



**Levy Decision for the period February 2001 to
December 2002**

Commission Paper CP5/2002

16 August, 2002

Commission for Aviation Regulation,
36 Upper Mount Street,
Dublin 2,
Ireland

Tel + 353 1 6611700
Fax + 353 1 6611269
E-mail info@aviationreg.ie

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1. The Process

On 4th April 2002 the Commission initiated a consultation process on the implementation of the levy pursuant to Section 23 of the Aviation Regulation Act, 2001 (the "Act") with the publication of CP4/2002.

The Commission received 13 submissions from the following interested parties in response to CP4/2002: Aer Lingus, Air 2000, Aer Rianta, ACL, BMI, Britannia, DHL, IATA, Irish Aviation Authority, Irish Exporters Association, Lufthansa German Airlines, Monarch and Ryanair.

In addition, Aer Lingus, Aer Rianta and Ryanair responded to the submissions made by other parties on CP4/2002.

All submissions and responses were placed on the Commission's website. After consideration of all the submissions and responses, the Commission has now decided on the method by which the levy will be implemented.

2. Decision of the Commission

The costs of the Commission are required by law to be recovered by a levy imposed by the Commission on the aviation sector. To do this the Commission has had to decide on the best way of dividing up the costs so as to charge the relevant undertakings in the fairest way possible.

The Commission has decided to make the initial allocation of its expenditure according to the six principal areas of responsibility given to it under the Act and in proportion to the Commission's costs incurred in respect of those areas. The six areas are comprised of: regulation of airport charges, regulation of aviation terminal services charges, slot allocation and co-ordination, approval of ground handlers and ground handling matters generally, travel trade licensing and air carrier licensing.

Specific costs of the Commission will be allocated to each of the six principal areas as set out in Section 5 of The Levy Consultation Paper CP4/2002, each of which will be dealt with below:

a. Airport Charges

The Commission has decided that airport users should bear all of the costs of regulation as set out in Section 5 of CP4/2002 and that these costs should be included in the airport charges as set out in the Commission's Determination on maximum levels of airport charges CP7/2001

Following careful consideration of the arguments that a portion of such costs should be born by the airport operator, the Commission has decided that no portion of the costs of regulation should be borne by the airport operator. In arriving at this conclusion, the Commission

took the view that it is difficult to quantify or measure the benefits to the airport operator of the new regulatory regime implemented by the Commission.

In order to measure those benefits, it would be necessary for the Commission to measure the costs and benefits of the two separate regulatory regimes to the airport operator (the regime which existed before the Determination and the new regime put in place by the Commission), to quantify the net benefits to the airport operator of the new regime and to identify those benefits that were not captured by the Commission's cost of capital exercise (which approximated the regulatory risk of the airport operator to BAA).

The Commission has already allocated a portion of the benefits of regulation to the airport operator in making its cost of capital calculation and the Commission does not consider that it has an empirically verifiable basis on which to make an additional allocation of regulatory costs to the airport operator based on a residual regulatory benefit not already captured.

Accordingly, the Commission has decided to treat regulatory costs in the same manner as it has treated all other reasonable operating costs of the airport operator identified at the time of the making of the Determination, and to incorporate such costs in the airport charges set out in the Commission's Determination on maximum levels of airport charges CP7/2001. This includes all costs of defending legal actions relating to the Determination. The allocation of the actual costs of such actions will be made by the relevant courts.

Included in the calculation of the maximum average revenue per passenger yield of €6.34, there is an allowance for the recovery of regulatory fees. There is a surplus for the period 31 December 2001, however, there is an estimated shortfall for the period January to September 2002. The amount allowed is calculated as follows:

From 27-02-01 to 31-12-01	Amount €
Amount included in the Cap [27-02-01 to 31-12-01]	(2,330,359)
Actual amount due in respect of Airport Charges	2,084,492
Surplus for period end 2001	(245,867)

From 01-01-2002 to 30-09-02	Amount €
Amount included in the Cap [01-01-02 to 23-09-02]	(1,523,057)
Budget amount due in respect of Airport Charges [01-01-02 to 30-09-02]	2,221,073
Shortfall for first 3 Quarters of 2002	698,016

The price cap formula also allows for an annual correction to take account of surpluses and deficits between the recoverable regulatory fees allowed for in arriving at the Determination and the Commission's actual expenditure over the relevant period. In calculating the maximum average revenue yield for the regulatory year 2002/2003, the Commission will correct (on a per passenger basis) for the differences between the allowances used in arriving at its Determination and (a) the actual expenditure of 2001 and (b) the budgeted amount to 30th September 2002, as set out above.

