations are set with specific reference to achieving those goals, including any goals relating to economic efficiency and/or welfare in the manner set out in Section 3 of Dublin Airport's response. If the goal (i.e. the Relevant justification) is just to reasonably reflect cost relatedness, then that goal will likely be better achieved if supported by an analysis of the cost differential, than if set arbitrarily and on an assertion of 'common sense'. Such analysis can reasonably be undertaken at varying levels of granularity, depending on factors such as materiality and data availability. Similarly, if the Relevant justification for a noise-related modulation is to reduce noise levels at night, that goal will likely be better achieved if supported by an assessment of what level of modulation is likely to be required to reduce noise levels at night, than if no such analysis is undertaken.
- 3.56 Consistent with the 2011 Regulations, where particular modulations/differentiations are supported by the airlines, as described by Dublin Airport in raising the above concern, these are unlikely to be the subject of any complaint to or investigation by the IAA. As noted in the Draft Decision, the purpose of and basis for some of the charging modulations, differentiations, and incentive schemes appears to be duplicative. If Dublin Airport has concerns as to whether the current range or proliferation of charging modulations/differentiations can all be justified, it might consider rationalising these to essentially aim to address each identifiable goal once and only once, in an Objective manner.
- 3.57 ACI Europe stated that the Draft Decision "*ignored paragraph 2 (b)*" of the 2011 Regulations which allows Dublin Airport to differentiate charges for reasons other than cost relatedness. The Draft Decision does not 'ignore' 2(b). 2(b) is not distinct from the rest of Regulation 11(2), which establishes that any differentiated charges may be set, provided that the level of the differentiated charges has been justified according to the quality and/or scope of the services and their costs, or on the basis of any other objective and transparent justification. This is the standard which the IAA has applied in investigating the complaint.

Questions from Dublin Airport submission

- 6) *Should there not be consistency in the legal application of the ACD obligations across ISAs?*
- 3.58 The nature of an EU directive, as opposed to a regulation, is that it is not directly effective and provides some flexibility to each Member State as to its legal application. The IAA is responsible for overseeing the application of the ACD in Ireland, as transposed by the 2011 Regulations, and has no function in respect of other ISAs, who operate on the basis of different national frameworks and

transpositions. Nonetheless, the IAA is fully supportive of the Thessaloniki Forum, which has produced a range of guidelines aimed at achieving a more effective and harmonised interpretation of the ACD, without arbitrarily different applications. For that reason, we have placed significant weight on the Thessaloniki Forum guidelines, which are also similar to the UK CAA guidelines, in investigating this complaint.

7) *Do the IAA expect daa to justify charges by illustrating cost allocation as directly correlated?*

3.59 Dublin Airport should be Transparent in illustrating the Relevance of each airport charge. If the Relevance of a charge is cost-relatedness, Dublin Airport should provide information to airport users which justifies the differential on the basis of an assessed cost differential. Dublin Airport also has the option to set charges for reasons other than cost relatedness. If this is the case, then Dublin Airport must demonstrate that the modulation/differentiation was Objectively set and outline its Relevance.

8) *In its assessment, why have the IAA not assessed whether there was an actual impact on Ryanair (i.e. damages or wider anti-competitive practices) which the Regulations are there to protect?*

3.60 This has already been addressed above. The purpose of the IAA's investigation was to assess whether the airport charges met the requirements of the 2011 Regulations, and in particular, the standards of Relevance, Transparency and Objectivity, were met, in circumstances where Ryanair alleged that they were not.

9) *Does the IAA assess price discrimination as inherently discriminatory and anti-competitive in nature?*

3.61 No. Under the 2011 Regulations Dublin Airport can differentiate/modulate charges according to the quality and scope of such services and their costs or any other Objective and Transparent justification. The issue is not that price discrimination is '*inherently discriminatory*' but rather that where Dublin Airport seeks to engage in price discrimination/differentiation, it must do so in accordance with the 2011 Regulations.

10) *Do the IAA believe there should be one single universal charge applied to recover costs at Dublin Airport as opposed to the current practice of unbundling and pricing to achieve desired set of outcomes within reason, and a cost related range?*

3.62 The structure of charges is, subject to compliance with the relevant regulatory requirements, a matter for Dublin Airport. Notwithstanding this, the IAA does not think that there should be a '*single universal charge*', which might itself be the subject of complaints. Based on the material provided to and reviewed by the IAA, it is not apparent that this characterisation of the alternative current practice is a fair reflection of the current practice.

4. Passenger Charges

Overview

- 4.1 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.
- 4.2 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 2019.¹⁹ 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.
- 4.3 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.
- 4.4 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 Airport. 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).²⁰
- 4.5 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

¹⁹ We note that the S24 TPC was proposed to be 33% higher than S19. The W24/25 TPC was proposed to be 5% higher.

²⁰ [National Aviation Policy](#)

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 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

4.6 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.

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

Draft Decision

Transparency

4.8 In our Draft Decision, we considered the question of Transparency in respect of the passenger charges differentiation/modulation. We considered the Transparency requirements of the 2011 Regulations, together with the guidelines from the Thessaloniki Forum. We then outlined the material which Dublin Airport provided, before considering whether this was sufficient to meet the requirements.

Relevant legal provisions and guidelines

4.9 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.
- 4.10 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”*.
- 4.11 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”*.
- 4.12 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.”*²¹
- 4.13 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.”*²²

Material provided to airport users

- 4.14 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 2023.²³ At that time, no other information or justification was provided.
- 4.15 In its first response, Ryanair wrote to Dublin Airport requesting:
- a) Detail on the justification for the proposed differentiated charges

²¹ [2016 Thessaloniki Forum Recommendations on Consultation and Transparency](#)

²² [Incentives and Discounts \(iaa.ie\)](#)

²³ 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).

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 passengers.

4.16 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.

4.17 Dublin Airport's response also mentioned that the transfer charge increased by 25% year-on-year in 2023.²⁴

4.18 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.

4.19 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

²⁴ We note that this 25% increase relates to the summer season only, the winter charge for transfer passengers remained at €2. It therefore did not increase by 25% year-on-year.

charges correspondingly.

- 4.20 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 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.
- 4.21 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.

Relevance

- 4.22 In the case of the passenger charges, we noted that Ryanair did not complain about the Relevance in principle of this differentiation/modulation.

Relevant legal provisions and guidelines

- 4.23 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.*"
- 4.24 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.*"
- 4.25 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.*"
- 4.26 As noted in section 2.34, 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

- 4.27 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.
- 4.28 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

- 4.29 Our Draft Decision considered Ryanair's complaint on the passenger charges insofar as it relates to Objectivity.

Relevant legal provisions and Guidelines

- 4.30 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).
- 4.31 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*".
- 4.32 *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*".
- 4.33 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.

Draft Decision Overview

- 4.34 This section outlines our Draft Decision position on Ryanair's complaint on the transfer passenger discount.

Whether the Transparency standard was met

4.35 We summarised Ryanair's complaints on Transparency of the passenger charge differentiation 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.

4.36 In the Draft Decision we noted that despite repeated requests from Ryanair to substantiate the asserted 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, we noted that it would not be possible for airport users to assess whether the charging differential is based on costs or whether the charges are Objectively differentiated/modulated.

4.37 We agreed with Ryanair that Dublin Airport is required to give 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. 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.

