

Submissions to the Commission for Aviation Regulation
in regard to
the Possible Review of its Determination in respect of the Maximum
Levels of Airport Charges (Document CP7/2001)

Submitted by A&L Goodbody Solicitors on
behalf of Airbus SAS

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1. INTRODUCTION

Airbus SAS (**Airbus**) welcomes the opportunity to make submissions in regard to the substantial grounds which it considers exist to justify a review of the Determination of the Commission for Aviation Regulation (the **Commission**) in Respect of the Maximum Levels of Airport Charges that may be levied by an Airport Authority in respect of Dublin, Shannon and Cork Airports in accordance with Section 32 of the Aviation Regulation Act, 2001 (the **Determination**).

The primary focus of these submissions is the aircraft classification attached at Schedule 1 to the Determination used to calculate off-peak landing and take-off charges at Dublin Airport. Airbus submits that the methodology used to calculate off-peak landing and take-off charges is unreasonable and discriminatory and may be based on incorrect input data as to Airbus aircraft. In particular, Airbus is concerned that the classification unfairly discriminates against the A320 family. These submissions also highlight a number of discrepancies in the manner in which aircraft were classified.

Section 2 of these submissions provides background information on Airbus and its activities. A general overview of the legislative framework is provided at Section 3. Section 4 sets out the background to the procedure involved in setting the current charges and classification. A discussion of the Determination on Maximum Take-off and Landing Charges and the related aircraft classification is set out in Section 5. Section 6 briefly discusses the impact of the discriminatory classification on Airbus's business. Finally, the substantial grounds which Airbus consider justify a review of the Determination are set out in Section 6.

Airbus looks forward to discussing these submissions in further detail with the Commission in due course, to responding to the Commission's queries, and to submitting such supplemental materials and documentation as may be required.

2. AIRBUS

Airbus is a leading aircraft manufacturer established in 1970 and based in Toulouse, France. It has approximately 46,000 employees and in its most recent financial year, Airbus had turnover of €19.4 billion. In Europe, Airbus' design and production sites are grouped into four wholly-owned subsidiaries, Airbus France, Airbus Deutschland, Airbus España and Airbus UK. Airbus has more than 150 sites throughout the world, including 16 development and manufacturing facilities in France, Germany, the UK and Spain, where Airbus aircraft are designed, built, assembled and tested. Airbus also operates several subsidiaries (including several in Ireland), six regional offices, three training centres, five spare centres and 120 resident customer services offices. In addition to its design and manufacturing sites, Airbus has an international network of some 1,500 suppliers in more than 30 countries, including 800 suppliers in the United States. Airbus currently has an in-service operation fleet in excess of 3,000 aircraft.

In Ireland, Airbus has a wholly owned subsidiary, Airbus Financial Services (**AFS**), which was established in 1989. AFS is now the active owner and lease manager for Airbus owned and financed aircraft. AFS also

manages aircraft and financial instruments held both as strategic positions and investments in addition to “warehousing” fleet buy-backs. The consolidated turnover of AFS and its subsidiaries to December 31, 2002 was US\$400.0 million. The Dublin portfolio currently under management is worth approximately US\$5.6 billion in value. In addition, AFS provides corporate finance and treasury activities and support to its portfolio of assets. As well as managing the Airbus portfolio, AFS operates and manages a number of joint venture and associated companies, including an ATR subsidiary which manages 50 turbo-prop aircraft out of Dublin. AFS employs 22 professional and support staff in Dublin all of whom are based in the International Financial Services Centre.

As the Commission is aware, Airbus is also active in the business of marketing and selling aircraft to customers operating from and to airports under the Commission’s jurisdiction.

3. LEGISLATIVE FRAMEWORK

Section 32(2) of the Aviation Regulation Act, 2001 (the **2001 Act**) requires the Commission to make a determination in regard to the maximum levels of airport charges that may be levied by an airport operator (i.e. Aer Rianta) as follows:

“Not more than 6 months after the establishment day and at the end of each succeeding period of 5 years, the Commission shall make a determination specifying the maximum levels of airport charges that may be levied by an airport authority”.

