



Michael Durack SC,
Chairman, Aviation Appeal Panel
The Law Library, 158/9 Church Street,
Dublin 7

26 March 2010

Re: consultative process for the 2009 Airport Charges Determination

Dear Mr Durack,

In your email to me dated 19 March you requested an overview of the consultative process engaged in by the Commission prior to making the final determination of maximum airport charges at Dublin Airport for 2010-2014.

That process was required to respect certain mandatory requirements that are set out in the Aviation Regulation Act 2001, section 32 (7) of which states that:

“Prior to making a determination the Commission shall—

- (a) give notice to any person concerned stating that it proposes to make a determination.
- (b) publish such notice in a daily newspaper published and circulating in the State, and
- (c) specify the period (being not less than one month from the publication of the notice) within which representations with respect to the proposed determination may be made by interested parties or the public.”

Thus the only mandatory requirements are (a) to publish a notice in a newspaper alerting interested parties that the Commission intends to make a determination and (b) to allow a minimum period of one month for representations to be made regarding the proposed determination.

Notwithstanding these basic provisions - as will be apparent from what follows - it has been the practice of this Office from the outset (2001) to adopt a comprehensive and transparent approach to the concept of “notice”.

All documents are published on the 'Charges/Slot Regulation - Airport Charges' and 'News' sections of the Commission's website. The Commission maintains an electronic mailing list of parties who wish to be notified of the publication of Commission documents. Parties can sign up to this list on the Commission's website, and parties who participate in Commission consultations are added to this list. The Commission's website includes an 'RSS' feature ("Really Simple Syndication"). The RSS feature converts all Commission news articles to a web feed which, once a user signs-up to it, provides automatic updates on any news, publication or consultation carried out by the Commission.

In respect of the lead up to the most recent determination, I set out in this response the specific details of the consultative process which are also described in paragraphs 1.2 to 1.10 of the final determination. The process for the determination which I set out herein was first formally notified to parties through the publication of a proposed timetable for the process leading to the Determination in the Commission's Annual Report to the Minister for Transport for the year ended December 2007. An up-to-date timetable was maintained on the Commission's website throughout the process. Consistent with earlier determinations, the Commission's timetable leading to this Determination included the publication of both an issues paper and later a draft determination. Parties were invited to comment following the publication of both documents. For consistency each of these documents, and the final determination, followed the same structure in terms of chapter headings and sequencing.

Prior to the publication of the issues paper and draft determinations a number of policy documents were also produced for public consultation purposes. External expertise was obtained before and after the draft determination and there was ongoing engagement with the industry throughout each stage of the process described herein.

I should also point out that I have, as requested, addressed only the public consultation elements of the Commission's work. In addition, the Commission has been involved in a continuous flow of correspondence from various parties, including the appellants, over the period of the consultation process described herein. Where work for the Commission was conducted by consultants, the findings of the consultants were published and comments invited in advance of the Commission coming to a final view on how it might rely on their findings. In each of these cases the consultants themselves also considered the responses of interested parties before issuing a final report to the Commission.

For the convenience of the members of the Panel, all the documentation referred to below is included in the CD-ROMs that accompany this letter.

June 2008 – Publication of Commission Policy Papers

On 9 June 2008 the Commission published two consultation papers, one which dealt with quality of service at Dublin Airport¹ and the second addressed efficiency incentives associated with the price cap.² Both of these papers were produced arising from commitments made by the Commission at the time of its previous (2005) determination on airport charges. The Commission wrote to a wide range of likely interested parties, by email and letter, announcing the publication of the two consultation papers, and included copies of said papers. The Commission allowed a two-month period until 8 August 2008 for parties to present their views on the papers.

The Commission received nine responses in relation to the Quality of Service consultation paper and two responses in relation to the Efficiency Incentives paper. (A list of the respondents in this and other rounds of consultation is provided in a table at the end of this letter.) The views of parties on these topics were considered and were incorporated into the Commission's policies and proposals in subsequent consultation documents.

