



**CONSULTATION PAPER ON THE MAKING OF A
NEW DETERMINATION UNDER THE AVIATION
REGULATION ACT, 2001, AS AMENDED BY THE
STATE AIRPORTS ACT 2004**

Commission Paper CP7/2004

1st October, 2004

Commission for Aviation Regulation
3rd Floor, Alexandra House
Earlsfort Terrace
Dublin 2
Ireland

Tel: +353 1 6611700
Fax: +353 1 6611269

E-mail: info@aviationreg.ie

TABLE OF CONTENTS

1.	INTRODUCTION	3
1.1	Purpose of the Consultation Paper	4
1.2	Call for Submissions	4
2.	AMENDMENTS TO SECTION 33 OF THE AVIATION REGULATION ACT 2001.....	5
2.1	Overview of the amendments to section 33.	5
2.2	Section 33 – Objectives	7
2.2.1	Objective in 2001 Act.....	7
2.2.2	Objectives in Section 33 as substituted by the 2004 Act.....	8
2.3	Section 33 - Statutory Factors	9
2.3.1	The Restructuring.....	9
2.3.2	The level of investment	10
2.3.3	A reasonable rate of return on capital.....	12
2.3.4	The efficient and effective use of all resources	13
2.3.5	Contribution of the airport to the region	14
2.3.6	The level of income	15
2.3.7	Costs or liabilities	18
2.3.8	Policy statements	19
2.3.9	Cost competitiveness	19
2.3.10	The level and quality of services	21
2.3.11	Minimum restrictions	21
2.3.12	Obligations	22
3.	PUBLICATION OF SUBMISSIONS.....	24
3.1	Information	24
3.2	Confidential Information	24
3.3	Use of the Commission’s website.....	25
4.	ECONOMIC PAPER ON THE AER RIANTA RESTRUCTURING	26
5.	CONCLUSIONS	27
	ANNEX I	28

1. INTRODUCTION

On February 27, 2001, the Minister for Public Enterprise established the Commission for Aviation Regulation ('the Commission') under Section 5 of the Aviation Regulation Act, 2001 ("the 2001 Act"). Under the Act, the principal function of the Commission is the making of a determination on maximum airport charges.

Under the 2001 Act, the Commission was required to make a determination specifying the maximum levels of airport charges that may be levied by Dublin, Cork and Shannon Airports. In setting maximum airport charges, the objective of the Commission was to facilitate the development and operation of cost effective airports, which meet the requirements of users. This was classed as the "statutory objective". In arriving at its determination, Section 33 of the Act required the Commission to have due regard to ten specified factors. These were regarded as the "statutory factors".

The State Airports Act, 2004, (the "2004 Act") amended the 2001 Act. The 2004 Act requires the Commission "as soon as is practicable, but not later than 12 months after the Dublin appointed day" to make a new determination specifying the maximum levels of airports charges at Dublin Airport. This new determination will effectively super-cede the current determination made by the Commission in August 2001.

The 2004 Act has also amended the regulatory objectives of the Commission in setting airport charges. In particular section 22(4) of the 2004 Act substitutes a new section 33 into the 2001 Act. Section 33 relates to the statutory objectives of the Commission when making a determination on airport charges and the factors to which it must have due regard when making a determination.

1.1 Purpose of the Consultation Paper

This consultation paper sets out the amended statutory objectives and factors to which the Commission shall have due regard as stated in section 33 of the 2001 Act, as substituted by section 22(4) of the 2004 Act. Its purpose is to invite submissions from interested parties as to how the Commission should interpret its amended statutory objectives and the factors to which it must have due regard when making a new determination specifying the maximum levels of airport charges that may be levied by Dublin Airport Authority in respect of the Dublin Airport. In doing so, the paper recaps on the way in which the Commission interpreted and approached its statutory objective and the factors to which it had to have due regard under the 2001 Act when making the existing Determination.

1.2 Call for Submissions

The Commission for Aviation Regulation requests interested parties to submit responses to the questions raised in this consultation paper by the 1st November 2004. Submissions should be addressed to:

Patricia O'Connor,
Head of Legal Affairs,
Commission for Aviation Regulation,
3rd Floor,
Alexandra House,
Earlsfort Terrace,
Dublin 2.

The Commission requests that all written submissions be typed. Submissions may also be sent to the Commission in electronic form either on floppy disk or by e-mail to info@aviationreg.ie and should be either in Microsoft Word (".doc") or portable document format ("pdf").

