



**DECISION BY THE COMMISSION FOR AVIATION
REGULATION ON THE 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**

Commission Notice CN1/2006

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1. BACKGROUND

Council Directive 97/67/EC (the "Directive") on Access to the Groundhandling Market at Community Airports was transposed into Irish law by Statutory Instrument 505 of 1998, European Communities (Access to the Groundhandling Market at Community Airports) Regulations 1998 (the "S.I."). Under Section 9(2) of the Aviation Regulation Act 2001 (No. 1 of 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."

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 6 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.

2. REQUEST FOR APPROVAL FOR HIGHER CUTE CHARGES AT SHANNON

On 16 March 2006, the DAA informed the Commission that it had been notified towards the end of 2005 by the current CUTE supplier, SITA, of its intention to terminate the existing contract with effect from 14 May 2006. The contract with SITA commenced on 15 May 2004 for a period of two years with the option on the part of the DAA to extend for a further year. However, the DAA were advised by SITA that the option to renew the contract for a further year on the same financial terms could no longer be made available due to increased operational costs to SITA that were not covered by the existing contract, including:

- additional on-site maintenance support costs from SITA's own supplier Data Electronics following a recent Labour Court ruling; and
- increased line and licence fees (including support and management charges)

The Commission was advised by the DAA that following a process of consultation with the Airline Operators Committee (AOC) at Shannon Airport, it was decided by the Shannon Airport Authority (SAA) to renew the contract with SITA with the resultant cost increase for a six-month period only, commencing on 15 May 2006. It was also decided that the SAA would commence a competitive tender process in April 2006 for the maintenance and support of the CUTE facility at Shannon, effective from November 2006 onwards.

The DAA advised that as a result of the increased cost requirements, it was necessary to impose a fee increase of €0.04 giving a revised charge of €0.27 per embarking passenger, effective from 15 May 2006. This increase was agreed with the Shannon AOC for the period of the extended six-month contract. The DAA has now formally requested the approval of the Commission for this revised charge for CUTE at Shannon Airport in accordance with the requirements of Section 14 (3) of S.I. 505 of 1998.

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 and 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 an increase on the original fee approved by the Commission in 2004, it is appropriate in the Commission’s view that the statutory criteria continue to be met.

In that context, the Commission engaged with the DAA in relation to the information supplied with their request and sought further detailed information and clarification in relation to the composition of the increased charge and relevant costings. The Commission also sought clarification regarding the SITA contract and the clause relating to the option to extend. The Commission also directly consulted the AOC at Shannon Airport in order to confirm that the users were satisfied that required consultation had taken place and that the revised charge of €0.27 per embarking passenger had been agreed by the users at Shannon Airport. That confirmation was received from the AOC.

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

3.1 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 manner set out by the Commission in 2004.

3.2 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 CUTE service continues to be provided by the airport authority below full cost. The Commission is satisfied that the principle of objectivity has been met because no ulterior or inappropriate motivation on the part of the airport authority can be said to have been applied.

3.3 Transparent

As part of the DAA request for approval, the Commission was supplied with the background to the necessity for the increase, relevant SITA costings, as well as the particulars regarding the Labour Court Award. All of this information was duly considered. Following engagement with the DAA, more detailed information and explanations on a number of issues was requested and received. As a result of this the Commission was in possession of all data which it deemed appropriate. In addition, the Commission independently verified that the AOC at Shannon Airport were consulted at all stages of the process leading to the proposal for the revised charge and were fully informed of the composition of the costs involved. In the Commission's view, these facts satisfy any reasonable interpretation of the transparency criterion.

3.4 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 the current request for approval – representing as it does, merely an increase in the existing fee – 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 €0.27 per embarking passenger for CUTE at Shannon Airport for the period 15 May 2006 to 14 November 2006. 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

12 May 2006