

***Irish Association of International Express Carriers (IAIEC)***

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**Response to (CAR) Commission Paper (CP5) 'Access Fees to Airport Installations: Consultation on the Implementation of the requirements of Statutory Instrument No. 505 of 1998 European Communities (Access to the Groundhandling Market at Community Airports) Regulation 1998'**

The Irish Association of International Express Carriers (IAIEC) represents the major providers of international express services in Ireland: DHL, FedEx, TNT and UPS. The express industry's core business is to provide value added door to door transport and delivery of time sensitive shipments locally, nationally and worldwide.

In moving these shipments into and out of Ireland the members of the IAIEC are directly or indirectly significant users of Aer Rianta's facilities, and are probably the largest single group of cargo operators utilising Dublin Shannon and Cork airports.

When SI 505 of 1998 was being transposed the Association actively engaged in discussion with the then Department of Public Enterprise to ensure that access to ground handling was not restricted at any of these airports so that the members retained the right and the possibility to continue to either self handle or use the services of range of competitive third party ground handlers. Aer Rianta despite not revealing intentions for some time, wisely in the Associations view, decided against invoking the Directives option to restrict. The result has been most positive for airport users.

At that time the IAIEC strongly expressed its concern to the Department that there should be no unfair, unwarranted and unjustified imposition of access fees on cargo operators under Section 14 (3) of the SI. The Association's case then was, as it remains today, that:

- Airport users, as defined in the SI (i.e. the airlines) pay airport charges for the use of the airport and its infrastructure to land take off and when necessary park their planes (as was confirmed in the Air Navigation and Transport Act of 1998)
- All cargo aircraft pay these charges and thus fully compensate ART for the use of the airport infrastructure (*and thus installations*) that they use for this purpose
- The self or third party ground handlers who directly put on and take off goods from these all cargo aircraft do so using only their own equipment and personnel
- More critically, the goods are moved to and from (sometimes very quickly) facilities that have been commercially rented from ART in the same manner as would be the case for any commercial warehouse accommodation not on the airport.
- While these facilities are 'on the airport' they are not essentially airport infrastructure and thus installations, in that they could be elsewhere, as for example many goods are brought 'in bond' to facilities well away from the airport before being formally cleared into the country by Customs

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Thus the IAIEC argued that 'landside' there was no additional costs being incurred by ART in facilitating self or third party ground handlers that were not being recouped through the standard commercial relationship of landlord and tenant through rents, management fees etc being paid by the ground handlers. There were also no costs incurred 'airside' by ART in facilitating self or third party ground handlers of all cargo aircraft over and above those already being recouped through airport charges or other fees (such as for re-fuelling, de-icing etc.) being paid by the airport users (i.e. all cargo airlines).

Therefore the IAIEC believed that there was no justification, requirement or necessity to collect a fee from the ground handlers of all cargo operators for access to airport installations as all of the applicable costs were already being fully, and it was presumed adequately, recouped by ART through existing charges and commercial revenues.<sup>1</sup>

***Current Situation:***

The IAIEC notes in the CAR Paper that the ECJ has acknowledged the property rights of the airport operator and the right to charge a rent. As can be seen from the above, the IAIEC has never challenged this point and those of its members who have exclusive access to ART property pay rent and presumably when agreed this charge included (as in any rental) recouping the costs of "*installation upkeep...and a reasonable margin*".

The IAIEC further notes that the ART application relates only to check in desk rental on the basis that they are "airport installations". Clearly as the members of the IAIEC do not use passenger check in desks for their operations they will not be subject to this fee.

What is of interest to the IAIEC however is the description of these desks as "airport installations" and the question of what kind of precedent such a description sets in regard to the application of Section 14 (3) of SI 505. Unfortunately the Directive and thus the SI (which transposed it almost verbatim) does not as CAR notes contain a definition of what is an 'airport installation'. Therefore CAR is to be complemented on taking the initiative to draw up a list of what they might be and going out to consultation on this question.

***IAIEC Responses to the Questions posed by CAR in CP5/2004:***

Q.1 Not relevant

Q.2 The IAIEC notes that CAR considers "*both the general view and the legal interpretation of the meaning of the term (airport installation) (is that it means airport infrastructure and equipment made available by an airport)*".

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<sup>1</sup> The equipment which cargo self-handlers for example use includes their own security screening facilities, such as specialist x-ray machinery, canteen facilities for staff and other support services that in the passenger terminals are provided by ART in shared and common areas

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In response to this view the IAIEC would cordially submit that:

- How a ground handler (and it is presumed that it is exclusively in the context of ground handling that the question is being asked as per Section 14 (3) of SI 505) either self handling or doing so on a third party basis organises itself re the airport infrastructure and the deployment of equipment to move goods and service all cargo aircraft is operationally very different to that which would be the case for passengers
- This does not necessarily mean that CAR needs to have two lists (one for airport installations serving cargo and another for passengers) but the IAIEC does believe that for the principles of relevance objectivity transparency and non discrimination to apply they need to be considered totally separately and distinctly were ART to apply to impose an access fee under Section 14 (3) on the ground-handlers of all cargo aircraft.
- Thus, for example, a building rented exclusively by a ground handler for the purpose of self handling or offering a third party service to move goods to and from all cargo aircraft and carry on any necessary support service (e.g. including their own handling and security equipment vehicles and personnel) should be excluded from any list of equipment that might be considered as constituting an 'installation'

Q. 3

The IAIEC would cordially submit that CAR generally:

- Follows the approach set out in this Consultation Paper by drawing up its list of airport installations to which the SI applies (taking the above comments into account), ensuring there is fair procedure, and that the legal and economic principles enunciated apply
- Refuse any access fees proposed where costs are in fact not incurred by ART
- In particular, ensure there is no 'double charging' by ART (i.e. fees proposed where they are or should already be recouping the costs incurred through other charges such as commercial rents and/or airport charges)
- Confine the application of the SI to that to which it is meant to apply: ground handling and ground handlers and the specified activities covered in the SI
- Confirm that the competitive free and not restricted market for ground handling that operates at ART's airports has been very positive for the competitiveness efficiency and overall effectiveness of operations for airport users and their customers (both passengers and goods movers and producers)