2. AMENDMENTS TO SECTION 33 OF THE AVIATION REGULATION ACT 2001.

2.1 Overview of the amendments to section 33.

2001 Act	Substitution as set out in the 2004 Act
the Commission shall aim to facilitate the development and operation of cost-effective airports which meet the requirements of users ¹	(1) the objectives of the Commission are as follows – a) to facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport, b) to protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport, and c) to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner
and shall have due regard to -	(2) In making a determination, the Commission shall have due regard to
	a) the restructuring including the modified functions of Dublin Airport Authority,
a) the level of investment in airport facilities at an airport to which the determination relates, in line with safety requirements and commercial operations in order to meet current and prospective needs of those on whom the airport charges may be levied	b) the level of investment in airport facilities at Dublin Airport, in line with safety requirements and commercial operations in order to meet the needs of current and prospective users of Dublin Airport,
b) a reasonable rate of return on capital employed in that investment, in the context of the sustainable and profitable operation of the airport	
c) the efficient and effective use of all resources by the airport authority	
d) the contribution of the airport to the region in which it is located	

¹ In the table above, a blank box opposite a subsection in one Act means that there is no corresponding subsection in the other Act. For example, certain subsections in the 2001 Act have been repealed but not replaced, whilst others subsections set out in the 2004 Act are appearing for the first time.

e) the level of income of the airport authority from airport charges at the airport and other revenue earned by the authority at the regulated airports or elsewhere	c) the level of operational income of Dublin Airport Authority from Dublin Airport, and the level of income of Dublin Airport Authority from any arrangements entered into by it for the purposes of the restructuring under the State Airports Act 2004
f) operating and other costs incurred by the airport authority at the airport	d) costs or liabilities for which Dublin Airport Authority is responsible,
g) the level and quality of services offered at the airport by the airport authority and the reasonable interests of the users of these services	e) the level and quality of services offered at Dublin Airport by Dublin Airport Authority and the reasonable interests of the current and prospective users of these services,
	f) policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission by the Minister, in relation to the economic and social development of the State,
h) the cost competitiveness and operational efficiency of airport services at the airport with respect to international practice,	g) the cost competitiveness of airport services at Dublin Airport,
i) imposing the minimum restrictions on the airport authority consistent with the functions of the Commission, and	h) imposing the minimum restrictions on Dublin Airport Authority consistent with the functions of the Commission, and
j) such national and international obligations as are relevant to its functions	i) such national and international obligations as are relevant to the functions of the Commission and Dublin Airport Authority.

2.2 Section 33 – Objectives

2.2.1 Objective in 2001 Act

The preamble to section 33 of the 2001 Act set out the statutory objective of the Commission.

" in making a determination, the Commission shall aim to facilitate the development and operation of cost-effective airports which meet the requirements of users...."

The Commission's interpretation of this statutory objective was set out in CP2/2001, which is available on the Commission's website www.aviationreg.ie

In interpreting the statutory objective, the Commission equated:

1. The operation of cost effective airports with the concept of productive efficiency, i.e., service provision at minimum cost;
2. The development of cost effective airports with the concept of dynamic efficiency, i.e., efficient investment behaviour motivated, in particular, by the pursuit of long-term cost savings;
3. Requirements of users² with the concept of allocative efficiency, i.e., all users who are willing to pay for the service have access to it subject to the regulated firm covering its efficiently incurred costs.

In doing so, the Commission was guided by the proposition that (i) well-functioning competitive markets are characterised by these three types of economic efficiency; and (ii) that regulators responsible for the regulation of market power typically seek to emulate the workings of competitive markets.

² The Commission equated users with consumers of airport services, not just airlines.

Where the three economic efficiencies (productive, dynamic and allocative) are observed, economic welfare (the excess of the value of producing a good or service over its production cost) is maximised.

Therefore, the implementation of the primary objective obliged the Commission, in its view, to determine airport charges in a manner that would maximise economic welfare through the pursuit of productive, dynamic and allocative efficiency.

2.2.2 Objectives in Section 33 as substituted by the 2004 Act

The statutory objective has been amended as follows:

"in making a determination, the objectives of the Commission are as follows-

- (a) to facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport,
- (b) *to protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport, and*
- (c) to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner.