4.38 Our draft conclusion was therefore that the Transparency requirements had not been met in the manner required by Regulation 10, and Regulation 6 and/or Regulation 11.

Whether the Objectivity standard was met

4.39 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.

4.40 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.

4.41 In the Draft Decision, we noted that these are not Objective justifications for the levels of differentiated passenger charges set. As outlined 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.

4.42 While the absence of Objective analysis means that it is not possible to fully assess Objectivity, we reviewed the transfer passenger discount over the last number of seasons. We noted that, 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). In the Draft Decision we included Table [4.1] below which shows that it has not generally been consistent.

Table [4.1]: 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

4.43 In the Draft Decision our overall assessment was that the criteria for differentiation within the passenger charges had not been supported by an Objective analysis, as required by Regulation 6 and/or Regulation 11 of the 2011 Regulations.

Responses to the Draft Decision

4.44 Aer Lingus, BA, Dublin Airport, IAG, Iberia Express and Vueling, all highlighted

the role the transfer passenger discount plays in growing Dublin Airport as a hub and how it aligns with the objectives set out under the National Aviation Policy. These airlines submitted the magnitude of the discount currently on offer at Dublin Airport necessary to allow the airport to compete with other hub airports. Aer Lingus in particular outlined its view that the transfer passenger discount was beneficial to all airport users as it resulted in higher passenger numbers which would ultimately lead to, in its estimation lower airport charges (“*a greater number of regulated passengers for similar Regulatory Asset Base (“RAB”) and operating expenditure*”).

- 4.45 Delta and IATA supported the Draft Decision insofar as it stated that Dublin Airport needs to detail how it has arrived at the level of differentiation underpinning the transfer charge, but also recognised the justification for the charging differential in principle.
- 4.46 Both Aer Lingus and IAG stressed how, under the 2011 Regulations airport charges could be objectively justified under the grounds of “*public and general interest*” without having to be explicitly cost-related. This point was also made by Dublin Airport who mentioned how its approach to the transfer passenger charge followed a ‘pricing to demand sensitivity’ approach which it deemed more appropriate. IAG and Dublin Airport made the point that a transfer passenger’s reduced use of facilities should result in a reduced charge.
- 4.47 Dublin Airport was of the opinion that it should have autonomy to differentiate charges based on the level of service provided and that the TPC has satisfied the Objectivity requirement as “*there is no potential for exercise of discretion in identifying transfer passengers*”. Dublin Airport claimed that our assessment that this modulation/differentiation did not meet the standards of the 2011 Regulations was based on an incorrect interpretation of those standards (and Relevance, Objectivity, Transparency meaning and application). It said that our criticisms are only valid to the extent that our interpretation is correct.

Final Decision

- 4.48 As outlined in Section 3 above, our interpretations of Objectivity and Transparency remain as described in the Draft Decision. We are satisfied that these interpretations are correct. Also, in line with the Draft Decision, we find that the Transfer Passenger Charge has not been Objectively set as required by Regulation 6 and/or Regulation 11 of the 2011 Regulations. We also find that Dublin Airport has not been sufficiently Transparent in setting the rate of the TPC or the resulting discount compared to point-to-point passengers and therefore did not meet the Transparency standards required by Regulation 10, and Regulation 6 and/or Regulation 11 of the 2011 Regulations.
- 4.49 We acknowledge the submissions of several airlines who outline the importance of the transfer passenger discount to developing Dublin Airport as a hub. Differentiation/modulation in transfer charges is of course not discriminatory in principle, but the charges set must be justified in accordance with the 2011 Regulations. We have outlined in detail in Section 3 the standards of Relevant, Transparent and Objective we applied to the investigation as set out under the 2011 Regulations.

4.50 *Questions from Dublin Airport Submission*

11) Can the IAA provide a view on what level of differentiation is proportionate. If not, can the IAA provide guidance on how daa can determine an appropriate level of differentiation?

4.51 Dublin Airport must be clear on what the Relevant justification of the charging differentiation/modulation is, with reference to the 2011 Regulations. If the charging differentiation is cost-related, then it should look to demonstrate quantitatively how a charging differential has been derived from the cost differential. If further or in the alternative, advancing a goal of the National Aviation Policy is the justification, then Dublin Airport must outline what weight was attributed to this non-cost driver in setting the differentiation/modulation, and on what basis.

12) Are the IAA referring to fixed or variable costs in relation to transfer passenger allocation?

4.52 If Dublin Airport seeks to set a transfer passenger differentiation which is justified on the basis of cost relatedness, the relevance of fixed or variable costs will depend on the methodology it follows.

13) A level of differentiation for the transfer charge can only, reasonably be subjectively determined (as opposed to a correlation of charge and direct cost allocation). Do the IAA believe this not to be the case and detail provided in Section 4 as not adequate?

4.53 Insofar as this question is suggesting that it is not possible to assess the extent to which Dublin Airport incurs differing levels of cost to process transfer as against point-to-point passengers, on the basis of objectively derived analysis, this is not correct, as explained in the Draft Decision and in Section 3 above.

14) If daa cannot provide a direct correlation of charge and cost allocation, do the IAA believe the transfer charge should be removed?

4.54 It is of course possible for Dublin Airport to set differentiated passenger charges on the basis of cost-relatedness supported by a cost allocation analysis. It is not the role of the IAA to determine that a 'transfer charge should be removed' and it has made no such suggestion.

15) The IAA view on the transfer charge suggests that it is opposed to the level of differentiation, if any. In doing so, may infer a position that opposes the National Aviation Policy [sic]. If this is the case, have the IAA communicated this view to Department/Minister for Transport?

4.55 This inference is not correct.

5. Runway Charges

Overview

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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

- 5.6 Ryanair submitted to the IAA that Dublin Airport did not provide 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.
- 5.7 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.

Draft Decision

Transparency

- 5.8 We considered the complaint from the perspective of the Transparency requirements under the 2011 Regulations and associated guidelines, as outlined in Section 4 above. We outlined the material provided by Dublin Airport in respect of the RWMC, and considered whether it met those requirements.

Material provided to airport users

- 5.9 Similar to the presentation of the passenger charges as described in Section 4, 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.
- 5.10 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.
- 5.11 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.
- 5.12 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.
- 5.13 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 it by Ryanair to, in particular, provide detail on the underlying cost differential (if the justification for this charging differential is cost-relatedness), or to clarify definitively that the justification is not cost-relatedness. No further material was provided to users at this point.

Relevance

- 5.14 We considered the 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

- 5.15 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.
- 5.16 In the consultation meeting and in Dublin Airport’s Decision Paper, Dublin Airport again suggested that the reason for the banded runway charges was 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.

Objectivity

- 5.17 We also considered Objectivity, again based on the requirements and guidelines outlined in Section 4. 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.

Draft Decision Overview

5.18 In this section we summarise the findings of our Draft Decision on the two-banded Runway Movement Charge (RWMC).

Whether the Transparency standard was met

5.19 Our Draft Decision summarised Ryanair's complaint on the RWMC 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 was 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) was set.

5.20 In the Draft Decision, we noted 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 agreed with Ryanair that it is not clear what the Relevant justification for the differentiated charging bands is said to be and noted that this is linked to the topic of Relevance. Consequently, there is an absence of Objective evidence in relation to any such justification.

5.21 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, in the Draft Decision we found that the justification for the banded charging system was not clear. The associated parameters, such as the 50% differential ultimately settled upon by Dublin Airport, lack an Objective basis. We concluded that this does not align with the requirement under Regulation 6 and/or Regulation 11 of the 2011 Regulations to provide Transparent justification.

