



COMMISSION NOTICE 4/2007

Decision by the Commission for Aviation Regulation on a request from the Dublin Airport Authority for approval for a revised charge for the use of the CUTE system on check-in desks at Shannon Airport

1. BACKGROUND

Council Directive 97/67/EC (the "Directive")¹ was transposed into Irish law by Statutory Instrument 505 of 1998 (the "S.I.")². Under Section 9(2) of the Aviation Regulation Act 2001, the functions vested in the then Minister for Public Enterprise in respect of this S.I. were transferred to the Commission for Aviation Regulation (the "Commission") on its establishment in February 2001. This transfer of responsibility made the Commission the competent authority in the State for all matters relating to the Directive as transposed.

Section 14(3) of the S.I. provides that -

"where access to installations gives rise to the collection of a fee, the latter shall be determined by the managing body of the airport and approved by the Minister in advance in accordance with relevant, objective, transparent and non-discriminatory criteria."

¹ On Access to the Groundhandling Market at Community Airports

² European Communities (Access to the Groundhandling Market at Community Airports) Regulations 1998

The functions ascribed to the Minister in respect of the approval of fees therefore fall to be carried out by the Commission by virtue of the 2001 Act.

On 6th October 2004, following a consultation process with the industry, (conducted as CP5/2004) the Commission published **CP8/2004** which set out its decision to approve the collection by the Dublin Airport Authority (DAA) of a rental fee (both annual and hourly rates) in respect of check-in desks at Dublin, Shannon and Cork Airports as requested by the airport authority under Section 14(3) of the S.I. At that time, approval was also granted to the DAA to collect a "per passenger fee" of €0.23 in respect of the use of the CUTE (Common User Terminal Equipment) facility at Shannon Airport.

Subsequently, in response to a request from the DAA in respect of the CUTE facility at Shannon Airport, the Commission approved (i) a fee increase of €0.04 per passenger and (ii) a six-month extension to the term of the contract. The Commission's Decision, which resulted in a revised charge of €0.27 per embarking passenger for the period 15th May 2006 to 14th November 2006 was published in Commission Notice 1/2006 (dated 12th May 2006). This facilitated the continuation of the existing arrangements with SITA for the provision of CUTE services and allowed the Shannon Airport Authority (SAA) to arrange for a competitive tender process commencing in April 2006 to appoint a new supplier for the maintenance and support of the new CUTE facility at Shannon Airport.

The arrangements on the part of the DAA to secure a new supplier and negotiate with the Airline Operators Committee (AOC) at Shannon Airport encountered delays and it became necessary for the DAA to approach the Commission again seeking further extensions to the SITA contract. The Commission's approval was given on two further occasions whereby the contract was extended to 14th March 2007 and 14th May 2007 respectively.

2. REQUEST FOR APPROVAL FOR A REVISED CUTE CHARGE AT SHANNON

Following the finalisation of the competitive tender process and consultation with the AOC at Shannon Airport, the Commission received an application from the Dublin Airport Authority on 15th March 2007, on behalf of Shannon Airport, seeking the approval of the Commission for a revised CUTE charge of €0.30 at Shannon Airport.

The DAA advised that the Shannon AOC had agreed to award a five-year contract to the firm of ARINC for the provision of CUTE services at Shannon effective from 15th May 2007. The DAA further advised that it had been agreed with the Shannon AOC that this charge could be reviewed in the event that other airlines agreed to use the system or in the event of any impact of a full Open Skies environment.

3. COMMISSION ANALYSIS

As required by Section 14 (3) of S.I. 505 of 1998 the Commission must, prior to approving a fee for access to airport installations, determine that a proposed fee meets the four criteria set out in the Directive.

These criteria are:

- relevance
- objectivity
- transparency
- non-discrimination

In CP8/2004, where the Commission granted approval for the “per passenger fee” of €0.23 in respect of the use of the CUTE facility at Shannon airport, it was stated that the Commission had examined the request in accordance with the four prescribed criteria and the basis for the Commission’s decision was set out. Although the current request for approval does not represent the introduction of a new fee as such but rather a further increase on the original fee approved by the Commission in 2004, it is appropriate in the Commission’s view that it evaluate whether the statutory criteria continue to be met.

In that context, the Commission engaged with the DAA on a number of issues in relation to their application. The Commission sought information and clarification in relation to the composition of the contract price and terms, and the equipment used to support CUTE. The Commission also independently consulted with the AOC as to the form and content of the DAA’s consultation with the AOC at Shannon Airport. In addition, the Commission sought confirmation from the AOC of the underlying data used in the DAA application and the terms of the arrangement with users as presented by the DAA.

In terms of the statutory criteria as applied to the request for approval, the Commission's conclusions are set out below:

(i) **Relevant**

The original fee was found to be directly related to the subject matter to which it is applied (i.e. the CUTE facility) and was not presented as including any extraneous items or costs which cannot be regarded as being reasonably related to the activity in question. Following an examination of the information and explanations put forward by the DAA, the basis for the current increase has also been deemed to be relevant in the sense set out by the Commission in 2004.

(ii) **Objective**

In the present case, the requirement for the increased fee has been explained and supported by documentation and is set in the context of a commercial entity having statutory responsibilities to meet its financial obligations in the most effective manner open to it in all the circumstances. In that regard, the Commission noted that the airport authority continues to make a significant contribution to the overall cost of providing CUTE, and it found that the principles of objectivity have been complied with.

(iii) **Transparent**

As part of the DAA request for approval, the Commission was supplied with documentation relating to the extensive consultation engaged in with the AOC at Shannon Airport. The DAA advised (and the Shannon AOC confirmed to the Commission) that the AOC were involved throughout all stages of the process from the drafting of tender documents and evaluation of returned tenders to the selection of a new supplier. The Commission was therefore provided with sufficient information to enable it to determine whether the transparency criterion had been met. In the Commission's view, the facts as presented satisfy any reasonable interpretation of the transparency criterion.

(iv) **Non-discrimination**

Since its introduction, the fee in respect of the CUTE facility applies only to those users of the facility, is not compulsory for existing or new customers and the rate involved is levied on each user on the same basis in a non-discriminatory fashion.

The Commission is satisfied that current request for approval continues to meet the non-discrimination condition.

4. COMMISSION DECISION

Following completion of its analysis in the context of the requirements of Article 14 (3) of S.I. 505 of 1998, the Commission hereby approves the request from the DAA for a revised charge of €0.30 per embarking passenger for CUTE at Shannon Airport effective from 15th May 2007. In accordance with its stance in the October 2004 Decision as to transparency, the Commission requires (i) that the amended fee for the CUTE facility at Shannon be promulgated in any publication by the airport authority relating to charges and (ii) that any user paying the fee be facilitated in any reasonable request made in relation to a breakdown of the components constituting the charge.

The DAA has been notified accordingly.

Commission for Aviation Regulation

10th May 2007