Pursuant to Section 32(5) of the 2001 Act, the determination shall:

- (a) “be in force for a period of 5 years, and
- (b) come into operation not later than 30 days after the making of such determination”.

However, pursuant to section 32(14)(a) of the 2001 Act, the Commission may review the decision at an earlier stage:

“The Commission may on or after the expiration of a period of 2 years after the making of a determination –

- (i) at its own initiative, or
- (ii) at the request of an airport authority or user concerned in respect of the determination, if it considers that there are substantial grounds for so doing, review the determination and, if it sees fit, amend the determination...”

Pursuant to Section 40(2) and (5) of the 2001 Act , the Minister may establish an appeal panel to consider any appeals from a determination of the Commission and the decision in relation to the determination may be referred back to the Commission for review:

“(2) The Minister shall, upon a request in writing from a person to whom this section applies who is aggrieved by a determination under section 32(2) or 35(2), establish a panel (“appeal panel”) to consider an appeal by that person against the determination....

...(5) An appeal panel shall consider the determination and, not later than 2 months from the date of its establishment, may confirm the determination or, if it considers that in relation to the provisions of section 33 or 36, there are sufficient grounds for doing so, refer the decision in relation to the determination back to the Commission for review.”

Pursuant to Section 40(8) of the 2001 Act, where a decision has been referred back to the Commission by an appeal panel, the Commission may affirm or vary its original determination within one month of the date of the referral.

4. BACKGROUND

On 26th August 2001, the Commission published its Determination in Respect of the Maximum Levels of Airport Charges that may be levied by an Airport Authority in respect of Dublin, Shannon and Cork Airports in accordance with Section 32 of the Aviation Regulation Act, 2001 (the **Determination**). The Determination entered into force on 24th September 2001.

The Determination specified the maximum revenue yield per passenger which may be recovered through airport charges as set out in Section 2 of the Air Navigation and Transport (Amendment) Act, 1998 as well as the maximum landing and take-off charges that could be levied during daily off-peak times at Dublin Airport.

The Determination was subsequently appealed by 5 parties aggrieved by the Determination (Aer Lingus, Air Contractors (Ireland) Ltd., Association of Flying Groups at Dublin Airport, British Midland and Ryanair) and the Minister duly established an aviation appeal panel (the **Panel**). Aer Rianta also brought judicial review proceedings in the High Court (which were decided in favour of the Commission on 3rd April 2003). On 10th January 2002, the Panel published its decision. With regard to the maximum landing and take-off charges and aircraft classification, the Panel considered that sufficient grounds had been established in respect of the Determination and that it required review. The Determination was therefore referred back to the Commission and on 9th February 2002, the Commission issued a varied Determination which is discussed in further detail below.

5. THE DETERMINATION ON MAXIMUM LANDING AND AIRPORT CHARGES

The Determination provides for maximum landing and take-off charges in respect of each regulatory year between 2001 and 2007. The charging system is aimed at encouraging the use of the airport at off peak hours. The methodology used for calculating the maximum off-peak landing and take-off charges in the original Determination was set out in Appendix VIII of the Determination. The model chosen by the Commission aimed to charge for the marginal damage done to the runway per aircraft type on the basis of the following methodology:

1. Each aircraft sub type was placed in an "Aircraft Damage Category" (initially 1 to 14 but subsequently increased to 1 to 18) based on Aircraft Classification Number (**ACN**) and Maximum Take Off Weight (**MTOW**) ranges.
2. Each "Aircraft Damage Category" was allocated a % of damage based on the number of movements per aircraft sub-type in the Category.
3. Each Category was allocated a cost.
4. These costs were put into "Cost Categories" (1 to 5).

