



**Access Fees to Airport Installations**  
**Decision on the Application by the Dublin**  
**Airport Authority for Approval of Access to**  
**Installation Fess under Statutory Instrument**  
**505/1998**

Commission Paper CP1/2008

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## 1. INTRODUCTION

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- 1.1 This Commission Paper sets out the decision of the Commission for Aviation Regulation (“the Commission”) in relation to an application for approval by the Dublin Airport Authority (“the DAA”) of an increase in its check in desk rental fees at Dublin Airport. The application was made to the Commission under Section 14(3) of Statutory Instrument 505 of 1998 (“the S.I.”).<sup>1</sup>
- 1.2 The Commission has decided to approve the fee increase from €16,718 to €25,000 per annum on the basis that the fees have been set in accordance with *relevant, objective, transparent* and *non-discriminatory* criteria as required by Article 14(3) of the S.I.
- 1.3 As part of its application the DAA submitted a detailed breakdown of the cost per desk which it estimated at €66,600. After a careful analysis the Commission disallowed certain costs and revised the cost per desk to €54,585. The Commission’s analysis had regard to the submissions of groundhandlers to the DAA during the DAA consultation and separate submissions received by the Commission. Despite the reduction in the relevant costs per desk the proposed fee of €25,000 remains significantly below cost.
- 1.4 The majority of the submissions received by the Commission related to how the costs and revenues associated with check-in desks are treated in the regulation of airport charges. The powers and obligations assigned to the Commission in the setting of price caps for airport charges under the Aviation Regulation Act 2001 do not apply in respect of its function of pre-approval of access to installation fees under the S.I.
- 1.5 In light of the submissions it has received the Commission has separately published a Notice, CN 2/2008, which discusses the interaction of airport charges regulation and access to installation fees approval and makes suggestions as to how the two regimes could be better aligned, if possible, at the time of the next airport charges price cap.

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<sup>1</sup> Statutory Instrument 505/1998 “*The European Communities (Access to the Groundhandling Market at Community Airports) Regulations 1998*”

## **2. THE FEBRUARY 2008 APPLICATION**

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### **Background**

- 2.1 Under Section 14(3) of the S.I., the DAA must seek approval in advance from the Commission where it seeks to introduce or increase a fee in respect of an 'airport installation'. The Commission must consider the request for approval on the basis of *relevant, objective, transparent* and *non-discriminatory* criteria ("the criteria"). The Commission's interpretation of the criteria was determined after an industry consultation in 2004.<sup>2</sup>
- 2.2 In 2003 the European Court of Justice ("the ECJ") ruled in the case of *Flughafen Hanover – Langenhangen GmbH v Deutsche Lufthansa AG* ("the Hanover Case")<sup>3</sup> that a check-in desk is an 'airport installation' within the meaning of Article 16 of the European Council Groundhandling Directive 1996 ("the Directive"),<sup>4</sup> as transposed into Irish law by S.I. 505 of 1998.
- 2.3 In 2004 the Commission approved an application for a fixed annual desk rental charge of €16,718 per desk and a flexible hourly rental charge of €21.40 per additional desk. The Commission later approved annual increases in the charging structure in line with the consumer price index.
- 2.4 On 8 February 2008 the Commission received an application under S.I. 505/1998 from the DAA for approval of a proposed change in its check-in desk rental charging structure at Dublin Airport. The DAA have now proposed a fixed annual charge of €25,000 per desk and a flexible hourly charge of €30 per desk. The DAA has also applied to increase these charges annually in line with the consumer price index. As with the 2004 application the Commission's decision must be made on the basis of *relevant, objective, transparent* and *non-discriminatory* criteria.

### **The Application Process**

- 2.5 As part of the 2004 application, the first application received by the Commission under the S.I., the Commission sought the views of the industry on how it should interpret the criteria referred to in Section 14(3) of the S.I. and on the proposed charges. Taking into account the views of groundhandlers and the Airport Authority the Commission published its interpretation of the criteria in its decision on 2004 application.
- 2.6 In the Commission's 2004 decision it stated that any future applications for approval of access fees would require substantive engagement by the airport authority with its users. The Commission hoped that relevant parties would be fully briefed on the background to any request for a fee approval prior to the Commission receiving an

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<sup>2</sup> See Commission Paper CP8/2004 and the related consultation paper CP5/2004, available for download on the Commission's website [www.aviationreg.ie](http://www.aviationreg.ie).

<sup>3</sup> See *Flughafen Hanover – Langenhangen GmbH v Deutsche Lufthansa AG* [2003] E.C.R. I-11893.