October 2009 – Publication of Issues Paper

On 24 October 2009 the Commission published on its website an Issues Paper which set out the Commission's thinking as to how it might approach a number of matters, including the calculation and forecasting of the regulatory 'building blocks' with a view to making a determination on airport charges at Dublin Airport for the period 2010-2014. The purpose of the paper was to consult with all parties on how the Commission should proceed to determine the 2010-2014 price cap. As there are a wide range of issues that can potentially influence a final determination, the Commission was keen to hear from all parties on such matters at an early stage. The Commission invited comments on policies that the Commission should adopt, methodologies that the Commission should or should not use, and possible data sources that the Commission might rely on. The Issues Paper also set out the Commission's thinking on the June 2008 consultations on quality of service and efficiency incentives, while an annex to the Issues Paper summarized the responses of parties to those consultations.

The Commission allowed until 18 December 2008 for parties to make representations. Responses were ultimately received from ten parties, including each of the appellants. The Commission subsequently invited each of the respondents to meet with the Commission to discuss their submission. Three parties accepted the invitation.³

¹ CP3/2008 - Consultation paper on quality of service issues at Dublin Airport

² CP4/2008 - Consultation on efficiency incentives (rolling schemes) at Dublin Airport

³ The Commission met with the Car Rental Council of Ireland ("CRCI") on 17 February, DAA on 4 March, and the Irish Association of International Express Carriers ("AIEC") on 19 March

February - May 2009 – Capex Consultation

In February 2009 the Commission placed on its website the DAA's proposed capital investment programme ("CIP") for Dublin Airport for the period 2010-2014. At this time, it was of some concern to the Commission that consultation between the DAA and companies using airport infrastructure on the capital programme was not proceeding in any fashion. Hence, in March 2009, the Commission took it upon itself to invite interested parties to attend a series of consultation meetings with the DAA to discuss aspects of the CIP. These meetings took place between March and May 2009.

The Commission chaired each of these meetings and provided for a stenographer to attend. Transcripts were made available to all participants. Additionally the Commission facilitated the exchange of information between DAA and the attendees during this period. These meetings were held for the purpose of enabling the Commission to reach its views on the CIP in the Draft Determination and to assist parties in commenting on both the DAA's investment plan and the Commission's proposed response

June 2009 – Publication of Draft Determination

The Commission published its Draft Determination, along with eight supporting documents, on 18 June 2009. As well as setting out a draft level of maximum level of charges for the five years 2010-2014, it also identified how the views of parties that participated in prior consultation rounds had been taken into account. Parties were afforded until 7 August to submit specific representations to the Commission on its draft determination. To aid parties in their understanding of the Commission's calculations underlying the draft price cap, a spreadsheet model was published along with the main report (see enclosed attachments).

The Commission received representations on the draft determination from twenty-two parties.

August 2009 – Invitation to parties to Comment on Representations of Other Parties

On 21 August, the Commission invited all parties that had made representations to the Commission on its Draft Determination to comment on the representations of other parties, should they wish to do so. A timeframe of 11 September was allowed for submissions. DAA, Ryanair, Aer Lingus and

the Dublin Airport Consultation Committee ("DACC")⁴ accepted the Commission's invitation.

November 2009 – Publication of consultancy report on T2 Operating Costs

As a result of representations received in response to the Draft Determination, the Commission commissioned a study into, amongst other things, the likely operating costs associated with the new terminal (T2) facility. The study, conducted by Booz and Co. considered also the likely set-up costs, the resulting cost implications in Terminal 1, and alternative operating models in T2. This study was published on 6 November 2009 and parties were invited to submit comments to the Commission by 20 November 2009. The final determination, issued in December 2009, as well as Booz and Co.'s final report took the responses of each of the five respondents into account (see the 'operating costs' Chapter of the final determination).

December 2009 – Publication of Final Determination

The Commission published its final determination on 4 December 2009. The content of the Report sets out how the Commission took account of the representations of parties in response to the Draft Determination, the responses to the representations of others, and the consultation on T2 opex. A spreadsheet model setting out the Commission's calculations was also published alongside the report.