Whether the Relevance standard was met

5.22 We concluded that the primary justification for the two-banded approach appeared to be to offset what Dublin Airport and certain airlines perceived 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. We set out our position in the Draft Decision that we did not agree with Ryanair's assertion that cost-relatedness is the only permissible basis for differentiated/modulated charges under the 2011 Regulations.

5.23 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 noted that this is the same justification already provided in respect of the

discounted transfer passenger charge, to which hub operations are more directly relevant. There are various other 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.

- 5.24 We noted that Band 2 was amended to align 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. We noted that 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 explained that 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. We suggested in the Draft Decision 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. The 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.
- 5.25 Our Draft Decision recommended that the structure of the RWMC be reconsidered. We noted our doubts over whether it is an appropriate/optimal way to achieve the referenced objectives, and consequently noted that it is challenging to justify in line with the 2011 Regulations. At a minimum we highlighted it is necessary for Dublin Airport 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.

Whether the Objectivity standard was met

- 5.26 *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*”. Dublin Airport has set the RWMC 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, our draft conclusion was that it cannot be said to be demonstrably proportionate.
- 5.27 As we noted in the Draft Decision, 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.

Responses to the Draft Decision

- 5.28 Aer Lingus, BA and IAG stated that the current two-banded approach to runway movement charges based on MTOW is relevant as, as they have referenced,

while the Band 2 aircraft require more airport infrastructure than Band 1 aircraft, the higher charge per MTOW (without the banded structure) would not be proportionate. Both Vueling and Iberia Express concur with this point, stating that the banded approach equalises the cost per passenger across narrow- and wide-bodied fleets.

- 5.29 Aer Lingus and IAG referenced the “effective” passenger charge which in their views sees a wide-body aircraft passenger pay more than the narrow-body counterpart. BA also stated that while charging on the basis of MTOW is an effective strategy, it can lead to inefficiencies and unfair cost allocations.
- 5.30 Aer Lingus, BA, IAG, Iberia Express and Vueling and all referred to the role that long haul aircraft play in meeting Dublin Airport’s objectives under the NAP. These airlines see the Band 2 aircraft as being instrumental in supporting transfer traffic and enabling trade through cargo transit.
- 5.31 In Dublin Airport’s view, the charge is cost related as it reflects the diminishing marginal cost per tonne in the pricing structure and ensures the movement charge is an ever-increasing function of MTOW. It stated that a diminishing marginal relationship is assumed between an aircraft’s MTOW, and the costs incurred to airport operators and the banding structure is therefore designed to replicate the relationship between MTOW and costs incurred. Dublin Airport maintained that the Relevance of this charge is satisfied as, in its view, it is “*self-evident*” that there is less use of infrastructure by one heavy aircraft than by two light aircraft, and that Objectivity is satisfied as the chosen weight allows for no exercise of discretion and is an industry definition used by the UK CAA.
- 5.32 Dublin Airport said it is common practice in other European airports to offer a banded runway charge based on MTOW.

Final Decision

- 5.33 The differentiated runway charges whereby Heavy aircraft are charged less per tonne of MTOW has not been justified in line with the 2011 Regulations, for the reasons set out in the Draft Decision. While it is not the case, as suggested by Ryanair, that cost relatedness can be the only justification of differentiated/modulated charges under the 2011 Regulations, Dublin Airport did not, either, provide any other such justification for the differentiation in line with those regulations.
- 5.34 The responses from certain airlines outlining the role which the two-banded charge plays in attracting long-haul aircraft to Dublin Airport are more for the upcoming consultation process to be run by Dublin Airport, as opposed to our review of whether the current structure has been set in compliance with the 2011 Regulations.
- 5.35 In responding to our Draft Decision, Dublin Airport asserted that it designed the RWMC structure to replicate the relationship between MTOW, and “*costs incurred to airport operators*” (which it sees as a diminishing marginal relationship). This is a new reason based on new analysis which did not feature in Dublin Airport’s consultation process.

- 5.36 In its response to the Draft Decision, Dublin Airport provided analysis in response to Ryanair's claim that the RWMC is discriminatory as a B737-800 pays higher per MTOW tonne than an A330. Dublin Airport's submission shows that when runway charge per tonne of payload is considered, rather than per tonne of maximum take-off weight, an A330 pays a significantly higher charge per tonne than a B737-800.
- 5.37 Again, while such analysis may be of interest in the context of the next consultation process, Dublin Airport cannot retrospectively justify the charges currently in effect through generating new reasons/new analysis which did not form part of its decision. We note in any event that the charge is levied on MTOW, not payload tonnes. Analysis of this form, again, does not support the RWMC structure set by Dublin Airport as being compliant with the 2011 Regulations. If Dublin Airport considers that payload tonnes rather than MTOW is a more appropriate way to assess chargeable weight, as its latest analysis suggests, the conclusion instead is that it should consider using that metric as the tariff driver, not continue to use MTOW but with a discontinuity to make the result closer to using payload tonnes.
- 5.38 We do not dispute that banded runway charging may in principle be justifiable, but as we have assessed above, and in the Draft Decision, Dublin Airport did not justify it in this instance.

Questions from Dublin Airport Submission

- 16) Have the IAA conducted their own analysis to inform their views on whether the claims by Ryanair are true? E.g. the Ryanair statement outlining that costs fall after 136 tonnes?*
- 5.39 We note that, based on Figure 3 of its response, Dublin Airport appears to have misread/misunderstood Ryanair's submission as referring to charges rather than costs. Ryanair's contention was, on an assumption of cost-relatedness, that Dublin Airport provided no evidence that the additional costs to Dublin Airport of processing aircraft tonnage falls once tonnage enters band 2. Ryanair did not say that the total RWMC falls once total tonnage enters the second band, which is obviously not the case. Nothing turns on this point in any case. The IAA is satisfied that any factual point which is relevant to our assessment of the complaint is correctly stated, as summarised above. These have not been disputed.
- 17) Why have the IAA not considered the material changes made to the runway movement charge following consultation, where daa conceded to much of the arguments made by Ryanair and made changes to reflect this?*
- 5.40 These changes were outlined in the Draft Decision; whether Dublin Airport 'conceded to much of the arguments made by Ryanair' is a matter of opinion and again, the shortcomings identified above with reference to the 2011 Regulations are not remedied by the fact that Dublin Airport made certain other changes in response to the submissions it received.

18) As part of the investigation, daa provided detailed aeronautical revenue

forecasts to the IAA. Was this used to assess the wider airport user impacts of removing a banding structure?

- 5.41 No. The purpose of this investigation was to assess, based on the materials made available by Dublin Airport, whether the current RWMC was set in accordance with the Relevant, Objective, Transparent principles in the 2011 Regulations. It is not for the IAA to explore the implications of an alternative RWMC, as part of a possible amended overall structure of charges at Dublin Airport, and then the implications of such revised charges.

19) Following Question 18 was the aeronautical revenue forecast provided by daa used to assess whether Ryanair have incurred higher costs because of the banded runway movement charge when compared to a universal charge per tonne?

- 5.42 No. Again, such questions cannot be answered in isolation, and in advance of Dublin Airport re-assessing the charging structure in line with the 2011 Regulations. The purpose of the IAA investigation was to assess whether the charges had been set in line with the requirements of the 2011 Regulations.