The Commission notes that subsection 33(1)(c) is an entirely new provision. In addition, "user" has been defined in the 2004 Act as meaning any person –

- (a) "for whom any services or facilities the subject of airport charges are provided at Dublin Airport,

- (b) *using any of the services for the carriage by air of passengers or cargo at Dublin Airport, or*
- (c) *otherwise providing goods or services at Dublin Airport.”*

The Commission seeks views as to how it should proceed in making the new determination in order to attain these three statutory objectives in setting airport charges.

2.3 Section 33 - Statutory Factors

The Commission is directed to have due regard to a number of factors specified in Section 33. These factors have now been amended as follows:

2.3.1 The Restructuring

“In making a determination the Commission shall have due regard to

- (a) the restructuring including the modified functions of Dublin Airport Authority.”*

This is an entirely new provision.

One should note, however, that having regard to the fact that the Cork and Shannon appointed days shall not be earlier than the 30th April 2005, this sub-section does not apply in relation to the first determination made after the Dublin Appointed Day.

The Commission seeks views as to how the Commission should take account of this statutory factor in setting airport charges.

2.3.2 The level of investment

The previous statutory factor specified the following:

- (a) *"the level of investment in airport facilities at an airport to which the determination relates, in line with safety requirements and commercial operations in order to meet current and prospective needs of those on whom the airport charges may be levied"*
[Section 33 (a) 2001 Act]

This has become -

- (b) *"the level of investment in airport facilities at Dublin Airport, in line with safety requirements and commercial operations in order to meet the needs of current and prospective users of Dublin Airport"* [Section 33 2(b) as substituted by the 2004 Act]

Given the primacy of safety in the context of aviation, the Commission stated in CP2/2001 that in carrying out economic regulation, it would assume that the regulated company continues to meet the safety standards set by the Irish Aviation Authority and to maintain a strong corporate safety culture.

In terms of commercial imperatives, the view was held that as airports are capital-intensive businesses, it is necessary that their economic regulation be consistent with a level of investment in facilities that allows the needs of users to be met. Equally, investments in airport infrastructure are very costly, and made against a background of considerable uncertainty as to future passenger demand and future economic conditions. Therefore, economic regulation must seek to avoid excessive or excessively early investments that have to be paid for by raising airport charges.

The level of capital investment (CAPEX) that is required at an airport will depend, inter alia, on the level of current and projected demand, desired improvements in quality and the age of the existing facilities. An

assessment as to the required CAPEX programme and its efficiency is, therefore, a central element of the economic regulation of airports.

Capital expenditure increases a firm's assets. For a regulated firm, whose prices are set in part to allow a certain rate of return to be paid on those assets, there may be an incentive to err on the side of over-investment, since this will cause regulated prices to be higher than they might otherwise be. Consistent with this, there may be under-spending on *actual* investment by regulated utilities compared with investment projections made at the time of airport price reviews. Therefore, it is necessary that a regulated firm's investment plans be carefully scrutinised as to their timing and efficiency.

In making its Determination in August 2001, the Commission noted that in respect of the Aer Rianta airports, the following situation had arisen in relation to both previous, as well as current CAPEX:

- poor consultation with users of the airport,
- lack of transparency in quality of information provided to users of the airport, particularly as to planned costs of proposed projects,
- construction (both past and planned) of facilities that were inefficient and/or did not meet the requirements of users of the airports in line with best international practice,
- inadequate or non-existent cost-benefit-analysis or business cases undertaken to justify specific CAPEX projects,
- internal inconsistencies in information supplied by Aer Rianta to the Commission on the CAPEX Programme.

As a consequence of this, therefore, the Commission could not rely on the Aer Rianta CAPEX programme in making its Determination save to the extent that it identified necessary compliance or safety projects.

The Commission's approach to CAPEX in the existing Determination was supported by the High Court.

“The effect of the relevant statutory provisions, therefore, appears to be that the respondent, in carrying out his duty of regulating airport charges, has a positive duty to aim to facilitate the development of cost effective airports and while so doing must have due regard to the level of investment in the subject airport and is specifically equipped with a power to reject any proposals in relation, inter alia, to CAPEX that may be submitted to him by the operators of that airport. Moreover, there is nothing in the provisions of the Act of 1998 which would upset or overturn this conclusion; rather the contrary, because the statutory duties to ensure the provision of services cast upon the applicant is in 16(2) and its powers under s. 39 to determine charges is specifically made subject to those general and specific powers of the respondent which include the power to reject their proposals on CAPEX. My conclusion on the first question which deals only with the principles to whether the respondent has jurisdiction to review the applicant’s CAPEX, therefore, is that he has such a power.”³

The Commission seeks views as to how, if at all, the Commission’s approach under the 2001 Act needs to be modified to take account of this factor, as amended, in setting airport charges.