The Commission will shortly issue a Consultation Paper regarding the manner in which it proposes to calculate the price caps for the Regulatory Year 2002/2003. This paper will include an explanation of the treatment of the correction factors.

b. Aviation Terminal Services Charges

The Commission has decided that airport users should bear all of the costs of regulation and that these costs should be recoverable from the charges set out in the Commission's Determination on maximum levels of aviation terminal services charges CP3/2002. In arriving at this

decision, the Commission has applied the same reasoning as that set out in Section 2a above in respect of airport charges.

Included in the maximum average revenue per tonne, for the first regulatory year, of €1.34 there is an allowance for the recovery of regulatory fees as follows. The shortfalls in the amount allowed is calculated as follows:

From 27-02-01 to 31-12-01	Amount €
Amount included in the Cap [27-02-01 to 31-12-01]	100,000
Actual amount due in respect of ATSC	127,215
Shortfall for the period end 2001	27,215

From 01-01-2002 to 30-09-02	Amount €
Amount included in the Cap [01-01-02 to 30-09-02]	93,750
Budget amount due in respect of ATSC [01-01-02 to 30-09-02]	95,160
Shortfall for first 3 Quarters of 2002	1,410

The ATSC price cap formula also allows for an annual correction to take account of surpluses and deficits between the recoverable regulatory fees allowed for in arriving at the Determination and the Commission's actual expenditure over the relevant period. In calculating the maximum average revenue yield for the regulatory year 2003/2004, the Commission will correct (on a per tonne basis) for the differences between the allowances used in arriving at its Determination and (a) the actual expenditure of 2001 and (b) any surplus/shortfall calculated at the end of 2002.

c. Slot Co-ordination

The Commission has decided that Aer Rianta and the Irish registered airlines should each bear 50% of the cost of slot co-ordination at Dublin Airport. The 50% of the cost borne by the airlines will be allocated amongst the airlines in proportion to their air traffic movements at Dublin airport during the relevant period. Such an approach is consistent with the EU legislation on slot allocation/coordination and with international practice.

The amount due in respect of Slot Co-Ordination for the period 27th February to 31st December 2001 is €20,963.

The amount budgeted for in the year 2002 is €157,244.

d. Ground Handling

The Commission has decided that, going forward, ground handlers should bear the administrative costs of the approval process and that their contribution to the levy should take the form of:

- (i) a fee in the sum of €1,000 in respect of an application for a new approval,
- (ii) an annual fee of €250 associated with the monitoring of approved handlers,
- (iii) an approval renewal fee of €750 (the annual fee will also be charged in the year of the renewal, which occurs every five years), and
- (iv) a licence amendment fee of €500.

e. Air Carrier Licensing

The Commission has decided that, going forward, the licensed air carriers should bear the administrative cost of the licensing process, and their contribution to the levy should take the form of:

- (v) a fee of €2,000 in respect of an application for a new Air Carrier Operating Licence,
- (vi) an annual fee of €500 associated with the monitoring of approved air carriers, and
- (vii) a licence renewal fee of €1,500 which be charged in the year of the renewal, which occurs every five years after the Licence has been granted. The annual fee will also be charged in the year of the renewal.

f. Travel Trade Licensing

The Commission has decided that tour operators and travel agents should bear the cost of the administration of the travel trade licencing process. Tour operators and travel agents currently pay fees in accordance with the Tour Operators (Licensing) Regulations, 1993 (S.I. No. 182 of 1993) (as amended) and the Travel Agents (Licensing) Regulations, 1993 (S.I. No. 183 of 1993) (as amended). The Commission intends to retain the current system whereby the fees are imposed on the industry under Travel Trade Statutory Instruments. Amendments will be made to these fees to effect a full cost recovery mechanism and will be implemented by way of Regulations.

g. Work Programme for 2002

The Commission previously summarised its 2002 work programme in its Annual (Section 26) Report, which was published on its website on 16th May 2002. The following extracts from that document reiterate the Commission's focus during 2002:

"The Commission will carry out its continuing statutory functions in the travel trade, ground handling and air carrier licensing areas.