20) Why do the IAA contradict ICAO doc. 9082 by questioning the relevance of weight as a driver of the runway movement charge?

- 5.43 We do not disagree with or contradict ICAO doc. 9082 regarding the use of MTOW as a tariff driver. Ryanair's complaint did not relate to the use of MTOW as a tariff driver, but rather to the discontinuity applied to the tariff driver by Dublin Airport. It is Dublin Airport which has concluded that using MTOW as a tariff driver leads to a result where the cost per seat is excessive for widebody aircraft and has then sought to offset this by charging different rates for different levels of MTOW, without justifying that differentiation/modulation in line with the 2011 Regulations.

6. Low Emissions Aircraft Discount

Overview

- 6.1 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.
- 6.2 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.
- 6.3 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*".
- 6.4 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) And provide data on the distribution of flight emissions to/from Dublin Airport in 2023.

6.5 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.

6.6 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

6.7 Ryanair challenged 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.

6.8 In summary, Ryanair said 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 complained that Dublin Airport failed to engage with this suggestion or give adequate reasons for why it was rejected.

6.9 In the Draft Decision we noted that 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 heterogenous CO₂ related modulations across airports, and the fact that such a modulation will not properly internalize the societal costs of emissions associated with aviation.²⁵ CO₂ emissions from aircraft are not directly related to the airport local

²⁵ 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 services, 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.

environment and should be addressed at the European or global level. Nevertheless, a CO₂ modulation could be considered when the cost of 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.

Draft Decision

Transparency

6.10 In the Draft Decision we considered this complaint from the perspective of the Transparency requirements under the 2011 Regulations and associated guidelines. We outlined the material provided by Dublin Airport in respect of the LEAD scheme, and considered whether it met those requirements.

Material provided to airport users

6.11 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.

6.12 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*".

6.13 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*".

6.14 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, in the Draft Decision we noted 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.

6.15 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.

6.16 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), Dublin Airport 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”*.

Relevance

6.17 We considered the question of Relevance with reference to Ryanair's

complaint, but also, given the general level of contention and disagreement over the Relevance/justification for the LEAD scheme, considered 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

6.18 In the Draft Decision, we observed that Dublin Airport appeared 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 noted we were not aware that Dublin Airport incurred any reduced cost as a result of processing aircraft with engines which burn relatively less fuel in the LTO cycle.
- b) Behavioural incentivisation. According to Dublin Airport, 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 noted that it was 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.

6.19 Based on the materials provided, we found that the only justifications provided relate to b), behavioural incentivisation, and in our Draft Decision we proceeded on the assumption that that was the intended justification.

6.20 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

- 6.21 As per *TF Environment* and *TF Non-Discrimination*, we deemed it 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.
- 6.22 In the Draft Decision, we noted that, despite submissions seeking it, there was no 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.
- 6.23 We thus could not conclude 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, we found that it could not be possible for Dublin Airport to assess or demonstrate whether the modulation is likely to be effective or proportionate in achieving any such objective. We noted 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.²⁶ We stated in the Draft Decision that we do not understand why fuel burn would be considered as an appropriate metric unless it was being used as a proxy to measure CO₂ emissions, which is clearly the case here, as stated in the September 2023 document.
- 6.24 We also explained in the Draft Decision that we were 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, we noted that the only stakeholder to address the question of effectiveness was IATA, which set out why, in its view, such schemes are not effective.

²⁶ <https://www.dublinairport.com/latest-news/2023/05/19/daa-incentivises-airlines-to-reduce-co-emissions-with-new-sustainability-measures>

Addressing CO₂ emissions on a global level

- 6.25 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.
- 6.26 Given that airport charges are, at least at the total airport level, cost related, it is also noted in *TF Environment* 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.
- 6.27 In the Draft Decision we noted 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*”.²⁷
 - ICAO assembly resolution A40-19 provides that the assembly “[d]etermines that the CORSIA is the only global market-based 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.”²⁸

MTOW as a component of the LEAD scheme

- 6.28 Ryanair alleged 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*”²⁹. 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.

²⁷ https://www.icao.int/environmental-protection/Documents/Assembly/Resolution_A40-18_Climate_Change.pdf

²⁸ https://www.icao.int/environmental-protection/Documents/Assembly/Resolution_A40-19_CORSLIA.pdf

²⁹ [environmental-modulations-paper_final-\(1\).pdf \(iaa.ie\)](https://www.icao.int/environmental-protection/Documents/Assembly/Resolution_A40-19_CORSLIA.pdf)

- 6.29 Dublin Airport 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.
- 6.30 For that reason, we noted that the LEAD scheme 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

- 6.31 Ryanair complained 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 should not be used for comparing the fuel efficiency of different engines”*.³⁰
- 6.32 In the Draft Decision, we noted 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

- 6.33 Ryanair argued that by *“ignoring”* airline retrofits and other CO₂ reducing mechanisms (e.g. SAF), the modulation is irrelevant. In the Draft Decision, we acknowledged 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

³⁰ [ICAO engine emissions databank](#)

schemes and, where the suggestions are not implemented, give cogent reasons why that decision was reached.

Objectivity

6.34 As we addressed in the Draft Decision, whether the justification is said to be a 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.

Draft Decision Overview

6.35 In this section we provide an overview of our findings on the LEAD scheme in the Draft Decision under the standards of Transparency, Objectivity and Relevance set out by the ACD.

Whether the Transparency standard was met

6.36 In addressing the Transparency aspect of the complaint, we considered only the provision of material in respect of the LEAD scheme. We summarised Ryanair's complaints in respect of Transparency 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).

6.37 On the first complaint, we agreed 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. We also noted 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, we noted that the resulting modulation could not be distinguished from a situation where a subset of aircraft are handpicked and given an arbitrary discount. We assessed that this approach was open to a high risk of discriminatory charging and is not in line with the 2011 Regulations or the ACD. This meant it was not possible to assess whether they were set based on Objective analysis, or otherwise.

6.38 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. In the Draft Decision we referenced 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 can 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 noted 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*". In the Draft Decision we noted that refraining from the use of coefficients in this manner would align with the *TF Environment* paper recommendation outlined above.

- 6.39 We therefore considered that Ryanair's proposals had been 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 outlined our view that Ryanair also did not provide full detail on how its proposal would operate in practice. For example, based on the material available to us, Ryanair 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.
- 6.40 As outlined in the Draft Decision, however, it was apparent that Ryanair's proposal was not limited to using coefficients to modulate the existing airport charges (which relates to the technical construction of the modulation formula), but rather focused on the metric upon which the modulation is based. Ryanair's submissions were primarily making the case that the metric on which the modulation is based should be estimated on CO₂ emissions per passenger, as opposed to estimated (banded) LTO fuel burn per (banded) aircraft engine. We also noted that Dublin Airport's statement that the LEAD scheme does not use coefficients to adjust up or down airport charges is incorrect. We concluded 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.
- 6.41 We said that while Dublin Airport is not required to incorporate all of the suggestions put forward by airport users, it is obliged 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. If Dublin Airport meets that requirement, then it meets 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.

Whether the Relevance/justification standard was met

- 6.42 In the Draft Decision we highlighted a 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. We outlined that, in order 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. We stated that 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.

- 6.43 In the Draft Decision we agreed 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 stated that we considered 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, to go more to Objectivity and Transparency.