<sup>4</sup> European Council Directive 96/67/ EC on Access to the Groundhandling Market at Community Airports, 15 October 1996

application. On foot of the Commission's decision in 2006 approving a revised charge for common user terminal equipment ("CUTE") at Shannon Airport, the DAA contacted the Commission to discuss future access to installation fee applications.

- 2.7 In October 2007 the Commission provided the DAA with guidance on the parameters for user consultation and information sharing in the context of access to installation fee applications. It was proposed that instead of the Commission holding a consultation with groundhandlers after receipt of an application, the DAA would hold such a consultation with groundhandlers and make its application to the Commission having regard to the views of groundhandlers, after which the Commission would allow groundhandlers a further period to make their views known to the Commission. The Commission requested that any application would include all documentation related to the consultation held between the DAA and groundhandlers. The Commission also informed the DAA that, where possible, relevant information supporting the charging structure should be provided to users but where confidential or commercially sensitive information could not be shared with groundhandlers that it could be provided to the Commission as part of an application. The DAA largely followed this proposal.
- 2.8 As part of its consultation the DAA contacted groundhandlers on 2 November 2007 setting out in writing the proposed changes in the charging structure and seeking comments (see Annex 1). On 12 December it held a meeting with groundhandlers which was attended by a representative of the Commission at which further information was provided regarding the basis for the increased charges (see Annex 2). The DAA sought submissions in writing which it responded to in an amalgamated table of submissions and responses which was circulated to all users on 29 January 2008 (see Annex 3).
- 2.9 Having responded to the submissions of groundhandlers the DAA made an application to the Commission on 8 February. Its application included cost data described as confidential and commercially sensitive which was not provided to groundhandlers, although a high level description of the data was provided to groundhandlers (see annex 2). The Commission was also provided with documentation and correspondence between the DAA and groundhandlers relating to the consultation.
- 2.10 The Commission issued a public notice on 13 February informing parties that it had received an application. The notice set out the proposed charging structure as well as the existing charges and informed parties that the Commission had been provided with cost data which had not been provided in its entirety to groundhandlers on the basis that it contained confidential and commercially sensitive information. Given that the Commission already had access to all of the submissions by parties to the DAA it asked parties wishing to make submissions to do so only if they wished to present information and comments which had not been made to the DAA during the earlier consultation.
- 2.11 The Commission received three submissions from groundhandlers. The issues raised in these submissions as well as issues raised by groundhandlers during the consultation with the DAA have informed the Commission's consideration of the application.

### **3. REQUIREMENTS IMPOSED BY THE GROUNDHANDLING REGULATIONS**

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- 3.1 Article 14(3) of the S.I. requires the Commission to consider an application for approval of access fees for airport installations on the basis of *relevant, objective, transparent* and *non-discriminatory* criteria.
- 3.2 The Commission's interpretation of these criteria, as set out in CP8/2004, is set out below.

#### Relevant

- 3.3 The Commission interprets *relevant* as meaning that the fee is directly connected to the subject matter to which it is applied and is not inclusive of extraneous items or costs which cannot be regarded as being reasonably related to that item of infrastructure or equipment or to the activity in question.

#### Objective

- 3.4 The Commission interprets *objective* as requiring that the fee be set in a fair and balanced way and without any motivation on the part of the airport other than that expected of a commercial entity having statutory responsibilities to meet its financial obligations, conduct its affairs in a cost-effective manner and make a reasonable profit.

#### Transparent

- 3.5 The Commission's interpretation of *transparent* is that the basis on which the fees is derived is clear and evident to all and that it will bear scrutiny in all its elements and can be understood by the payees of the fees and any interested parties.

#### Non-discriminatory

- 3.6 The standard applied by the Commission for *non-discriminatory* is that the charges are applied in an equitable manner to all and that identical or comparable situations are treated the same.

## 4. THE COMMISSION'S ASSESSMENT OF THE APPLICATION

4.1 As stated above the Commission must, prior to approving a fee for access to installations, determine that the proposed fee meets the four criteria set out in Article 14(3) of the S.I. the Commission's assessment is therefore structured under each of the four criteria beginning with the issue of whether the charges are relevant.

### Relevant

4.2 The DAA submitted that the proposed fees are logically connected to what is being provided in consideration of the fee. As with the 2005 application the DAA have argued that the proposed fees are based on the costs of providing check-in desks to users. Accordingly its costs are an aggregation of capital costs, operating costs and an allocation for senior management time and resources. The following information comparing the 2007 and 2004 cost per desk was presented to the Commission. A similar table with a total cost per desk of €68,297 based on an earlier cost estimate was presented by the DAA to groundhandlers on 12 December 2007.

