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Ms. Anne Moloney  
Deputy Head of Economic Affairs  
Commission for Aviation Regulation  
36 Upper Mount Street  
Dublin 2

**RE: Consultation Paper on the Implementation of the Levy pursuant to Section 23 of the Aviation Regulation Act, 2001 (CP4/2002)**

Dear Ms. Moloney,

The following are our comments on the other submissions received by the Commission in relation to CP4/2002.

### **1. Regulation of Airport Charges**

We do not agree with Aer Rianta's assertion that there are no benefits from regulation in the form of a lower cost of capital or that any such benefits have already been taken into account in the cost of capital that the Commission has applied in setting Aer Rianta's price cap. We believe that there are significant benefits for the airport operator from regulation for the reasons outlined in CP4/2002 and our submissions of 26<sup>th</sup> April. The Commission should therefore allocate a reasonable proportion of costs and expenses (excluding professional/litigation fees) as not being recoverable from airport users and to be borne by Aer Rianta. As particular benefits have been derived by Aer Rianta from the three reports produced by the Commission, the cost of these should be borne exclusively by Aer Rianta. At the very least, any provision made by the Commission for the cost of similar studies in Aer Rianta's opex should be set off against the cost of the three reports produced by the Commission.

In relation to litigation fees, we concur with the views set out in many of the submissions that neither the Commission nor Aer Rianta should be able to pass on to users legal costs which they have incurred as a result of being unsuccessful in legal proceedings. Such an approach would encourage litigious behaviour on the part of both the Commission and Aer Rianta.

Costs should be paid in accordance with the order of the court and should be borne either by the party concerned (and not recoverable from users) or be paid from central government funds. In the current judicial review proceedings, Aer Lingus should not be liable for a greater portion of the Commission's and/or Aer Rianta's legal costs by reason merely of its participation as a notice party.

## **2. Regulation of Aviation Terminal Services Charges**

We do not agree with the IAA's submission that all the Commission's costs related to the regulation of aviation terminal service charges should be charged to customers but that a reasonable proportion of these costs should be borne directly by the IAA in respect of the benefits the IAA receives from regulation. However, we agree with the IAA's general proposition that the portion of the levy, which is recoverable should be recovered through its cost recovery process in line with its charging policy.

## **3. Slot Allocation and Co-ordination**

Under normal circumstances, Aer Rianta's request for a 50/50 split of slot allocation costs between the airport authority and the operators might be considered reasonable. However, for the reasons stated in our previous submission and the submission of Ryanair, we believe that the costs of slot allocation and co-ordination should be borne entirely by Aer Rianta and should not be recoverable from operators. If the Commission should nevertheless consider that the operators should fund a portion of these costs, we believe that at least 75% of the costs should be borne by Aer Rianta as these unnecessary costs are directly attributable to Aer Rianta's actions. Any portion of the costs to be borne by operators should be based on a fee per slot. There is no reason for allocating this fee on a per tonnage basis as the weight of the aircraft bears no relation to costs incurred. Moreover, we do not accept that there should be any distinction between Irish operators and all other operators (including cargo and charter operators) using Dublin Airport. Indeed, any such distinction would be contrary to the principles of non-discrimination, objectivity and transparency which should be applied in any charging mechanism. While it is correct that the costs associated with slot coordination are borne at some other European airports by the home carriers, the schedules co-ordinators in these cases are often effectively owned and/or controlled by the home carriers (e.g. ACL in the UK, SACN in the Netherlands, COHOR in France). This is not the case with ACL at Dublin Airport and there is no reason why Aer Lingus and other Irish airlines should be expected to subsidise the other airlines using Dublin Airport.

## **4. Ground Handling / Air Carrier Licensing / Travel Trade Licensing**

In relation to these three cost centres, we have nothing to add to the points made in our submission of 26<sup>th</sup> April.

Yours sincerely,

Laurence Gourley  
Group Legal Office