Whether the Objectivity standard was met

- 6.44 In the Draft Decision, we explained that the components of the LEAD 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, we could not conclude that there was an Objective basis for the components of the scheme such that the magnitude of the discount would be proportionate and that this has been assessed fairly and reasonably.
- 6.45 *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.
- 6.46 Our Draft Decision noted the absence of such an assessment in respect of the LEAD scheme. We found that the LEAD scheme 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.
- 6.47 In conclusion, we found that Dublin Airport did not provide material to sufficiently demonstrate that the LEAD parameters were objectively set. Without this information, it was not possible for users or 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.

Responses to the Draft Decision

- 6.48 Each of the seven airlines who responded to the Draft Decision, along with IATA and IAG, opposed the LEAD scheme, and referenced the global efforts such as CORSIA and EU-ETS that address CO₂ emissions from aircraft. The airlines were of the view that emissions from international aviation should only be accounted for once. BA alluded to how the ICAO Assembly agreed that CORSIA be the only market-based measure for international aviation. Aer Lingus said that these environment-related charges are “Greenwashing” by Dublin Airport. Delta, IAG, IATA, Iberia Express, Lufthansa and Vueling in particular noted their agreement with the IAA’s Draft Decision on the LEAD scheme.
- 6.49 Aer Lingus, IAG, Iberia Express and Vueling submitted that the use of the ICAO databank by Dublin Airport was inappropriate in measuring engine fuel efficiency and noted how ICAO itself had advised against using the databank for that purpose. IATA and Delta expressed how, in their views, neither LTO cycles nor load factors (i.e. CO₂ per passenger) were suitable measures to measure emissions.
- 6.50 Delta, IATA, and Lufthansa agreed with the IAA’s position that Dublin Airport has not Objectively justified the CO₂ modulation. The same entities expressed concern that the scheme would result in market distortions without effectively reducing emissions.
- 6.51 BA, Delta, IATA and Lufthansa raised the issue of cost-relatedness with the LEAD scheme making the point that airports do not incur any costs in relation to the mitigation or prevention of greenhouse gas emissions from aircraft engines and that CO₂ emissions from aircraft operations are not related to airport infrastructure.
- 6.52 Ryanair welcomed the finding that the CO₂ emissions incentive scheme was, in its view, found to be “*highly flawed*”, and in breach of the 2011 Regulations. It stated that by not using the CO₂ per passenger metric the scheme is inherently “*irrelevant and unobjective*”. Ryanair also said that it would be a missed opportunity by the IAA not to compel Dublin Airport to follow the Government’s National Aviation Policy and use reduced CO₂ per passenger as the key parameter in the modulation.
- 6.53 ACI Europe submitted that airports should be allowed to use the charging structure to influence consumer behaviour and claimed that the IAA was not facilitating Dublin Airport’s efforts to decarbonise. ACI Europe deemed it incorrect to suggest that CO₂ modulation would result in double-counting of CO₂ emission charges. It concludes that ‘*the differentiation of aircraft landing charges based on aircraft CO₂ emissions is not intended to internalise the CO₂ externality at all, it is meant to nudge aggregate behaviour.*’
- 6.54 ACI Europe alluded to how airports compete on environmental factors and make use of pricing schemes to attract the quietest and least-emitting aircraft.

It said that CO₂ modulations can be used by airports to accelerate marginal fleet replacement. ACI Europe stated that in 2023, the Airport Carbon Accreditation programme established a Level 5, which requires the airport to achieve net zero Scope 3 emissions by driving third parties at the airport to reduce their own emissions.³¹ It also says that investors and financial lenders are now asking airports to provide evidence of alignment of their revenue structure and operations with sustainability taxonomies, such as the EU's taxonomy for sustainable activities, which themselves support the use of pricing that integrates environmental efficiency aspects. ACI Europe remarked that for this aspect alone it is important that the option to modulate or differentiate airport charges based on aircraft CO₂ emissions performance is available.

- 6.55 ACI Europe stated that airport charge modulations based on aircraft emissions are Relevant, demonstrated by the implementation of CO₂ price adjustments by airports in Sweden, France and the United Kingdom. It noted that Ryanair itself considers such modulations to be relevant.
- 6.56 ACI Europe stated that the effectiveness of such modulations can only be known over time, and seeking ex-ante evidence to support a contention that it is likely to be effective is therefore a catch-22. It asked us to clarify that we are not *“establishing a position in Ireland nor via the Thessaloniki Forum which de facto prohibits charges differentiations based on CO₂ emissions performance of airport users”*.
- 6.57 Dublin Airport said that it refuted that the LEAD scheme is a CO₂ modulation and refers to it as a *“standalone incentive scheme”* because *“charges are not increased for non-qualifying aircraft”*. It stated that the LEAD incentive is essential in attracting the use of next generation aircraft to Dublin Airport and delivering its sustainability objectives. Dublin Airport claimed that since the LEAD scheme has been in effect, it has seen an increase of almost 30% in lower carbon and noise emitting aircraft being utilised by non-based carriers. Furthermore, Dublin Airport stressed that the qualifying aircraft were chosen on merit after consulting OEM (Original Equipment Manufacturer) material.
- 6.58 Dublin Airport outlined how it believes the LEAD scheme is in line with the Thessaloniki Forum guidelines (as, in its view, it does not apply a coefficient). Dublin Airport also addressed the issue of the shadow price of carbon, stating that the cost to society from a tonne of carbon is currently significantly higher than EU ETS prices which airlines pay per tonne of carbon. Dublin Airport suggested that EU ETS is not fully holding airlines to account.
- 6.59 Dublin Airport said the reason for setting the threshold at 105 Tonnes is *“there is a large jump in MTOW from the higher end of the narrowbody to the lower end of the widebody scale”*. It said that fuel burn in the LTO cycle is used to qualify aircraft, not MTOW and that the use of MTOW is to differentiate narrow and widebody aircraft as they differ substantially in performance and economics. Dublin Airport thinks it incorrect to compare LTO emissions of widebody and narrowbody aircraft, as this fails to reflect the carbon intensity of the flight as aircraft differ considerably across markets, sector length and

³¹ <https://www.airportcarbonaccreditation.org/>

Aircraft economics. It stated that such a comparison fails to capture much higher carbon intensity for a short sector narrowbody flight compared to a medium length sector widebody flight. Dublin Airport's response included an example which illustrated emissions per Revenue Passenger Kilometre for a Boeing 737 MAX amounting to double that of a Boeing 787-10.