For Regulatory Year 2001/2002, the Determination provided as follows:

"The Airport Authority shall ensure that, for the regulatory year 2001/2002, the charges levied in respect of the landing and take-off of aircraft during daily off-peak at Dublin Airport shall, in respect of the five different categories of aircraft referred to in the table below not exceed the maximum stipulated therein

| | |
|---------------------|---|
| Aircraft Category 1 | $TL_{01,1} - IR£0.21 = \text{euro } 0.26$ |
| Aircraft Category 2 | $TL_{01,2} - IR£0.86 = \text{euro } 1.09$ |
| Aircraft Category 3 | $TL_{01,3} - IR£1.06 = \text{euro } 1.34$ |
| Aircraft Category 4 | $TL_{01,4} - IR£1.52 = \text{euro } 1.93$ |
| Aircraft Category 5 | $TL_{01,5} - IR£2.16 = \text{euro } 2.74$ |

Where

$TL_{01,n}$ are the maximum charges per tonne per aircraft movement during off-peak times to be levied at Dublin Airport during the regulatory year 2001/02 in respect of the five different aircraft categories $n = 1, \dots, 5$ as set out in schedule 1."

For Regulatory Year 2002/2003, the Determination provided as follows:

"The Airport Authority shall ensure that, for the regulatory year 2002/2003, the charges levied in respect of the landing and take-off of aircraft during daily off-peak at Dublin Airport shall not exceed the maxima calculated in accordance with the following formula

$$TL_{02,n} = \frac{TL_{01,n} (1 + \Delta CPI_{01,1})}{100} \quad \text{for all } n = 1, \dots, 5$$

Where

$TL_{02,n}$ are the maximum charges per tonne per aircraft movement during off-peak times to be levied at Dublin Airport during the regulatory year 2002/03 in respect of the five different aircraft categories $n = 1, \dots, 5$ as set out in schedule 1.

$TL_{01,n}$ for all $n = 1, \dots, 5$ are specified above."

($\Delta CPI_{01,1}$ means the percentage change (whether of a positive or negative value) in the Consumer Price Index between that published in July 2001 and July 2002.)

For Regulatory Years 2003/04-2005/06, the Determination provided as follows:

“The Airport Authority shall ensure that, for each of the three consecutive regulatory years 2003/04, 2004/05 and 2005/06, the charges levied in respect of the landing and take-off of aircraft during daily off-peak at Dublin Airport shall not exceed the maxima calculated in accordance with the following formula

$$TL_{t,n} = \frac{TL_{t-1,n} (1 + \Delta CP_{t-1})}{100} \quad \text{for all } n = 1, \dots, 5$$

Where

$TL_{t,n}$ are the maximum charges per tonne per aircraft movement during off-peak times to be levied at Dublin Airport during the relevant regulatory year t in respect of the five different aircraft categories $n = 1, \dots, 5$ as set out in schedule 1, where $t = 03, 04$ and 05 .

$TL_{t-1,n}$ are the maximum charges per tonne per aircraft movement during off-peak times to be levied at Dublin Airport during the relevant regulatory year $t - 1$ in respect of the five different aircraft categories $n = 1, \dots, 5$ as set out in schedule 1.”

(ΔCP_{t-1} means the percentage change (whether of a positive or negative value) in the Consumer Price Index between that published in July 2001 and July 2002 when $t = 03$, July 2002 and July 2003 when $t = 04$ and July 2003 and July 2004 when $t = 05$)

Schedule 1 of the Determination set out the five different categories of aircraft classification. The Report on the Calculation of the Associated Marginal Costs prepared by Oliver Hogan and David Starkie for the Commission and attached at Appendix VIII to the Determination stated that the ACN was an ICAO rating based on *inter alia*, function of aircraft weights, Centre of Gravity position, Main Landing Gear (**MLG**) geometry and MLG tyre pressure. According to the Report, a higher ACN indicated a more damaging aircraft and, for the same load, more wheels, larger Landing Gear Geometry and lower tyre pressures implied a lower ACN. The Aircraft Categories contained in Schedule 1 are set out below. Airbus notes with regard to the ACN / PCN method as described in ICAO doc 9157-AN/901-1983, Part 3 is the official methodology to compare the relative effect of an aircraft on a pavement for a specified standard sub-grade strength.