2.3.3 A reasonable rate of return on capital

The previous statutory factor specified the following:

- (b) *“a reasonable rate of return on capital employed in that investment, in the context of the sustainable and profitable operation of the airport”* [Section 33 (b) 2001 Act]

The Commission deemed this factor as requiring it to establish, or estimate, the magnitude of three critical economic parameters:

³ Per O’Sullivan J. Aer Rianta cpt. v. The Commissioner for Aviation Regulation (unreported, 3rd April 2003) [2001 No. 707 J.R.] at page 51.

- the value of capital employed in the business;
- the cost of capital to the airport operator;
- the appropriate rate of return on capital employed.

In the absence of market valuations of the company, the value of capital employed in the business was estimated as the value of the assets used in the provision of airport services, that is, the Regulatory Asset Base (RAB). The RAB was valued according to primitive current cost accounting, i.e., indexed historic net book value, consistent with the costs that would be borne by a new entrant in a competitive market.

The Commission sought independent expert advice on the company's cost of capital and, also consistent with the workings of competitive markets and with achievement of the Commission's statutory objective, decided to set the company's allowable rate of return equal to its cost of capital.

The Commission notes that the 2004 Act, has deleted this section from the 2001 Act.

The Commission seeks views as to how, if at all, the Commission's approach needs to be modified to take account of the deletion of this factor in setting airport charges.

2.3.4 The efficient and effective use of all resources

The previous statutory factor specified the following:

- (c) *"the efficient and effective use of all resources by the airport authority"* [Section 33 (c) 2001 Act]

The Commission regarded this issue as being logically linked to the investment factor cited at (a) and the international cost competitiveness factor at (h) as stated in section 33 of, 2001 Act. In addition, the Commission provided for an explicit efficiency factor in the Determination

in respect of Dublin and Shannon airports (3.5% and 4% respectively for each of the five regulatory years) in order to express its reliance on this factor in a more transparent manner. In the Revised Determination in February 2002, adjustments were made in order that the efficiency requirements would be achieved over three rather than five years.

The Commission notes that this section has been deleted from the 2004 Act.

The Commission seeks views as to how, if at all, the Commission's approach needs to be modified to take account of the deletion of this factor in setting airport charges.

2.3.5 Contribution of the airport to the region

The previous statutory factor specified the following:

(d) "the contribution of the airport to the region in which it is located", [Section 33 (d) 2001 Act]

An airport may be regarded as making a contribution to the region in which it is located in a number of different respects. A good aviation infrastructure can influence business location decisions and therefore, employment in that region. Firms may be especially concerned about flight frequency and reliability. Similarly, airports can provide an important basis for regional tourism and in that scenario seat availability at keen prices is a primary concern.

One of the primary comments offered either explicitly or implicitly, in the representations received by the Commission on this factor, during the consultation leading to the August 2001 Determination was to require that users of Dublin airport pay for the cost of Shannon and/or Cork airports. The Commission rejected this approach as it was regarded as fundamentally contrary to the statutory objective of facilitating the development and operation of cost-effective airports, which meet the

requirements of users. Such a cross-subsidy could not be said to be in the interest of users of Dublin airport and would not be consistent with the development of cost-effective airports which meet the requirements of users. Accordingly, the Commission held the view that any reliance on Section 33(d) that would have the effect of requiring subsidies would only serve to frustrate the achievement of the statutory objective.

The Commission notes that this section has been deleted from the 2004 Act. In addition, one must note that the scope of the Aviation Regulation Act, 2001 has been restricted by the 2004 Act. The Commission must now make a determination specifying the maximum levels of airport charges that may be levied by Dublin Airport Authority in respect of Dublin Airport only.

The Commission seeks views as to how, if at all, the Commission's approach needs to be modified to take account of the deletion of this factor in setting airport charges.