<b>Dublin Airport</b>		
	<b>2007</b>	<b>2004</b>
<b>Combined check in desk-in desks and outgoing baggage</b>	€	€
Annual capital costs	3,703,892	3,495,374
Operating costs	6,277,003	3,745,737
Total annual cost to recover	<u>9,980,895</u>	<u>7,241,111</u>
Annual costs to recover per desk	60,859	50,994
Allocation for management and support staff	5,741	3,957
<b>Annual costs to recover per desk including allocation</b>	<b>66,600</b>	<b>54,951</b>
Number of desks	164	142

Figure 1: Cost Data Presented to the Commission

Source: Dublin Airport Authority

4.3 The annual capital costs are based on the sum of annual depreciation and a return on capital based on a capital stock that covers the check-in desk and baggage infrastructure assets as well as an allocation for terminal wide depreciation based on the proportion of the overall terminal that the check-in area occupies. The depreciation calculation uses the straight-line methodology while the rate of return relies on a nominal post tax rate of return of 10.5%, equating to a nominal pre-tax return of 12% based on a 12.5% corporate tax rate.<sup>5</sup>

4.4 During the DAA's consultation groundhandlers were informed of the categories of assets on which the depreciation and return on capital were based on. Groundhandlers were also informed of the changes in capital stock that have occurred since the last application, namely:

- An extension to the outgoing baggage hall in 2005;
- The addition of the Area 14 check in area; and,

<sup>5</sup> To convert from a post tax to pre tax rate of return use the following formula, pre tax = post-tax / (1 - tax rate)

- A reduction in the footprint of each check-in desk

The net effect of the changes in capital stock since the 2004 application on a per desk basis was a reduction in capital costs of €2031 per desk.

4.5 The categories of operating costs attributed to the provision of check in desk facilities as well as the relevant cost changes from the 2004 application are set out in Figure 2: below. This information was provided to groundhandlers along with a description of the rationale for the changes at the consultation meeting held by the DAA. The methodologies for constructing each of the cost categories was also outlined to users at the consultation meeting

<b>Operating Cost Heading</b>	<b>Change from 2004</b>	<b>Change per desk from 2004</b>
Cleaning	(29,396)	(345)
Terminal staff costs	2,033,703	10,944
Utilities	206,591	1,157
Maintenance costs	90,325	(1,181)
Rates	230,042	1,321
Management and support staff	379,690	1,784

Figure 2: Changes in Operating Costs  
Source: Dublin Airport Authority

4.6 There has been no change to the methodologies used to calculate cleaning, utilities, maintenance, rates and the management allocation from the 2004 application. On this basis it is logically consistent to conclude that these operating cost categories remain relevant.

4.7 The main increases in operating costs have arisen due to the terminal staff costs category. The change in staff payroll costs comes from two sources; changes in payroll costs for existing staff and, changes in staff numbers.

4.8 The main terminal staff cost increases relate to customer relations, baggage control and trolley collection. The duties performed by these staff groups are as follows:

- Trolleys: A dedicated trolley collection team are engaged in the retrieval, movement and replenishment of trolley stock. According to the DAA the trolley staff allocated to check-in are responsible for clearing and retrieving trolleys to improve passenger processing.
- Customer services/ customer relations: Customer service agents manage the queuing and organisation of passengers on the departures floor.
- Baggage control: The additional staff employed in baggage control ensure the baggage processing facilities function effectively and are responsible for remedial work to remove bag jams and prevent system failure.

Views of interested parties

4.9 Servisair and Aer Lingus objected to the inclusion of certain of the terminal staff costs relating to queue management. In addition Servisair queried the inclusion of charges for CUTE.



- 4.10 Ryanair and Aer Lingus objected to the proposed charges on the basis that the capital and operating costs associated with check-in are recovered through airport charges.
- 4.11 Additionally Ryanair submitted that the Commission must have regard to its obligations under Section 33 of the Aviation Regulation Act 2001.
- 4.12 The submission made by Aer Lingus was the same submission which it earlier made to the DAA. The Commission has only expressly responded to those issues in the submission which directly relate to the relevant criteria in the S.I. In addition the Commission also had regard to the DAA's response to the Aer Lingus submission as set out in the DAA's response to groundhandler submissions (see Annex 3).