FORMER AIRCRAFT CATEGORY TABLE

| | | | | | |
|----------------------------|----------|---------|---------|---------|----------|
| Aircraft Category 1 | AN24 | B737500 | B75723N | CRJ | RJ85 |
| | ATP | B737505 | B75727B | D328 | SAAB2000 |
| | ATR42 | B737529 | B75728A | D328110 | SF34 |
| | ATR42300 | B737530 | B7572Q8 | DC9 | SH36 |
| | ATR72 | B737548 | B7572T7 | DC941 | SH360 |
| | B717 | B73755S | BA11 | DC951 | SH360100 |
| | B737 | B7375K5 | BA11501 | DC980 | TU134 |

| | | | | |
|---------|---------|----------|--------|--------|
| B737200 | B7375L9 | BA11510 | DC982 | TU154 |
| B737222 | B737600 | BA11523 | DC983 | TU154B |
| B737229 | B737683 | BA11530 | DC987 | TU154M |
| B7372YF | B737700 | BA146300 | DH8 | |
| B737300 | B7377AK | BA41 | DHC7 | |
| B737329 | B7377L9 | BA46200 | DHC8 | |
| B737330 | B737800 | BA46300 | E110 | |
| B73733A | B73785H | BAE146 | EMB110 | |
| B73736 | B73785P | BAE14610 | EMB145 | |
| B737382 | B73786N | BAE14620 | F100 | |
| B7373S3 | B737883 | BAE14630 | F50 | |
| B7373Y5 | B7378K2 | BAE146RJ | F70 | |
| B7373YO | B7378Q8 | BAEATP | FK100 | |
| B737400 | B757 | BAEJ41 | FK50 | |
| B737429 | B757200 | BAERJ85 | FK70 | |
| B737448 | B757217 | CL60 | L610 | |
| B73746B | B757224 | CL600 | PA23 | |
| B7374Q8 | B757236 | CL6002B | PA31 | |
| B7374YO | B75723A | CL65 | RJ100 | |

Aircraft Category 2

| | |
|---------|---------|
| A300 | A320200 |
| A300203 | A320211 |
| A300600 | A320212 |
| A300B4 | A320214 |
| A310 | A320231 |
| A310300 | A320232 |
| A310304 | DC862F |
| A319 | MD80 |
| A319100 | MD81 |
| A319111 | MD82 |
| A319112 | MD83 |
| A319114 | MD87 |
| A320 | MD87H |

Aircraft Category 3

| | |
|---------|----------|
| A330 | B767200 |
| A330200 | B767204 |
| A330243 | B767300 |
| A330301 | B767304E |
| AN12 | B767332 |
| B747 | B7673Q8 |
| B747128 | L1011 |
| B747200 | L10111 |
| B747400 | L101114 |
| B767 | L1011385 |

Aircraft Category 4

A321
A321131
A321132
A321200
A321211
A321231
A340312
B777
DC10
DC1030
MD11
MD90
MD9030

| | |
|----------------------------|----------------------------|
| Aircraft Category 5 | B727 B727256 B727276 |
|----------------------------|----------------------------|

As discussed above, the Determination was appealed to the Panel who made a number of findings in regard to the ACN method of calculation as follows:

- (i) “ACN is used for pavement strength reporting and therefore the sole use of ACN as the basis for setting landing charges appears to be unique and thus not consistent with practices at other airports.
- (ii) In using ACN no account is taken of other related costs, for example, ground-based navigation aids and the provision of rescue and fire fighting services.
- (iii) The categorisation of aircraft (Schedule 1, p 18 of the Determination) is inconsistent and omits certain aircraft types (refer to (e) below) that are currently operating into airports operated by Aer Rianta. In particular, the Boeing 737-800 (Category 1) has a similar ACN to the Airbus 319 and 320 (Category 2); the Airbus 321 (Category 4) and Boeing 727 (Category 5) have a lower or similar ACN to aircraft allocated to Categories 2 and 3. This categorization will produce charges that are treating similar aircraft differently. Air Contractors (Ireland) Ltd has also set out aircraft missing from the categories used by the Commission.
- (iv) No account has been taken of options in undercarriage design that can allow aircraft to use airports with lower pavement strengths. The Airbus 320 has this option and no account is made in the determination for this situation.”

The Panel found that the maximum charges for each category relative to each other “appear to be out of proportion when compared with the relative ACN values for aircraft in each of the corresponding categories...” The Panel referred to British Midland’s submission that “the categorisation unfairly benefits carriers operating B737 and B757 fleets, which are deemed Category 1 aircraft despite weights in excess of 50 tonnes. The ratio of ACN to tonnage is only slightly higher for an A321 at 79 tonnes, which appears in Category 4, thus paying a similar fee to aircraft which are double its weight, and a higher rate per tonne than B747 aircraft. British Midland have 2 aircraft types with the same weight and similar ACN, being the A320 and B737-400. The A320 has a lower ACN but has been classified in a higher category and is subject to a charge which is more than 4 times greater that of the B737-400””. The Panel concluded that there were a series of problems arising from use of the ACN methodology for the purposes of aircraft classification and that the methodology therefore needed to be reviewed. The Panel noted that “in the event of a weight mechanism being used, then the categorization of aircraft type (with its attendant problems....) does not arise”.

Following the Panel’s Decision, the matter was referred back to the Commission for a further Decision. The Commission decided not to vary the original Determination in regard to the methodology by which maximum off-peak landing and take-off charges are calculated and specified. However, the Commission decided to revise its calculation in light of the submissions made to the Panel which led to a re-classification of certain aircraft types and some changes to the category charges. The amended classification is set out below:

