



CONSULTATION ON THE DECISION OF THE 2012 AVIATION APPEALS PANEL

Commission Paper 2/2012

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1. Introduction

- 1.1 On 24 October 2011 the Commission published its third determination on the maximum level of aviation terminal service charges that may be levied by the Irish Aviation Authority (“IAA”) at Cork, Dublin and Shannon airports. Charges for aviation terminal services are for the provision of air traffic control services around the three named airports. The determination covers the four-year period from 1 January 2012 to 31 December 2015 and is expressed as a maximum per terminal service unit. This Determination is published as Commission Paper 2/2011 (“CP2/2011”) and is available on the Commission’s website.¹
- 1.2 On 27 August 2012 the Minister for Transport established an appeal panel under Section 40(2) of the Aviation Regulation Act 2001 to consider an appeal by the IAA against the Commission’s determination. The Appeal Panel issued its decision on this appeal on 16 November 2012. The decision of the Appeal Panel is summarised in Section 2 below. For further information on the appeal panel’s reasoning, parties may review the relevant decision of the panel which is published on the Commission’s website.

¹ www.aviationreg.ie

2. The Appeal Panel's Decision on the Appeal

- 2.1 The IAA's appeal related to four grounds that it sought to have referred back to the Commission. The panel concluded that a sufficient basis existed in respect of one of the IAA's grounds:
- **Pension costs** – the Appeal Panel was not satisfied that the Commission had due regard to pension costs in its determination.
- 2.2 The panel did not consider that sufficient grounds were established in respect of the remainder of the IAA's appeal.

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

- 3.1 The 2012 Appeal Panel has decided to refer one element of the November 2011 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 may make 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 the 2001 Act 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 2001 Act, and in particular section 35. In addition, the Commission holds 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 matter 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 the matter 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 this referral will concern the decision made by the Commission based on the information before it at the time it made its Determination in November 2011.
- 4.3 The matter referred to the Commission by the Appeal Panel is set out 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 issue referred to it by the Appeal Panel. 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 2011 determination on the maximum level of aviation terminal service charges at Cork, Dublin and Shannon airports for the period 2012-2015 as published in CP2/2011. Parties of the view that the determination should be varied are encouraged to propose specific changes to the 'price cap'.
- 4.6 The Commission will not have regard to submissions that introduce 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. Responding to this Consultation Paper

- 5.1 Submissions should be made for receipt by the Commission no later than **5pm on Monday 3 December 2012**. Submissions should be marked "Consultation on the Decision of the 2012 Aviation Appeals Panel" and addressed to:

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

Submissions are also welcome by email to 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 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.