#### The view of the Commission

- 4.13 The Commission has considered the costs presented by the DAA in the context its interpretation of the relevancy criterion. In determining which costs are relevant to accessing an airport installation, in this case a check-in desk, the Commission has sought to identify those costs without which the installation would not exist, namely capital costs, utility costs and certain operating costs without which the installation could not operate. Consistent with the Hanover judgement of the ECJ the Commission will also allow a return on capital (i.e., profit).
- 4.14 The Commission is satisfied that the changes in capital stock are directly related to the provision of check-in facilities to groundhandlers. The Commission regards the depreciation based on the capital stock presented to the Commission as well as the methodology for calculating the depreciation charge as relevant to the provision of access to check-in desks. Similarly it accepts the logic of a return on capital although it does not accept the exact rate of return.
- 4.15 The DAA has sought a post tax nominal rate of return of 10.5% which equates to a pre tax return of 12%. The Commission has not been provided with any evidence to demonstrate why this should be regarded as a reasonable rate of return. In the absence of such evidence the Commission has had regard to a study prepared for the Commission in 2005 which estimated a real pre tax cost of capital for Dublin Airport as a whole of 7.4%. The Commission will therefore allow the nominal equivalent of 12.02% based on the January 2007 to January 2008 CPI inflation rate of 4.3%.<sup>6</sup> Based on the current inflation rate of 4.3%, the return sought by the DAA is comparable to what the Commission would deem to be appropriate. Future applications should have regard to the prevailing inflation rate at the time of an application.
- 4.16 Regarding operating costs the Commission believes that the operating costs which are relevant to providing the installation the subject of the access fees are relevant when setting access fees. In the instant case, these costs are utilities, maintenance costs, as well as the terminals management/ terminal services/ duty office and baggage control elements of terminal staff costs. The Commission also believes the

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<sup>6</sup> A real return can be converted into a nominal return using the Fisher equation,  $(1 + \text{nominal}) = (1 + \text{real}) * (1 + \text{inflation})$

levying of rates associated with the installation as well as the costs associated with cleaning the check in area are relevant.

- 4.17 The Commission regards the customer relations/ customer services and trolley collections costs as costs which are not directly related to the provision of access to the check-in desk installations. Rather they are costs incurred to improve the passenger processing service and should therefore be levied on passengers through the passenger element of airport charges.
- 4.18 Regarding Servisair’s contention that the proposed fee covers costs relating to CUTE, the Commission’s can confirm from its analysis of costs that CUTE related costs have not been included in the cost base.
- 4.19 In relation to the Aer Lingus and Ryanair submission that some of the costs associated with check-in desk are recovered by the DAA through airport charges, one must recall that the groundhandling regulation is an entirely distinct legal instrument to the Aviation Regulation Act, 2001. Accordingly having regard to the provision of s.33 of the 2001 Act would be inappropriate. It is the Commission’s view that Dublin Airport Authority is entitled to recover from groundhandlers seeking access to an airport installation access fees based on the costs incurred by it in providing the installation to groundhandlers. The fact that the Commission analyses and takes into account the DAA’s costs, amongst other things, when setting maximum levels of airport charges at Dublin Airport is a separate matter entirely to the approval of access to installation fees.
- 4.20 While the groundhandling regulations do not allow the Commission to reconcile the access fee application with the airport charges price cap, the Commission has separately published a paper CN2/2008 which sets out possible mechanisms to better align the access to installation fees with the airport charges price cap.
- 4.21 In conclusion, it is the decision of the Commission that the relevant costs per desk associated with access to check-in desks should be €54,585 rather than €66,600 as submitted by the DAA. This is calculated based on the exclusion of the staff costs referred to in paragraph 4.17 above. The approved cost base is summarised in Figure 3: below.

Total capital costs	3,703,891.67
Operating costs	4,563,596.14
Allocation for management and support staff	684,539.42
Total costs	<u>8,952,027.23</u>
Number of desks	<u>164</u>
Total costs per desk	<u>54,585.53</u>

Figure 3:

Source: Commission analysis

- 4.22 The Commission's scrutiny of the DAA's costs for this fees approval application is very similar to its scrutiny of the costings presented in 2004. However, on the former occasion, the Commission did not publish its assessment of costs because, as total costs exceeded the

proposed charge by a wide margin, the issue was moot. In relation to this DAA application, the Commission is publishing its cost assessment. This is in order to respond to more specific representations made to it by groundhandlers than were made in 2004.

- 4.23 On the basis that the proposed annual fee is derived from the cost base set out in Figure 3: the Commission accepts that the proposed annual fee of €25,000 has been set based on relevant criteria.
- 4.24 Regarding the proposed per hour charge of €30 the Commission had regard to the approval it gave to the DAA in 2004 in respect of a per hour charge of €21.40. The proposed rate of increase in the per hour charge is in line with the annual charge sought by the DAA. The Commission therefore regards the per hour charge to have been set based on relevant criteria.