REVISED AIRCRAFT CATEGORY TABLE

| | | | | | | | |
|----------------------------|----------------------------|---------|----------|----------|----------|----------|--|
| Aircraft Category 1 | AN24 | B737529 | B7572Q8 | BAE146RJ | E110 | SB20 | |
| | ARJ | B737530 | B7572T7 | BAEATP | EMB110 | SD360 | |
| | ATP | B737548 | BA11 | BAEJ41 | EMB145 | SF34 | |
| | ATR42 | B73755S | BA11501 | BAERJ85 | F100 | SH36 | |
| | ATR42300 | B7375K5 | BA11510 | CL60 | F50 | SH360 | |
| | ATR72 | B7375L9 | BA11523 | CL600 | F70 | SH360100 | |
| | B717 | B757 | BA11530 | CL6002B | FK100 | TU134 | |
| | B737 | B757200 | BA146300 | CL65 | FK50 | TU154 | |
| | B737200 | B757217 | BA41 | CRJ | FK70 | TU154B | |
| | B737222 | B757224 | BA46200 | D328 | L610 | TU154M | |
| | B737229 | B757236 | BA46300 | D328110 | PA23 | | |
| | B7372YF | B75723A | BAE146 | DH8 | PA31 | | |
| | B737500 | B75723N | BAE14610 | DHC7 | RJ100 | | |
| | B737505 | B75727B | BAE14620 | DHC8 | RJ85 | | |
| | | B75728A | BAE14630 | D082 | SAAB2000 | | |
| | Aircraft Category 2 | A300 | B7373YO | B747200 | | | |
| | | A300203 | B737600 | DC9 | | | |
| | | A300600 | B737683 | DC941 | | | |
| | | A300B4 | B737700 | DC951 | | | |
| | | A310 | B7377AK | DC980 | | | |
| A310300 | | B7377L9 | DC982 | | | | |
| A310304 | | B737800 | DC983 | | | | |
| B737300 | | B73785H | DC987 | | | | |
| B737329 | | B73785P | | | | | |
| B737330 | | B73786N | | | | | |
| B73733A | | B737883 | | | | | |
| B73736 | | B7378K2 | | | | | |
| B737382 | | B7378Q8 | | | | | |
| B7373S3 | | B747 | | | | | |
| B7373Y5 | | B747128 | | | | | |
| Aircraft Category 3 | A319 | A330301 | B767332 | | | | |
| | A319100 | A340312 | B7673Q8 | | | | |
| | A319111 | AN12 | B777 | | | | |
| | A319112 | B727 | DC10 | | | | |
| | A319114 | B737400 | DC1030 | | | | |
| | A320 | B737429 | DC862F | | | | |
| | A320200 | B737448 | L1011 | | | | |
| | A320211 | B73746B | L10111 | | | | |
| | A320212 | B7374Q8 | L101114 | | | | |
| | A320214 | B7374YO | L1011385 | | | | |
| | A320231 | B747400 | MD80 | | | | |
| | A320232 | B767 | MD81 | | | | |
| | A330 | B767200 | MD82 | | | | |
| | A330200 | B767204 | MD83 | | | | |
| | A330243 | B767300 | MD87 | | | | |
| | B767304E | MD87H | | | | | |
| Aircraft Category 4 | A321 | | | | | | |
| | A321131 | | | | | | |
| | A321132 | | | | | | |
| | A321200 | | | | | | |
| | A321211 | | | | | | |
| | A321231 | | | | | | |
| | MD11 | | | | | | |
| MD90 | | | | | | | |
| MD9030 | | | | | | | |

| | |
|-------------------|---------|
| Aircraft | B727256 |
| Category 5 | B727276 |

6. AIRBUS'S SUBMISSIONS IN REGARD TO THE VARIED DETERMINATION

Airbus considers that the varied Determination is unreasonable, discriminatory, incorrect and disproportionate. Airbus submits that each of these grounds are substantial and that they justify a review of the determination. Airbus's submissions in regard to each ground are set out below.

(i) The Aircraft Classification is Unreasonable

A number of airport users namely, Air Contractors (Ireland) Limited, Aer Lingus, the Association of Flying Groups at Dublin Airport and British Midland appealed to the Appeal Panel in respect of the aircraft classification. Airbus The Appeal Panel considered that there were a number of problems with regard to the use of ACN as the basis for setting landing and take-off charges. The Panel noted that other airport operators use the MTOW mechanism for determining landing and take-off charges and that the use of this methodology was a "unique exercise". Airbus submits that in light of the objections received and the problems and complexities identified by the Panel with use of ACN as a basis for classifying aircraft, it is unreasonable for the Commission to use such a methodology in the calculation of appropriate landing and take-off charges. Airbus submits that an MTOW methodology would be more appropriate.

(ii) The Aircraft Classification is Discriminatory

Airbus submits that the varied off-peak landing and take off charging system implemented by the Commission is discriminatory and, in particular, discriminates against the A320 family.

