



CONSULTATION ON THE DECISIONS OF THE 2010 AVIATION APPEAL PANEL

Commission Paper 1/2010

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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

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1. Introduction

- 1.1 On 4 December 2009 the Commission published its third determination on the maximum level of airport charges that may be levied by Dublin Airport Authority (“DAA”) at Dublin Airport. Airport charges are charges levied in respect of the taking-off, landing and parking of aircraft, the use of air bridges, the arrival and departure of passengers, and the transportation of cargo. The determination covers the five-year period from 1 January 2010 to 31 December 2014 and is expressed as an annual per passenger price cap. This Determination is published as Commission Paper 4/2009 (“CP4/2009”) and is available on www.aviationreg.ie.

- 1.2 On 4 March 2010 the Minister for Transport established an appeal panel under Section 40 (2) of the Aviation Regulation Act 2001 (“the Act”) to consider the appeals of three parties – Aer Lingus, Ryanair and DAA – against the Commission’s determination. The Appeal Panel issued its decisions on these appeals on 2 June 2010. The decisions of the Appeal Panel are summarised in Section 2 below. For further information on the appeal panel’s reasoning on each of the three appeals, parties may review the relevant decisions of the panel which are published on the Commission’s website www.aviationreg.ie.

2. The Appeal Panel's Decisions on the Appeals

The Aer Lingus Appeal

- 2.1 Aer Lingus's appeal to the panel focused on five areas or 'grounds' that it sought to have referred back to the Commission. The panel concluded that sufficient grounds existed in respect of one of Aer Lingus's grounds:
- **The overspecification of T2** – to consider how the recovery of increased overheads associated with the overspecification of retail space in T2 could be postponed until commercially justified.
- 2.2 The panel did not consider that sufficient grounds were established in respect of the remainder of Aer Lingus's grounds.

The Ryanair Appeal

- 2.3 The panel identified nine grounds within Ryanair's appeal. It concluded that sufficient grounds had been established in respect of two of Ryanair's grounds:
- **Differential Pricing** – the panel referred this matter back to the Commission for it to consider how best differential pricing might be initiated; and,
 - **T1X incremental revenues and remuneration** – to carry out an analysis of the extent of incremental retail revenue attributable to T1X before allowing the capital expenditure associated with this project into the RAB
- 2.4 The panel did not consider that sufficient grounds were established in respect of the remainder of Ryanair's grounds.

The DAA Appeal

- 2.5 DAA presented four broad headings to the appeals panel each of which the panel further subdivided into a number of sub-headings leading to a total of 18 matters. The matters that the appeal panel referred back to the Commission were as follows:
- **An error in the treatment of PRM revenues in the calculation of the price cap** – to review whether there has been an error resulting in double counting for PRM charges;
 - **An error in the treatment of inflation in reconciliation of CIP 2006-09 outturn costs** – to review and consider the effect of its application of deflation of -6.6.% for 2009 to DAA's submitted figures (which had allowed for an estimated inflation figure of 4% for 2009);
 - **The disallowance of €15.3m in respect of Pier D costs**; and,
 - **The disallowance of temporary forward lounge ("TFL") costs of €6.2m and Pier D fit-out costs of €1.2m.**
- 2.6 The panel did not consider that sufficient grounds were established in respect of the remainder of DAA's grounds.

3. The Commission's Review of the Appeal Panel Decisions

- 3.1 The 2010 Appeal Panel has decided to refer certain elements of the December 2009 determination back to the Commission to either affirm or vary its original determination.
- 3.2 The 2001 Act provides that the Commission, upon a referral by the Appeal Panel shall within two months of receipt of referral either vary or affirm its original determination. Whilst the Appeal Panel has made observations and suggestions as to how the Commission might consider varying its determination, it is a matter for the Commission to conduct its deliberations in accordance with the provisions of Aviation Regulation Act, 2001 and within the time permitted.
- 3.3 The Commission is of the view that in deciding whether or not to vary its Determination on foot of the referral by the Appeal Panel, it must continue to comply with the requirements of the Aviation Regulation Act, 2001 and in particular section 33. In addition, the Commission continues to hold the view that it should consult with and receive the views of all interested parties. Accordingly, the Commission wishes to give interested parties an opportunity to express their views on the decisions of the Appeal Panel and to assist it in its decision of whether to affirm or vary the Determination.
- 3.4 In this regard the Commission invites written submissions from interested parties and the public in relation to the matters identified by the Appeal Panel as constituting sufficient grounds for referring its decision in relation to certain aspects of the Determination back to the Commission.

4. Scope of the Commission's Review

- 4.1 The review of the Determination is limited only to those matters where the panel concluded that sufficient grounds existed for referring its decision in relation to the Determination back to the Commission.
- 4.2 The analysis arising from these referrals will concern the decision made by the Commission based on the information it had before it at the time of the making of its Determination in December 2009.
- 4.3 The seven matters referred to Commission by the Appeal Panel are set out in detail in Section 2 above.
- 4.4 The Commission requests interested parties to give their views as to whether the Commission should affirm or vary its determination based on the issues referred to the Commission by the Appeal Panel and set out above. The Commission encourages the receipt of representations setting out cogent arguments and supporting evidence in order to assist the Commission in properly considering those views.
- 4.5 In submitting comments parties are invited to state whether in their view the Commission should or should not vary its December 2009 determination on the maximum level of airport charges at Dublin Airport for the period 2010-2014 as published in CP4/2009. Parties of the view that the determination should be varied are encouraged to propose specific changes to the text of the 'price cap', as described in pages ii to ix of the final determination document CP4/2009. Parties may also support their proposals with reference to the 'ready reckoner' price cap model published alongside CP4/2009.
- 4.6 The Commission will not have regard to submissions that introduce any issues not referred back to it by the Panel.
- 4.7 Parties should be aware that all submissions and material provided to the Commission will be published on its website as part of the consultation on the Commission's review of the decision of the Appeal Panel.

5. Deadline for receipt of submissions and procedure leading to affirmation or variation of the determination

- 5.1 Submissions should be made for receipt by the Commission, no later than **5pm** on **Tuesday 22 June**. Submissions which should be marked "Consultation on the decisions of the 2010 Aviation Appeal Panel" should be addressed to:

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

Submissions are also welcome by email at info@aviationreg.ie.

- 5.2 Commission Paper CP2/2005 sets out the meaning of deadlines imposed by the Commission in respect to the deadline for receipt of submissions. All submissions received by the Commission will be posted on the Commission's website.
- 5.3 Upon making a decision on these referrals within the timeframe indicated above the Commission will notify the parties who requested the Minister to establish the Appeal Panel of its decision and the reasons for its decision. The decision and the reasons for its decision will also be published on the Commission's website. In addition the Commission will publish a notice of its decision in a daily newspaper published and circulating in the State in accordance with Section 40(9) of the Aviation Regulation Act, 2001.
- 5.4 Any party submitting information to the Commission for Aviation Regulation in response to a document inviting submissions acknowledges that the Commission intends to publish that information on the website of the Commission, in reports of the Commission and elsewhere as required or appropriate. Parties submitting such information to the Commission consent to such publication. Any party submitting information to the Commission shall have sole responsibility for the contents of such information and shall indemnify the Commission in relation to any loss or damage of whatsoever nature and howsoever arising suffered by the Commission as a result of publication or dissemination of such information either on its website, in its reports or elsewhere.