Final Decision

- 6.60 As outlined above, our assessment remains in line with our Draft Decision where we found the LEAD scheme to effectively be a CO₂ modulation where the parameters used to determine the discount were not transparently shown to be objectively set or in line with the requirements as set out under the 2011 Regulations.
- 6.61 Ryanair suggested that we should have compelled Dublin Airport to “*use reduced CO₂ emissions per passenger as the key parameter*”. The purpose of this investigation was to assess whether Dublin Airport's existing airport charges met the standards of Relevance, Objectivity, Transparency under the 2011 Regulations. It is not for us to prescribe what charges/incentives Dublin Airport should introduce.
- 6.62 ACI Europe has made the point that charges based on CO₂ emissions are meant to “*nudge aggregate behaviour*” and are “*not intended to internalise the CO₂ externality*”. To nudge aggregate behaviour to the social optimum is what is meant by internalising the externality. As recognised by ICAO, and the Thessaloniki Forum, such ‘nudges’ should only take place once. This view was reiterated by airlines in response to the Draft Decision. ACI also referenced how airports compete to attract the “*quietest least emitting aircraft*”; we wish to note here that there is no complaint/finding in this investigation in respect of the noise related charging modulation scheme.
- 6.63 In respect of accreditation requirements for the ACI Airport Carbon Accreditation programme, we wish to reiterate that any such factors do not absolve the airport operator from the requirement to set charges in line with the ACD (as transposed). Further, it is presumably important to the ACI accreditation programme, and to other entities such as investors, that such measures would actually have a prospect of reducing Scope 3 emissions, rather than it being sufficient that they would merely claim to do so.
- 6.64 We also wish to clarify to ACI Europe for the avoidance of doubt that we are not “*establishing a position in Ireland nor via the Thessaloniki Forum*” that would prohibit “*charges differentiations based on CO₂ emissions performance of airport users*”. The issue with the environmental schemes proposed by Dublin Airport is that they have not been justified or shown to have been objectively set. This also goes to ACI's point that Ryanair supports environmental modulations in other cases (and in this case it also supports such a modulation at Dublin Airport, but not as constructed by Dublin Airport). This is not to say that any type of modulation is Relevant in all circumstances/at all airports covered by the ACD, but this will depend on the reasons underlying the modulation, and the construction of the modulation in each case.

- 6.65 We do not agree with ACI Europe that the effectiveness of a modulation can only be assessed or shown ex-post. If the stated goal of the modulation is to change behaviour, as it is in the present case, it is not and cannot be sufficient to barely assert that it will be, or might ultimately prove to be, effective, without providing any analysis or assessment of whether or not it is likely to be effective, has a good prospect of being effective, or what 'effective' actually looks like. It is standard good practice to, for example, assess ex-ante the likely effectiveness of measures such as carbon taxes. Without any such analysis, there is no basis for a meaningful consultation on whether any positive impact of such a modulation outweighs any negative impacts in terms of distorting the market.
- 6.66 Dublin Airport provided certain new reasons and analysis which, it suggests, supports the Relevance/Objectivity of the LEAD scheme. Such new material provided at this stage cannot retrospectively render the LEAD modulation, which was put in place on the basis of the consultation process carried out in 2023, to be compliant with the 2011 Regulations, in particular because it was not provided to airport users during the consultation process and did not form part of Dublin Airport's decision. It can be noted, in any event, that this material does not show LEAD to be Relevant and Objective, for the reasons already described in the Draft Decision. Dublin Airport also repeats various statements and claims which were already considered above as part of the Draft Decision.
- 6.67 Dublin Airport also stated that it considered the LEAD scheme to have been effective as it estimates that Dublin Airport has seen an increase of almost 30% lower carbon and noise emitting aircraft being utilised by non-based carriers compared to Summer 2023. This analysis does not address causation, and excludes aircraft used by both Ryanair and Aer Lingus which we note amounts to circa 80% of total traffic.

Questions from Dublin Airport Submission

- 21) Have the IAA communicated their position on whether or not airport authorities should contribute to the efforts to achieve national environmental policies and objectives to the Minister/Department of Transport?*
- 6.68 Determining the complaint made by Ryanair in this matter does not involve the IAA taking any position on how airport authorities should contribute to the efforts to achieve national environmental policies and objectives.
- 22) Have the IAA conducted analysis that contradicts the transparent qualifying parameters outlined in the LEAD scheme, to determine that a risk of aircraft being handpicked exist?*
- 6.69 As explained in the Draft Decision, where such qualifying criteria/parameters were set without any supporting analysis or explanation, this generates a risk of aircraft being handpicked, and cannot be distinguished from such a scenario. For example, the fuel burn and/or tonnage thresholds might be set with reference to ensuring that a particular aircraft does, or does not, qualify for the discount. In that regard, while it may be a coincidence, based on the material provided by Dublin Airport, the upper bound of the unexplained fuel burn

threshold in the high MTOW category (955kg) is just sufficient to include the A350 (where the LTO fuel burn is given as 955kg) within the scope of the scheme. Similarly, the low MTOW category qualifying criterion in terms of LTO fuel burn (380kg) is in line with that of the A321 neo (380kg).

23) Can the IAA explain and demonstrate how the LEAD scheme is a modulating coefficient of charges as opposed to a published incentive scheme?

6.70 The LEAD scheme is both a 'published incentive scheme', and a scheme which establishes a modulating coefficient applicable to airport charges (specifically, the RWMC and PSC), as has been explained and addressed in the Draft Decision. It affects the level of charges paid based on MTOW and passengers. It is therefore not a 'standalone' charge or incentive (in contrast, for example, with the NOx charges).

24) Why do the IAA describe the 12.5% discount rate for qualifying aircraft as a coefficient, increasing non-qualifying aircrafts airport charge as oppose to only discounting charges for qualifying aircraft?

6.71 A 'coefficient' in this context is the quantity which is multiplied by the other charges to determine the modulation. In this case, the LEAD scheme provides that the RWMC and PSC are to be multiplied by a coefficient of 12.5% and discounted accordingly, in the case of qualifying aircraft. Then, on the assumption that Dublin Airport will not under collect significantly on the annual price cap set by the IAA, the price cap regulatory formulae will ensure that the existence of the LEAD scheme does not change the total aeronautical revenues to be collected by Dublin Airport. Instead, LEAD redistributes some of the charging burden away from the discrete qualifying aircraft and towards the discrete non-qualifying aircraft, relative to a counterfactual scenario where there is no LEAD modulation. It does not matter whether the technical construction of the modulation involves increasing charges for non-qualifying aircraft or decreasing them for qualifying aircraft.

25) Have the IAA conducted its own analysis to determine that larger aircraft are paid more when the contrary has been provided in section 6?

6.72 It is not clear what is meant by 'larger aircraft are paid more'. As already explained, the construction of the LEAD scheme, being a coefficient applicable to MTOW and passenger charges, means that a larger aircraft will, as a result of LEAD, receive a larger discount than a smaller aircraft with exactly the same fuel burn performance. This larger discount would arise solely as a result of being heavier and/or carrying more passengers.

26) Why was the disparity between the shadow cost of carbon and ETS not considered in the IAA's analysis?

6.73 Considering the modulation from this perspective (together with CORSIA) would have aligned with the recommendations of TF Environment. However, Dublin Airport did not design the LEAD scheme from this perspective, and LEAD does not have the effect of correctly bridging any disparity between the

shadow cost of carbon and ETS, as explained in the Draft Decision. In the context of the current complaint, our role is to investigate whether the LEAD scheme and its introduction complies with the 2011 Regulations, not attempt to retrospectively justify the LEAD scheme on behalf of Dublin Airport based on the IAA carrying out new analysis or seeking to identify new reasons.

27) Why have the IAA not considered other measures of carbon intensity to assess the validity of the LEAD scheme i.e., emissions per Revenue Passenger Kilometre (RPK)?

- 6.74 Again, it is not the role of the IAA to try to identify new reasons or new analysis in support of decisions made by Dublin Airport which are being appealed to the IAA. Emissions per RPK is not, in any case, a parameter of, nor the tariff driver of, the LEAD scheme. Thus, no such analysis could lead to a conclusion that the LEAD scheme, as currently constructed, is based on Relevant and Objective criteria.