A Report compiled by Oliver Hogan, David Starkie and Kieran Feighan on Off-Peak Landing and Take-Off Charges and Aircraft Classification (the **Report**) attached at Appendix 1 to the Commission's Decision varying its original Determination sets out the "Aircraft Damage Category" ("ADC") assignment at Table 1 as follows:

| ADC | Aircraft Types | Min ACN | Max ACN | Min MTOW | Max MTOW |
|------------|----------------------------|----------------|----------------|-----------------|-----------------|
| 7 | B737-300, -600 | 36 | 39 | 55 | 57 |
| 8 | A319, B737-400, -700, -800 | 41 | 46 | 61 | 71 |
| 9 | A320, B727 | 48 | 49 | 68 | 79 |
| 10 | A321 | 52 | 58 | 79 | 83 |

Airbus has a number of observations in regard to Table 1 of the Report. Firstly, Airbus notes that ADC 7 has a much narrower band than ADC 8. Second, the MTOW bands in ADC 8 and ADC 9 overlap, however, because ADC 9 covers just 2 ACNs, the -800 falls within ADC 8. Third, it is unusual that the ACN band starts at 48 and not at 46. If the ACN band in ADC 9 commenced at 46, the -800 would fall within this category.

Table 6 of the Report categorises the ADCs into "Aircraft Cost Categories" (**ACCs**) as follows:

| ADC | Aircraft Types | ACC | Charge per movement |
|------------|---------------------------|------------|----------------------------|
| 7 | 737-300, -600 | 2 | €0.79 |
| 8 | A319, 737-400, -700, -800 | 3 | €1.26 |
| 9 | A320, 727 | 3 | €1.26 |
| 10 | A321 | 4 | €1.94 |

Airbus has a number of observations in regard to Table 6 of the Report. Firstly, the 737-400, -700 and -800 are placed in ACC 3 the same category as the A320 and the 727 whereas in Table 1 the 737-400, -700 and -800 were placed in separate ADC categories to the A320 and the 727. Subsequently, in Annex II of the Report which set outs the Revised Aircraft Classification, the 737-700 and -800 are included in ACC 2 and the 737-400 and A319 are included in ACC 3. The Report does not contain any explanation for this discrepancy. The Revised Aircraft Classification in Annex II sets the ultimate charging position for each aircraft.

At Section 3 of the Report entitled "Response to Specific Points Raised by Appeal", the authors of the Report attempt to give some explanation of the charging system contained in the Report. However, Airbus considers that the explanation given therein raises additional questions. The second Paragraph of Section 3 provides as follows:

"Paragraph 8.01(f)(iii) of the Decision of the Panel refers to the Boeing 737-800 and the Airbus 319 and 320 and the inconsistency in the fact that, although these aircraft have similar ACNs, they were placed in different cost categories. In these revised calculations, the A319 and A320 are classified as category 3 and the B737-800 is classified as category 2. The ACNs of these aircraft are 42, 48 and 46 respectively. As expected, the marginal cost per landing should be broadly similar and table 2 confirms this. The A320 is slightly more damaging (with a higher ACN of 48) than the B737-800 and this is reflected in a moderately higher marginal damage cost per landing of €180.09 compared to €144.13. Comparing the A319 and the B737-800, the former is a lighter aircraft at 64 tonnes and, therefore, needs to pay a higher per tonne charge in order to cover the cost of imposing approximately the same amount of damage as the heavier B737-800 (at 70.53 tonnes). Although the A320 is a heavier aircraft than both, its marginal damage per landing is slightly higher, leading it also to be classified as category 3."

There are a number of discrepancies in the above paragraph. First, the A319 is compared to the 737-800 whereas it is technically and physically comparable to the 737-700 and therefore should be categorised with the 737-700. Second, the statement that the A320 is slightly more damaging than the 737-800 is only true in respect of ACNs at the lowest MTOW in ADC 8 and also only because the Commission has assumed ACNs that do not comport with those Airbus uses and can demonstrate for these aircraft. Third, if this statement is correct, it is internally inconsistent that the A319 is cost equalised with the 737-800 and that the A320 is in a higher cost category. Airbus understands and can show that, in certain configurations, the 737-800 has a higher MTOW than the A320 but this is not reflected in the charging system. Fourth, the statement that "comparing the A319 and the B737-800, the former is a lighter aircraft at 64 tonnes and, therefore, needs to pay a higher per

tonne charge in order to cover the cost of imposing approximately the same amount of damage as the heavier B737-800 (at 70.53 tonnes)" also raises questions, including:

- (i) it is unusual that the cost is equalised for lighter aircraft with a lower ACN - why does this not apply to the 737-700?;
- (ii) why does this analysis apply to the A319 and 737-800 delta MTOW 6.5t, delta ACN 6 and not the 737-800 and A320 delta MTOW 3t (or less), delta ACN 2?