2.3.6 The level of income

The previous statutory factor specified the following:

- (e) *"the level of income of the airport authority from airport charges at the airport and other revenue earned by the authority at the regulated airports or elsewhere", [Section 33 (e) of the 2001 Act]*

This has become:

- (c) *the level of operational income⁴ of Dublin Airport Authority from Dublin Airport, and the level of income of Dublin Airport Authority from any arrangements entered into by it for the*

⁴ Section 22(5) of the State Airports Act, 2004 states that "operational income" includes airport charges and commercial revenues associated with the operation of Dublin Airport.

purposes of the restructuring under the State Airports Act, 2004", [Section 33 2(c) as substituted by the 2004 Act]

In making a Determination, the Commission was required in 2001 to take account of two sources of income available to the airport operator i.e. income from airport charges and 'other revenues' (e.g. from retailing, catering, car parking, concessions, rent etc). If full account is taken of both income streams, regulation is said to be 'single till'. In other words, airport charges are a residual after allocating the surplus of an airport's 'other income' (over the costs of providing "other services") to financing aeronautical services. Whereas if airport charges alone fund aeronautical services (without reliance on 'other income') this different treatment by the regulator of the two income streams is termed 'dual till' regulation.

One of the implications of a single till is that commercial profits can be used to reduce charges for airport services. This could serve to improve efficiency if there was excess airport capacity because lower airport charges would encourage greater use of the airport. However, under a single till, in combination with cost-based regulation (that is, price regulation that is designed to cover costs), the incentives for productive efficiency in the provision of airport services may be weakened. There may also be a tendency towards over-investment.

Under a dual till, there may be greater incentives to achieve productive efficiency in the provision of airport services. There may also be stronger incentives to invest efficiently. Therefore, if an airport faced capacity constraints, the case for a dual till is likely to be stronger because higher prices could ensure allocative efficiency (that is, airport usage by those who are not willing to pay the efficient charges could be discouraged), which may itself contribute to the alleviation of the congestion, and dynamic efficiency because the higher prices may encourage efficient investment in the capacity that is required to solve the congestion problem.

In respect of this factor, in 2001, the Commission received divergent representations from interested parties. The scope of the regulatory till recommended, depended largely on whether or not the interested party was an airport user or an airport operator. Airport users, generally, recommended a regulatory till as large as possible. The airport operator recommended a regulatory till limited to revenue derived solely from airport charges. Both positions are supported by economic argument.

The Commission took the view that there is nothing particularly remarkable about pricing certain aspects of the charges for airport services according to a dual income stream, as such behaviour is found in competitive markets. Additionally, there may be potentially adverse incentive effects of a regulatory till including commercial revenue on operations at airports approaching the limits of physical capacity. Therefore, it was decided to include commercial revenue in the regulatory till in all three airports.

The Commission did consider excluding from the regulatory till in Dublin all revenue from commercial investments which took place after the Determination. However, Dublin, although a large airport, has ample room for expansion of capacity. In addition, the implementation of a dual till arrangement requires detailed cost allocation information from the airport operator. The Commission discovered that the airport operator did not have adequate accounting systems to perform these allocations. Therefore, the Commission decided to adopt a single till regime in Dublin for the period of the first Determination.

Aer Rianta, (and from the Dublin appointed day, Dublin Airport Authority) also earns income from international investments and other international activities (Aer Rianta International) and its group of hotels (Great Southern Hotels). There were many representations calling for the inclusion of revenues from such activities into the regulatory till. The Commission rejected these views since these activities do not have a sufficient nexus to the regulated activities. Thus, in defining the

regulatory till, the Commission endeavoured to exclude all costs, direct and indirect, associated with these activities.

The Commission seeks views as to how the Commission should take account of this statutory factor, as amended, in setting airport charges.

2.3.7 Costs or liabilities

The previous statutory factor specified the following:

(f) "the operating and other costs incurred by the airport authority at the airport", [Section 33 (f) of the 2001 Act]

This has become:

(d) "costs or liabilities for which Dublin Airport Authority is responsible", [Section 33 2(d) as substituted by the 2004 Act].

A business will ordinarily seek to recover through its charges, the capital and operating costs required together with a return on capital invested. In respect of the operating costs, the former statutory objective (i.e. the development of cost-effective airports which meet the needs of users) meant that the Commission's approach should be to ensure that operating costs at regulated airports are no higher than necessary in order for services of a given quality to be provided to users. The Determination set a maximum level of airport charges so as to cover all necessary operating and capital costs of the airport authority and the regulatory formula operates so that revenues derived from airport charges, along with the operating and other costs incurred by the airport authority are monitored to ensure that the maximum yields are not exceeded.

The Commission notes the addition of the term "liabilities" in the subsection and seeks views on how it should interpret the amendment to this statutory factor in setting airport charges.