7. Nitrogen Oxide Charges (NOx)

Overview

- 7.1 Dublin Airport's September 2023 consultation document 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.
- 7.2 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.³² 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%.
- 7.3 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 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.
- 7.4 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.³³
- 7.5 As with the LEAD scheme, we noted that this charge is revenue neutral, i.e. it would 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 noted that, unlike the LEAD scheme, this is a standalone

³² <https://www.easa.europa.eu/en/domains/environment/icao-aircraft-engine-emissions-databank>

³³ [Sustainability at Dublin Airport](#)

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

Ryanair’s complaint on the NOx charges

7.6 Ryanair claimed that the inverse relationship between NOx and CO₂ emissions means that the modulation is not Relevant. It added that Dublin Airport has provided no evidence of a NOx problem at the airport, nor demonstrated any legal obligation to introduce NOx charges, whereas, Ryanair noted, it is Irish Government policy to reduce CO₂ emissions. Ryanair also highlighted 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 stated that the (small) 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.

Draft Decision

Transparency

7.7 While Ryanair’s complaint in this case relates primarily to Relevance, in our Draft Decision we also reviewed it from the perspective of Transparency, and noted 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

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

Dublin Airport’s justification

7.9 Dublin Airport asserted that the purpose of the charge was 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 noted 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.

Objectivity

7.10 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.

Draft Decision Overview

Whether the Relevance/justification standard was met

- 7.11 In the Draft Decision we found it was not entirely clear whether the NO_x 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, we could not ascertain whether the purpose of the NO_x modulation/differentiation is to:
- Reflect cost-relatedness, by reference to anticipated costs for Dublin Airport of required measures to comply with NO_x emissions standards and/or otherwise address a NO_x 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 NO_x problem would be resolved, where otherwise it would not be resolved in the absence of the modulation.
- 7.12 If the purpose was the former, we noted 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, we could not 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.
- 7.13 In the Draft Decision we disagreed with Ryanair that trade-offs between CO₂ and NO_x emissions would make a NO_x 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*”. We therefore considered it not the case that the inverse relationship between CO₂ and NO_x would mean that airport managing bodies should choose between one or the other.
- 7.14 We also noted that if there were a specific cost to the airport operator of resolving a NO_x problem, this would provide a justification for an associated charging differentiation based on the level of NO_x emissions, notwithstanding any trade-off with CO₂ emissions.
- 7.15 In our Draft Decision, we concluded that the NO_x modulation/differentiation had not been established as having a Relevant justification, as required by Regulation 6 and/or Regulation 11 of the 2011 Regulations.

Whether the Objectivity standard was met

- 7.16 As laid out in the Draft Decision, if the Relevant justification itself is not clear, it follows that there could not 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. We stated that 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. We concluded that Dublin Airport did not meet the standard of Objectivity in respect of the NO_x charge.

Responses to the Draft Decision

- 7.17 Each of the airlines who responded to the Draft Decision, as well as IATA, stated that Dublin Airport had not demonstrated the existence of a NO_x issue at Dublin Airport. Delta, IATA and Lufthansa were also of the view that Dublin Airport had not illustrated how its proposed charging mechanism would solve the NO_x problem it was supposedly addressing. Aer Lingus, IAG, Iberia Express and Vueling suggested that most of the NO_x around Dublin Airport comes from road traffic.
- 7.18 Ryanair welcomed the finding that the NO_x charge has “*no relevant justification*” as required by Regulation 6 and/or 11 of the 2011 Regulations. It also maintained its position that the NO_x/CO₂ trade-off must be considered in the context of all stakeholders working to reduce CO₂ emissions.
- 7.19 Dublin Airport stated that its reason for introducing the NO_x charge was to internalise the social cost of local air pollutants created by aircraft at Dublin Airport. The airport operator referenced how in its view, the charge aligns with EU and national policies to limit the increase of local air pollution, in particular Ireland’s Clean Air Strategy.³⁴ Dublin Airport asserted that ‘*the IAA have agreed with Ryanair that a charge on air pollution is not in the public interest and not relevant*’.
- 7.20 Dublin Airport claims that the NO_x charge is Relevant (as NO_x affects air pollution) and Objective (as there is no potential for the exercise of discretion). It believes the unit cost of €0.25 which was questioned by the IAA in its Draft Decision is proportionate.
- 7.21 Dublin Airport alluded to how Ireland’s Clean Air Strategy has also committed to the Interim WHO 2026 NO_x targets and states that while some air quality monitoring stations in the vicinity of Dublin Airport are below the 2026 WHO targets that Ireland has signed up to, others are close to or above the limit.

³⁴ [Clean Air Strategy](#)

Final Decision

- 7.22 We uphold our Draft Decision that a Relevant justification for the NOx charge introduced by Dublin Airport has not been established, and as a result cannot be shown to have been Objectively set. In its response to the Draft Decision Dublin Airport appears to suggest that the NOx charge is Relevant simply because it “*affects air pollution*”.
- 7.23 Dublin Airport again provided certain new reasons and analysis which, it suggested, supports the Relevance/Objectivity of the NOx charge, this time with particular reference to Ireland’s Clean Air Strategy and WHO NOx limits. Such new material provided at this stage cannot retrospectively render the modulation compliant with the 2011 Regulations, in particular because it was not provided to airport users during the consultation process and did not form part of Dublin Airport’s decision. It can be noted, in any event, that this material does not show the modulation to be Relevant and Objective, for the reasons already described in the Draft Decision. Dublin Airport then reiterates much of the same narrative as it has previously laid out during the consultation process, as outlined above and in the Draft Decision.
- 7.24 We also wish to clarify, for the avoidance of doubt, as ought to be already clear from the Draft Decision, that the IAA has not decided that “*a charge on air pollution is not in the public interest and is not relevant*”. However, in this instance, Dublin Airport has not shown that or assessed whether the modulation in its current form will drive behavioural changes that will impact NOx levels in a manner that would have otherwise not have been achieved, or otherwise justified the modulation in line with the 2011 Regulations.

Questions from Dublin Airport submission

- 28) *Have the IAA communicated their position on whether airport authorities should (or shouldn't) address air quality issues and objectives set out in the Programme for Government, Clean Air Strategy and Climate Action Plan to the Minister/Department of Transport?*
- 7.25 Determining the complaint made by Ryanair in this matter does not involve the IAA taking any position on how airport authorities should contribute to the efforts to achieve national environmental policies and objectives.
- 29) *Do the IAA assess the published air quality reports and daa not currently achieving 2026 WHO air quality targets that Ireland has committed to as inadequate when considering the relevance of a Nox charge and whether or not it is in the public interest?*
- 7.26 The NOx modulation was not justified on the basis of showing how it will, or might reasonably be expected to, enable Dublin Airport to achieve any such targets (or justified on the basis of any other Relevant justification). As explained above, bare and unspecific assertions in that regard are certainly inadequate. Effectively demonstrating how a NOx modulation can be expected to address an identified LAQ problem may well provide a Relevant justification.

30) Why do the IAA determine that a Nox charge to achieve the 2026 WHO air quality targets and improving local air quality as not in the public interest?

- 7.27 As per the previous response, the NOx modulation was not justified on the basis of any analysis or rationale showing how the modulation (amounting to c0.3% of total airport charges, on Dublin Airport's applied example of an A320 neo) could lead to a behaviour change sufficient to lead to such WHO targets being achieved (or lead to any behaviour change) or improve local air quality.

