Dublin Airport Capex Consultation Committee Response to Commission Notice CN 2/2008

9th May 2008

The Dublin Airport Capex Consultation Committee (DACC) was established by the four main airlines operating at Dublin Airport (Aer Arann, Aer Lingus, Cityjet and Ryanair) but includes in its membership the majority of airlines and handlers operating at Dublin Airport. The purpose of the Committee is to ensure that the DAA is properly reflecting the reasonable requirements of users in its capex decisions at Dublin Airport, and if not, that any such expenditure is excluded from the RAB.

The DACC is responding to the Commission for Aviation Regulation's (CAR's) Notice given that it involves the use by the DAA of capex costs in order to justify a very large increase in check-in desk charges to users, approximately 50%. We believe, and a number of operators at Dublin Airport have reflected this in comments to both the DAA and CAR on this issue, that users are being double charged for costs associated with the terminal, which are already being recovered or partially recovered through airport charges.

- The following are examples of statements made by users during the consultation with the DAA/CAR:
- DAA enjoys a bottleneck position with regard to check-in facilities at Dublin Airport, which, if left unregulated, gives DAA an incentive to set charges for these facilities at an excessive level;
- Users do not accept DAA's estimates of the costs of operating check-in desks;
- The vast majority of the costs being relied upon by DAA are already being recovered through airport charges and the DAA is therefore attempting to double charge its customers;
- Regardless of the level of check-in desk charges assumed when aeronautical charges were set in 2005, DAA is not under-recovering the costs of these desks, because any alleged shortfall relative to costs is subsumed within aeronautical charges;
- Users repeatedly requested a copy of the "detailed cost analysis" referred to by DAA as the basis for the cost increase. However, both DAA and CAR refused to disclose this document claiming that it was "commercially sensitive"; and
- The costs of managing congestion, which DAA is attempting to attribute to the cost of check-in desk provision, are more properly treated as a cost incurred for the general benefit of the operation of the terminal building. These costs should therefore fall within regulated aeronautical charges.

DACC regrets that the Regulator failed to take these arguments into account and granted the increase to DAA, despite acknowledging that DAA was double recovering these costs. The CAR seeks to rely on the fact that fees for access to installations are governed by different legislation than that governing airport charges (i.e. the Statutory Instrument governing the approval of access-to-installation fees (SI505) versus the Aviation Regulation Act 2001).

DACC believes that the criteria in SI505 are broad enough to have allowed the CAR to deny the increase to DAA, on the basis that the costs claimed by DAA are already being recovered through airport charges.

The comments below are without prejudice to the fact that certain of our members have indicated their intent to legally challenge the CAR's decision.

OPTIONS PROPOSED

The CAR has suggested four alternative ways of aligning the regime for fees charged to groundhandlers and regulated airport charges which are:

1. Confirming that "airport charges" include airport installations;
2. Requiring DAA to pre-commit to a path for access-to-installation fees for the duration of each price cap;
3. For the Regulator to assume "full cost recovery" for the relevant class of airport installation at the time of the determination of regulated charges; or
4. To alter the price-cap formula to allow for an adjustment in the cap if access-to-installation fees were introduced or increased.

OUR VIEW

DACC considers that Option 1 is the best approach to dealing with the alleged conflict between the two regimes.

However, if for whatever reason the CAR finds it is not possible to implement Option 1, then in our view Option 2 represents an acceptable compromise that provides airlines with adequate protection from DAA's market power.

Options 3 and 4 are not in our view appropriate solutions to this issue.

Reasoning

Option 1

Notwithstanding the views expressed by Aer Rianta before the High Court, it is our interpretation that check-in desk rental charges *are* airport charges as far as the airlines are concerned.

Check-in desks are an essential and unavoidable part of the service we have to buy in order to offer passenger services. As only DAA provides this service, check in desks form part of its monopoly service.

Furthermore, as airlines and handlers have already outlined in their responses to the original consultation, in our view the costs of managing the check-in area are not clearly separable from the costs of managing the terminal building more widely. These are activities that benefit all airport users and are recovered from regulated charges.

As a consequence we believe the appropriate way to deal with the double counting of access-to-installation fees is to include all relevant costs within the definition of regulated airport charges.

We do not consider it acceptable that certain unavoidable charges are excluded from the scope of economic regulation on a legal technicality.

We would furthermore encourage the Regulator to carry out a complete review of all services offered by DAA, to identify *all* such services that represent bottlenecks controlled by DAA, and to then include all of these charges in a revised legal definition of "airport charges".

Option 2

In our view option 2, requiring DAA to pre-commit to a path for access-to-installation fees for the duration of the next price control, is less satisfactory than option 1 although it would be acceptable if option 1 were found to be unworkable for some other reason.

We recognise that under the existing regulations option 2 would provide protection to airlines against increases in these fees. However we consider this solution less satisfactory than option 1 because it amounts in effect to a sub-price cap on an element of overall airport charges. We believe this is contrary to the spirit of the price cap regulation on Dublin Airport, which does not seek to regulate the structure of charges, but only the overall level of airport charges and profits.

Option 3

In our view option 3, for the Regulator to assume full cost recovery, is inappropriate.

We do not consider it advantageous for the Regulator to introduce additional complications to the regulatory regime, especially if these complications are based on hypothetical calculations that may not reflect the reality of DAA's actual scheme of charges.

Furthermore, this option does not appear to deal with the problem that DAA has market power over these access-to-installation fees. DAA would still have an incentive to try and push up these charges to monopoly levels. This could either occur after the setting of airport charges, or could be reflected in the evidence DAA makes to the regulator regarding the costs of check-in desks, etc.

Users have already expressed concerns that DAA is exaggerating its claim on the portion of terminal costs that relate to check-in desks. In our view option 3 might exacerbate this tendency.

Option 4

Option 4, creating a special adjustment factor in the price cap for changes in access-to-installation fees is also inappropriate.

This solution seems to us to be an *ad hoc* solution to the issue. There is no logical reason why the price cap should be adjusted for changes to some non regulated charges but not for changes to others.

We consider that this matter is more efficiently dealt with by option 1, which simply includes these charges within the scope of regulation and therefore makes the adjustment mechanism automatic, without need for additional complicating factors in the price cap.