### **Objective**

- 4.25 The Commission's interpretation of the objective criterion is that the fee must be set in a fair and balanced manner. In other words the fee must be set without any motivation on the part of the airport other than that expected of a commercial entity having statutory responsibilities to meet its financial obligations, conduct its affairs in a cost effective manner and make a reasonable profit.
- 4.26 Additionally the Commission has regard to the Hanover case where the ECJ ruled that the criteria for setting the access to installation fees, including which includes the objective criterion, does not prevent the fee from being determined in such way that that the airport authority is able to recover its costs and earn a profit.

#### The views of interested parties

- 4.27 Servisair submitted that any charge increase should not exceed the rate of inflation.

#### The view of the Commission

- 4.28 The proposed fee of €25,000 has been found to be below the relevant costs, as estimated by the Commission, of €54,585. The Commission believes that it is an objective approach for the DAA to attempt to conduct its affairs in a cost effective manner and to attempt to make a profit. As the fees have been found to be below actual cost, the Commission finds that this criterion has been met.

### **Transparent**

- 4.29 The Commission's interpretation of *transparent* is that the basis on which the fees is derived is clear and evident to all and that it will bear scrutiny in all its elements and can be understood by the payees of the fees and any interested parties.

#### The views of interested parties

- 4.30 Ryanair called on the Commission to disclose the information which was provided by the DAA on a confidential basis as part of the

application. It also argued that it was not properly consulted on the new charging structure. Other groundhandlers made similar submissions to the DAA during its consultation.

#### The view of the Commission

- 4.31 It is the Commission's view that the calculation by the DAA of access to installation fees should be done in manner whereby groundhandlers are provided with numerical cost category information which the DAA intends to use as a basis for fees. This information should be such as to allow the groundhandlers understand the breakdown of the components constituting the fee and the basic methodology used in its calculation.
- 4.32 It is clear from the application that DAA has shared information and cost figures with the groundhandlers in November 2007 and has met with them in December 2007 to discuss the approach taken in making this application. The Commission is mindful of the fact that DAA is under no obligation to reveal confidential information to groundhandlers in the context of an application for approval on access to installation fees. The objective of this process is to set and approve fees in a manner whereby all sides can see the level of the component figures constituting the fee, to what these figures relate and how they are being used to calculate the proposed fee. This transparency allows one accept that those figures are relevant and their use is objective. Thus, these criteria are linked and interdependent.
- 4.33 The Commission, in reaching its decision has regard to the information exchange between DAA and groundhandlers and the comments arising from it, including the responses to the Commission's consultation on this application.
- 4.34 Having regard to the amount of information exchanged and the interaction between all sides in this application the Commission is satisfied that there has been transparency in arriving at the fees proposed.

#### **Non-discrimination**

- 4.35 The standard to be applied here is whether the proposed charges will be applied in an equitable manner to all and whether identical or comparable situations are treated the same.

#### The views of interested parties

- 4.36 The Commission has not received any submissions alleging that the charges would not be levied in the manner described in paragraph 4.35.

#### The view of the Commission

- 4.37 Furthermore the Commission has found no reason to suggest that any element of discrimination has been applied in the proposed charging structure.

## **5. COMMISSION DECISION**

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- 5.1 Having completed its analysis in the context of the requirements of S.I. 505/1998, and on the basis of a revised cost base described in 4.13 to 4.21 above the Commission grants approval for an annual fixed annual charge of €25,000 per desk and a flexible hourly charge of €30 per desk.
- 5.2 In relation to the request for approval of annual CPI adjustments to the charging structure the Commission had regard to its decision in 2005 to allow annual CPI adjustments to the current charging structure at Dublin Airport.<sup>7</sup> Also consistent with prior decisions on this matter at Shannon and Cork Airports the Commission approves an annual increase to the check-in desk fee in line with inflation.

Cathal Guiomard

Commissioner for Aviation Regulation  
10 March 2008

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<sup>7</sup> See Commission Notice 8/2005. Available for download on the Commission's website [www.aviationreg.ie](http://www.aviationreg.ie).

## **A. APPENDIX A: LIST OF ANNEXES**

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- A.1 Annex 1: DAA consultation letter of 2 November 2006
- A.2 Annex 2: DAA presentation to groundhandlers at consultation meeting of 12 December 2007
- A.3 Annex 3: DAA response to submissions of 29 January 2008