31) Did the IAA assess if and how the Nox charge would deter Ryanair in the use of enviro-friendly aircraft when there is a multi-million-euro incentive scheme in place for lower emissions aircraft that Ryanair can avail of?

- 7.28 No. Whether the NOx modulation was set by Dublin Airport in compliance with the 2011 Regulations does not turn on any such assessment. It is not for the IAA to assess whether, as appears to be suggested by this question, Dublin Airport's NOx modulation is likely to be ineffective in reducing NOx emissions from Ryanair aircraft, because it is outweighed by the more impactful LEAD incentive scheme, which incentivises Ryanair to deploy the aircraft with higher NOx emissions at Dublin Airport, generating the opposite incentive.

32) Why was consideration to Ryanair's statement outlined in paragraph 7.5.8 not made by the IAA when Ryanair's complaint ground for the Nox charge was a breach of the 2011 Regulations?

- 7.29 The IAA had due regard to all of the consultation material and correspondence, including Ryanair's letter to Dublin Airport of 6 October, as outlined in the Draft Decision. The suggestion that this statement is inconsistent with, or undermines, Ryanair's complaint, is not correct. Ryanair did not, as incorrectly claimed by Dublin Airport at paragraph 7.5.9 of its response, accept or support the NOx modulation. It opposed the modulation, while then welcoming that the proposed charge was minimal and consequently would have very little impact.

8. Conclusion and Remedy

- 8.1 In this section, we outline the findings from our Draft Decision, summarise the responses from stakeholders and conclude on the appropriate remedy and way forward for Dublin Airport.

Draft Decision

- 8.2 In our Draft Decision we found that the four specific charging modulations/differentiations in respect of which Ryanair complained had not been sufficiently demonstrated as non-discriminatory and justified as being compliant with the 2011 Regulations. We proposed that 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.
- 8.3 We proposed that Dublin Airport should be given sufficient time to consider and address the issues raised in the Draft Decision, including taking account of the views of users as part of a consultation process. We also noted that 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. Our position in the Draft Decision was that Dublin Airport should re-assess the charges subject to the complaint to come into effect in time for the Winter 2024-2025 season, i.e. from 27 October 2024. We did not propose any retrospective action or adjustments in relation to the charges currently in effect for Summer 2024.

Responses to the Draft Decision

- 8.4 Aer Lingus, British Airways (BA), Delta, IAG, IATA, Iberia Express and Vueling all advocated that the charges should be reconsidered as part of the annual consultation process at Dublin Airport and be implemented no sooner than Summer 2025. Aer Lingus, IAG, Iberia Express and Vueling all raised the need for the IAA to consider that airlines have already set tickets prices based on the current charging structure and would not be able to adjust their charges to reflect any changes in airport charges. The same airlines requested that if the charges were to be revised, that an economic assessment be carried out to validate any changes and assess their impact on Dublin Airport's objectives under the NAP.
- 8.5 The above airlines and IATA stressed the importance of reviewing the charges in the context of the full charging scheme and allowing sufficient time for the airport to prepare the analysis, consult and appropriately takes users' views into account.
- 8.6 Aer Lingus, IAG, Iberia Express and Vueling referenced what they see as "*profound complexity in the Dublin aviation environment*" which they say has emerged from the planning conditions limiting the capacity of terminal 1 and terminal 2 currently in place at Dublin Airport, the "*likely implementation of night flight quotas, complex airport planning applications and a statutory appeal of*

the price cap”). They stated that “*a further distracting review of the structure of charges (outside of the established annual process) is entirely unnecessary*”.

- 8.7 Delta and IATA suggest that the IAA should review the full scheme of charges under the ACD principles of Transparency, Objectivity and Relevance. IATA in particular highlights a number of other aspects of the charging structure which it believes were not justified in line with the ACD either. IAG and Vueling also remarked that any review of charges should be done holistically, with due consideration for the symbiotic nature of the charging framework.
- 8.8 Lufthansa raised the need for Dublin Airport to also justify other charges that were not subject to the IAA investigation such as the various aircraft parking charges and other incentive schemes.
- 8.9 Ryanair submitted that the IAA’s Draft Decision did not go far enough and requested that the IAA issue a statutory direction to Dublin Airport to remedy the breaches identified. Ryanair also found it disappointing that the IAA refused to uphold the complaints on excessive airport charges and capex at Dublin Airport. It stated that Dublin Airport’s “*excessive charge increases*” have been driven by “*wasteful capex*” and should therefore be allowed to be challenged by airport users.

Final Decision

- 8.10 As noted above, in each case, our substantive conclusions remain as set out in the Draft Decision. The four specific charging modulations/differentiations in respect of which Ryanair complained were not sufficiently demonstrated as non-discriminatory and justified as being compliant with the 2011 Regulations. We note that while IATA has expressed concern that other aspects of Dublin Airport’s charging structure were not justified in line with the ACD requirements, IATA did not submit a complaint in respect of these charges, and they are therefore not investigated here. The charging modulations/differentiations which have been subject to investigation above 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.
- 8.11 However, following suggestions from other airlines as outlined above, and given the timeline required for consultation under Article 10 of the 2011 Regulations, we have revised our remedy proposed in the Draft Decision.
- 8.12 Considering we allowed an extension to the deadline for responses to the Draft Decision and that the overwhelming preference from other airlines (notwithstanding the agreement at least in respect of the LEAD and Nox modulations) was to re-consider the charges holistically as part of the annual consultation process, our Final Decision is that Dublin Airport should review and consult on the charges in time for the Summer 2025 season i.e.. 30 March 2025. It is worth noting that there are now just about two months until the start of Winter 2024, and this process and investigation has highlighted that significant work is required on the part of Dublin Airport to re-assess and then consult on an updated structure of charges in a manner which fully complies with the 2011

Regulations.

- 8.13 This decision means that Dublin Airport does not have to re-consult on the charges that will come into effect from Winter 2024. Instead, it must ensure that it reassesses its charging structure to address the issues which have been highlighted, and to consider the extent to which there may also be similar issues with the other charges in the charging scheme as suggested by IATA. We expect that such work is already underway, and consultation/engagement should commence shortly in order to complete a thorough process in time for new charges to take effect from S25.
- 8.14 Ryanair has requested that we issue a direction pursuant to section 45B of the Aviation Regulation Act of 2001, as amended. In the Draft Decision we said that if Dublin Airport agreed to address any compliance issues identified, we may not need to issue a direction. However, Dublin Airport responded to the Draft Decision by disputing the established requirements of the ACD and the 2011 Regulations, by outlining its position that the four charges which are the subject of findings by the IAA “*remain in full compliance*” with its “*legal obligations and regulatory framework*” and should therefore be retained, and by refusing to accept clear instances where improvements are required to achieve compliance with the 2011 Regulations. In that context, we have further considered whether this Final Decision should be accompanied by a statutory direction at this time.
- 8.15 We have nonetheless decided that it would be premature to issue a direction at this point. We will, instead, rather than closing this investigation, keep the situation under review over the coming months during which we expect the new consultation to start and, if it appears that Dublin Airport is continuing to not accept these findings, or to not take appropriate actions to address them and reassess its charging structure accordingly, we then expect to issue a direction to Dublin Airport requiring it to comply with the 2011 Regulations in respect of the charges in effect from 30 March 2025, and/or such other or further directions as may be considered necessary by the IAA.