A summary of the engagement processes described above is provided in the form of the attached table.

I trust that these materials will satisfy your request for an overview of the consultation process engaged in prior to the final determination.

Yours sincerely



Cathal Guiomard
Commissioner

⁴ DACC represents a number of airlines and ground handlers at the airport, including both Aer Lingus and Ryanair.

Consultation	Consultation Period	Responses Received	Follow-up Consultation	Relevant Documents
CP3/2008 Commission consultation on Service Quality	9 June 2008 – 8 August 2008	<ul style="list-style-type: none"> ▪ DAA ▪ DACC ▪ Forfás ▪ IBEC ▪ ITIC ▪ Tourism Ireland ▪ Matt Harley ▪ Barry Hall ▪ NCA 	CP6/2008 Airport Charges Issues Paper (Oct 2008) – Chapter 3 'Quality of Service'	<ul style="list-style-type: none"> ▪ CP3/2008 Commission Policy Paper on Quality of Service ▪ Responses to CP3/2008
CP4/2008 Commission consultation on Efficiency Incentives	9 June 2008 – 8 August 2008	<ul style="list-style-type: none"> ▪ DAA ▪ DACC 	CP6/2008 Airport Charges Issues Paper (Oct 2008) – Chapter 5 'Operating Expenditure'	<ul style="list-style-type: none"> ▪ CP4/2008 Commission Policy paper on efficiency incentives ▪ Responses to CP4/2008
CP6/2008 Issues Paper	24 October 2008 – 18 December 2008	<ul style="list-style-type: none"> ▪ Aer Lingus ▪ Car Rental Council of Ireland ▪ DAA ▪ Forfás ▪ IAIEC ▪ IBEC ▪ ITIC ▪ NCA ▪ Ryanair ▪ DACC 	CP3/2009 Draft Determination	<ul style="list-style-type: none"> ▪ CP6/2008 Airport Charges Issues Paper ▪ Responses to CP6/2008

Consultation	Consultation Period	Responses Received	Follow-up Consultation	Relevant Documents
CP3/2009 Draft Determination	18 June 2009 – 7 August 2009	<ul style="list-style-type: none"> ▪ Aer Lingus ▪ Angela Lawton ▪ bmi ▪ Chamber Ireland, Dublin Chambers of Commerce ▪ DAA ▪ DACC ▪ EIB ▪ Fáilte Ireland ▪ Fingal Dublin Chamber ▪ Forfás ▪ Goodbody ▪ IATA ▪ IBEC ▪ IDA ▪ Irish Exporters Association ▪ Irish Hotels Federation ▪ ITIC ▪ ITOA, Ryanair ▪ SIPTU ▪ UPROAR 	<ul style="list-style-type: none"> ▪ Consultation on T2 opex (in relation to representations received relating to T2 opex) ▪ CP4/2009 Final Determination 	<ul style="list-style-type: none"> ▪ CP3/2009 Draft Determination ▪ Supporting documents to CP3/2009 ▪ Representations received in response to CP3/2009

Consultation	Consultation Period	Responses Received	Follow-up Consultation	Relevant Documents
Responses to Representations of Other Parties	21 August 2009 – 11 September 2009	<ul style="list-style-type: none"> ▪ Aer Lingus ▪ DAA ▪ DACC ▪ Ryanair 	Final Determination	<ul style="list-style-type: none"> ▪ Commission invitation to respond to representations of other parties ▪ Responses of interested parties
Consultation on T2 Opex	6 November 2009 – 20 November 2009	<ul style="list-style-type: none"> ▪ Chambers Ireland ▪ DAA ▪ DACC ▪ Forfas ▪ Ryanair 	Final Determination	<ul style="list-style-type: none"> ▪ Commission Notice CN2/2009 ▪ Booz & Co. consultancy report ▪ Responses to Booz & Co. report
CP4/2009 Final Determination (4 December 2009)				<ul style="list-style-type: none"> ▪ CP4/2009 Final Determination ▪ Supporting Documents to CP4/2009