2.3.8 Policy statements

- (f) *“policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission by the Minister, in relation to the economic and social development of the State”* [Section 33 2(f) as substituted by the 2004 Act]

This is an entirely new provision.

The Commission considers that while this provision appears self-explanatory it does import an entirely new dimension into the regulation of Irish airports and potentially places a very wide-ranging obligation and unpredictable onus on it to incorporate what may be in effect only “policy statements” from any Government source into the price cap process. The Commission seeks views on the significance of this new factor and how it should take account of it in setting airport charges.

2.3.9 Cost competitiveness

The previous statutory factor specified the following:

- (h) *“the cost competitiveness and operational efficiency of airport services at the airport with respect to international practice”*
[Section 33 (h) of the 2001 Act]

This has become:

- (g) *“the cost competitiveness of airport services at Dublin Airport,”*
[Section 33 2(g) as substituted by the 2004 Act]

In achieving this statutory objective, the Commission was required to have due regard to international cost competitiveness and international

practice on operational efficiency. This involved the use of benchmarking as an analytical tool. Although benchmarking has many obvious advantages, distortions could be introduced if incorrect comparisons were made.

A large number of representations were received on this statutory factor. Some interested parties sought to have airport charges reduced by an amount directly in proportion to potential operational inefficiencies, identified as the result of a single benchmarked indicator. Others stated that all benchmarking understated, to a significant degree, improvements possible in operational efficiency since external factors, such as growth in traffic or improvements in technology, made improvements in efficiency inevitable and needed to be taken into account in the setting of efficiency targets. The airport operator held the view that benchmarking was suspect as a device for setting charges.

On the issue of international cost competitiveness and operational efficiency, the Commission retained expert advice and this advice was fully set out in Appendix VII to CP8/2001. The Commission maintained the view that benchmarking must be approached with considerable caution, particularly in relation to:

- (i) the identification of comparator airports;
- (ii) the need to use objective metrics, and
- (iii) in the interpretation of results.

However, the broad consistency of the findings across a range of indicators supported the view that significant operational efficiencies were achievable at Dublin and Shannon airports. In addition, an analysis of operational performances of Aer Rianta, both past and future, was also consistent with these findings.

For purposes of transparency, the operational efficiencies achievable were included (along with all other factors such as traffic growth and the size of the CAPEX) into the X factor.

The Commission seeks views as to how it should take account of this statutory factor, as amended, in setting airport charges.

2.3.10 The level and quality of services

The previous statutory factor specified the following:

- (g) *“the level and quality of services offered at the airport by the airport authority and the reasonable interests of the users of these services”,* [Section 33 (g) of the 2001 Act]

This has become:

- (e) *“the level and quality of services offered at Dublin Airport by Dublin Airport Authority and the reasonable interests of the current and prospective users of these services”,* [Section 33 2(e) as substituted by the 2004 Act]

The Commission considers that this provision is self-explanatory but would nonetheless be happy to receive views as to how it should take account of this statutory factor, as amended, in setting airport charges under a new determination and in changed circumstances in terms of the establishment of the Dublin Airport Authority.

2.3.11 Minimum restrictions

The previous statutory factor specified the following:

- (i) *“imposing the minimum restrictions on the airport authority consistent with the functions of the Commission”,* [Section 33 (i) of the 2001 Act]

This has become

- (h) *"imposing the minimum restrictions on Dublin Airport Authority consistent with the functions of the Commission", [Section 33 2(h) as substituted by the 2004 Act]*

The Commission believes there is no change in policy needed regarding this factor.

Related to this issue, it is useful to set out the comments of, O'Sullivan J. in the High Court,

"As already stated, in my opinion the respondent was, if not obliged, certainly authorised by the specific provisions of s.33 to carry out an item by item analysis and review of the applicant's CAPEX with power to allow, disallow or reduce same. Again already as stated, I do not think that this means that he was carrying out management and development functions as identified in s. 16 of the 1998 Act. It may well be that the applicant's board will feel itself constrained by the respondent's methodology and the information they have in relation to his approach to their CAPEX but this does not mean that it is his decision rather than theirs to carry it out or not to carry it out."⁵

The Commission seeks views as to how it should take account of this statutory factor, as amended, in setting airport charges.

2.3.12 Obligations

The previous statutory factor specified the following:

- (j) *"such national and international obligations as are relevant to its functions"* [Section 33 (j) of the 2001 Act]

⁵ Op.cit. page 80.

