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28th September 2006

Ms. Anne Moloney,
Commission of Aviation Regulation,
3rd Floor,
Alexandra House,
Earlsfort Terrace,
Dublin 2

Dear Anne,

See attached Comments from Aer Lingus on other submissions to CP6/2006.

Please acknowledge safe receipt.

Yours sincerely,

Laurence Gourley
Manager Legal Affairs



COMMENTS OF AER LINGUS ON COMMISSION PAPER CP6/2006-09-28

1. Do you agree with the Commission's conclusion on the new types of circumstances necessary to justify holding an interim review? Please provide reasons and, where appropriate, evidence?

Aer Lingus agrees that the "substantial grounds" requirement under Section 32(14)(a) of the 2001 Act (as amended) for an interim review should be interpreted in accordance with the Commission's statutory objectives. We also agree that the scope of any interim review should be limited to matters of an exceptional nature. Generally speaking, these matters should be outside the control of the regulated firm but this should be considered on a case by case basis.

2. Do you consider the degree to which airline user of Dublin Airport have revised their anticipated requirements for airport facilities (such that the DAA has developed a substantially larger capital programme) to provide the basis for exceptional circumstances?

Given the complexity of the issues involved and the need for detailed discussions to take place with all users, we accept that it was not possible for the DAA to finalise its CIP in time for consideration by the Commission in its 2005 Determination. Indeed, Aer Lingus recognised in its submission on the draft Determination (CP2/2005) that there were too many outstanding issues in relation to the scale and timing of the investment and the method of financing of the development for the Commission to be able to adopt an appropriate price cap at the time of its Determination. As a possible solution to this, Aer Lingus proposed that the Commission adopt a "logging up" approach whereby it could formally recognise expenditure properly undertaken between reviews and guaranteeing that the sum will be included in the RAB at the start of the next regulatory period. The Commission did not adopt this suggestion and Aer Lingus believes that this same objective can now be achieved by means of an interim review.

Since the Determination, detailed discussions have taken place between the DAA and users (including Aer Lingus) in relation to matters such as the capacity of the terminal in terms of passenger throughput, aircraft stands, the capacity of internal systems including check-in, baggage handling and screening, passenger security screening and whether there would be the option for sole occupancy of the new terminal. As a result of these discussions, Aer Lingus accepts that T2 will be fundamentally different in terms of size and facilities from the plans considered by the Commission for the purpose of its Determination and, consequently, other aspects of the CIP will be affected (e.g. road infrastructure).

Moreover, the two main users at Dublin Airport (Aer Lingus and Ryanair) have since the Determination announced expansion plans which will require capacity and facilities significantly in excess of those contained in the plans considered by the Commission for the purpose of its 2005 Determination. These expansion plans could not have been predicted by the DAA when submitting its plans to the Commission for the Determination.

In view of the above, we agree that the revised requirements of users constitute exceptional circumstances which warrant an interim review at this time.

3. Do you consider the degree to which airline users of Dublin Airport have revised their anticipated requirements for airport facilities to be liable to give rise to financial or other effects that are large enough to compromise the Commission's statutory objectives unless the September 2005 decision is reviewed?

As stated in response to Question 2 above, the requirements of users have significantly changed since the Determination. If an interim review were not to take place, the DAA might not be in a position to carry out the required infrastructural developments. In such event, the interests of both current and prospective users and the DAA's ability to operate and develop Dublin Airport in a sustainable and financially viable manner would be significantly prejudiced to an extent that the Commission's statutory objectives under Section 33 would be compromised.

4. Do you consider the circumstances surrounding the unavailability of a finalised CIP at the time of the 2005 Determination to have been exceptional? If you consider the circumstances exceptional, is this for any of the reasons suggested as possibilities in this paper or for some other reason?

Yes, for the reasons set out in response to Question 2 above. We also agree with the Commission that the new deadline imposed by the 2004 for a new price determination together with the adoption by the Government of the Aviation Act Plan constitute exceptional circumstances.

5. Do you consider the circumstances to have been outside the control of the DAA?

As stated above in response to Question 2 above, we believe that the circumstances could not have been predicted by the DAA at the time of the Determination and, as such, should be considered to be outside its control. Moreover, we agree that the requirements imposed on the DAA under the Aviation Act Plan meant that it was not feasible for the DAA to finalise a CIP in time for it to be properly considered by the Commission for the 2005 Determination.

6. What do you consider should be the scope of any review? Do you consider that the scope of any review should be limited as far as possible to the matters directly affected by the circumstances justifying the review?

We agree that the review should in general be limited to considering the data and arguments as they were in September 2005 except that the 2006 CIP should be substituted for the May 2005 investment plan and should focus on the implications of the 2006 CIP for airport charges at Dublin Airport. We agree with the Commission that this may necessarily involve the adoption of assumptions based on revised traffic forecasts, consideration of consequential impacts on operating costs and retail revenues as a result of these revised assumptions, and other material consequences for operating costs, commercial revenues and other model inputs arising from the 2006 CIP. However, we believe that these issues should be considered in more detail in the course of the interim review.