In light of the Appeal Panel's finding that the original categorisation of aircraft was inconsistent referring in particular, to the Boeing 737-800 as having "a similar ACN to the Airbus 319 and 320", Airbus has concerns that the 319 and 320 (Category 3) have still been placed in a higher category to the 737-800 (Category 3). Airbus submits that the varied Aircraft Classification treats similar aircraft differently and that this results in different charges for aircraft with similar ACNs and/or similar MTOWs.

(iii) The Aircraft Classification is Incorrect and Disproportionate

Airbus submits that the Classification is incorrect and disproportionate in the charges that are set for each category of aircraft. According to Airbus analysis, the ACN categories which have been considered by the Commission corresponds to Rigid category C pavements. However, Airbus notes that two aircraft are wrongly classified due to incorrect ACN values considered:

- A319: MTOW = 64 tonnes – rigid C ACN = 39 (and not 42)
- With ACN 39, ADC=7 and MCL=61.47€, MCL/MTOW=0.96 which is in ACC=2

- B737-800 : MTOW=70.53 tonnes – rigid C ACN = 49 (and not 46)
- With ACN 49, ADC=9 and MCL=180.09€, MCL/MTOW=2.55 which is in ACC=3

ACN 49 is obtained by considering the max possible AFT CG position of B737-800 at MTOW=70.53 tonnes (155500 Lb), which provides 96.2% of loads on Main Landing Gear Legs.

The consideration of 93.58% of loads on Main Landing Gear Legs as shown on Boeing Airplane Characteristics for Airport Planning manual (AC – doc. D6-58325-3 – Dec 2001) is only valid for higher MTOW=174200Lb and would provide rigid C ACN = 47.

In addition, Airbus has identified an incoherence in Table 1 on page 58 of the Report. Airbus notes that minimum and maximum ACNs shown for ADC 4, 7, 8, 9, 16, 17 and 18 are not in accordance with Table 8, page 67 of the Report (or table shown in Chapter 7 on page 44). In this table, the range of MTOW for ADC 8 (61 – 71) is not in line with further calculation of ACC as shown in Table 6, page 62. With ADC=8, MCL= 144.13€, and MTOW=71 tonnes, MCL/MTOW=2.03 which corresponds to ACC=2 (and not 3 as shown in Table 6). If MTOW range for ADC 8 would have been (61 – 68 , to avoid overlap with ADC 9), the figure would change as follow: with ADC=8, MCL= 144.13€, and MTOW=68 tonnes, MCL/MTOW=2.12 which is exactly the beginning of ACC 3 band. In this case, Table 6 would be correct but the B737-800 with MTOW=70.53t would

fall into ADC 9, leading to $MCL=180.09\text{€}$, $MCL/MTOW=2.55$ which is in $ACC=3$.

In conclusion, the B737-800 appears to be favoured in the classification when the A319 is penalised.

7. Impact on Airbus

This section is confidential to Airbus.

8. CONCLUSIONS

As discussed above, Airbus considers that there are substantial grounds justifying a review of the varied Determination and the related Aircraft Classification. In particular, Airbus submits that the Aircraft Classification is unreasonable, discriminatory and disproportionate. There are a number of discrepancies in the Report attached to the Commission's Decision of 9th February 2002 following the referral back to the Commission from the Panel. Airbus believes that several of the concerns of the Panel have not been correctly taken into account by the Commission in its re-classification of aircraft.

Airbus looks forward to discussing the matters raised above with the Commission in due course.