This factor has become

- (i) *"such national and international obligations as are relevant to the functions of the Commission and Dublin Airport Authority",*
[Section 33 2(i) as substituted by the 2004 Act]

The Commission considers that this provision is self-explanatory but seeks views as to how it should take account of this statutory factor, as amended, in setting airport charges.

3. PUBLICATION OF SUBMISSIONS

3.1 Information

Having regard to the principles of better regulation, the Commission is eager to ensure that the process leading to its determination is administered in an open, accessible manner. This is reinforced by the requirements contained in Section 5(4) of the Act, that the Commission ensure that its determinations and requests be objectively justified, non-discriminatory, proportionate and transparent. To that end, details of all submissions received by the Commission will be posted on its website www.aviationreg.ie.

While parties are free to designate part or all of their submissions as confidential (and should do so clearly, given that it is their obligation to do so) this may create difficulties for the Commission. If the Commission is to make available the record leading to its determination, then all of the information upon which it relies for the purpose of its determination should, as a general rule, be put into the public domain. As a result, the Commission proposes the following to counteract the information asymmetry, which may otherwise arise.

3.2 Confidential Information

The Commission acknowledges that circumstances may arise where the disclosure of highly sensitive confidential information may cause damage to the party supplying the information. Clearly, the Commission will have access to and will analyse all information, but it is also desirable that interested parties as well as the public can see information that is relied upon by the Commission for the purpose of its determination. The Commission has a statutory obligation to give reasons for its determination. Consequently, as a general rule, unless the Commission is able to put all of the information that it is relying on into the public domain, it will be reluctant to rely on that information for the purpose of

making its determination. Nonetheless, the Commission is of the view that even where information is regarded as highly sensitive by the disclosing party, it may be possible, whether by means of aggregation or otherwise, to disclose the information in a modified manner. Where justified, the process of aggregation or restatement will be performed by the disclosing party in consultation with the Commission after the Commission has seen all of the information in original form.

3.3 Use of the Commission's website

As indicated, the Commission proposes to place all of the submissions and representations that it receives in response to this consultation, on its website. Ordinarily, the Commission will not be editing this material. As a result, the content of any submission is solely a matter for the submitting party, and in that regard, interested parties are referred to the legal notice and indemnity concerning use of the Commission's website which is contained in Annex I to this paper.

4. ECONOMIC PAPER ON THE AER RIAN TA RESTRUCTURING

The Commission has today also published a report prepared for it by the economic consultants DotEcon Ltd. (".econ"). This paper is entitled, "The implications of the de-merger of the former Aer Rianta for the Regulation of Airport Charges in Ireland". The paper analyses, from an economic perspective only, how the Commission should take into account the de-merger of the former Aer Rianta and the allocation of its assets and liabilities having regard to general principles of incentive regulation as would be applied by an independent regulator with a statutory mandate to promote economic efficiency.

The views expressed in that paper do not necessarily represent those of the Commission regarding the restructuring.

However, in line with its desire to have the most comprehensive consultation on the restructuring of Aer Rianta the Commission would be interested to receive the views of interested parties in response to the views set out in that paper.

Any submissions in response to this paper should be made by the 1st November 2004.

5. CONCLUSIONS

This consultation paper sets out the amendments to section 33 of the Aviation Regulation Act, 2001. In doing so, the paper sets out the way in which the Commission interpreted its statutory objective and the factors to which it had to have due regard under the 2001 Act when making the existing Determination together with some of the rationale behind that approach. It invites submissions from interested parties as to how the Commission for Aviation Regulation should proceed in making a new determination specifying the maximum levels of airport charges that may be levied by Dublin Airport Authority in respect of Dublin Airport. In particular, it seeks the views of interested parties as to how the Commission should proceed in making the new determination so as to attain the three statutory objectives set out in section 33 of the Aviation Regulation Act, 2001 as substituted by section 22 (4) of the State Airports Act, 2004 whilst also having due regard the various statutory factors listed in that section.

In addition the Commission has drawn the attention of interested parties to the “.econ” paper on the restructuring of Aer Rianta and seeks submissions on its contents.

When responses have been received by the Commission it will publish them on its website. The Commission will then consider these submissions when making its draft determination. Interested parties will have an opportunity to make representations on the draft determination and the Commission, prior to making a final determination, will consider them.

ANNEX I

LEGAL NOTICE

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