The Commission intends to appoint a co-ordinator to Dublin airport.

The Commission will place a levy on the industry to cover its expenses and adopt regulations necessary to implement the levy.

The Commission will continue to vigorously defend the judicial review proceedings brought by Aer Rianta to quash its determination on maximum levels of airport charges.

The Commission will analyse issues relevant to the making of determinations on maximum levels of airport and aviation terminal services charges including: CAPEX, operating efficiencies, regulatory models and approaches, and service quality."

h. Accountability

The Oireachtas

The Commission is accountable to the Oireachtas in two principal ways:

First is the Public Accounts Committee, which receives and examines the report of the Comptroller and Auditor General on the annual accounts of the Commission. Examination by the Committee of that Report can be to invite the Commission to appear before it to answer questions. Traditionally the remit of the PAC is very wide ranging and in practice may question any aspect of the Commission's operations and functions. It may also monitor the discharge of the Commission's statutory functions. The Committee is also free to request detailed written responses to matters raised at the oral appearance.

Second, the Commission is also answerable to the Oireachtas Committee with specific responsibility for transport issues.

The Commission re-iterates that it is prepared to engage with public representatives at any time, either personally, in writing or by appearance.

Procurement Policy

It is the Commission's policy to abide by all applicable national and EU legislation in relation to tendering for and sourcing of services.

In the procurement of even relatively minor goods and services, the Commission seeks quotes from a range of possible suppliers before awarding/placing any contract.

The Minister for Transport

As a statutory body, the Commission is answerable, within the limits of statutory functions, to the Minister for Transport in respect of any and all aspects of its functions and, while not required to respond to Dáil Questions, supplies material to the Minister to enable this to be done when necessary.

On any topic related to the Commission or its functions when so required by the Oireachtas, the Minister is obliged to respond to Dáil Questions, both Oral and Written, Private Notice Questions, Adjournment Debates, and Dáil Motions. Such responses or statements would be based substantially on material supplied by the Commission.

The Comptroller and Auditor General

As mentioned, the Aviation Regulation Act, 2001 provides that the Commission's accounts be audited annually by the Comptroller and

Auditor General to the standards ordained by that Office. When audited, the legislation also provides that those accounts be submitted to the Minister and the Government and that they be laid before the Houses of the Oireachtas in accordance with statute.

Annual (Section 26) Report

The Commission is obliged to produce an annual report and work programme for the coming year. This report was produced for the period ended 31 December 2001, which was laid before the Houses of the Oireachtas in March 2002. That Report was also published on the Commission's website.

Contracts of Employment

The terms and conditions of employment of the Commission staff are subject to strict scrutiny and approval by both the Minister for Transport and the Minister for Finance. Its personnel, remuneration, administrative and HR practices accord with public service norms and are subject to on-going monitoring

i. The Regulations to give effect to the Levy (under Section 23 of the Aviation Regulation Act, 2001)

Regulations to give effect to the Levy are currently being drafted and will be finalised over the coming weeks.

j. Invoicing

- (viii) Invoices in respect of expenditure during the period 27th February to 31st December 2001 will be issued as follows;
 - a. Airport Charges – Invoices will be issued with immediate effect.
 - b. Aviation Terminal Services Charges – Invoices will be issued with immediate effect.

- c. Slot Allocation – Invoices will be issued with immediate effect.
 - d. Ground handling – Ground Handlers which were approved prior to the establishment of the Commission will be required to pay a fee of €211¹. For handlers approved since the establishment date the annual fee will be time-apportioned. These invoices will be issued to all handlers with immediate effect.
 - e. Air Carriers– The Annual fee of €500 has reduced to €422¹. These invoices will be issued to all air carriers with immediate effect. For air carriers approved since the establishment date the annual fee will be time-apportioned. These invoices will be issued to all air carriers with immediate effect.
 - f. Travel Agents and Tour Operators – The amount collected in fees for the year 2001 covered the cost of providing the Travel Trade function for the year 2001 and generated a small surplus. Because the costs of the Commission have increased in 2002 due to, among other factors, a change in premises, the Commission will retain this surplus and offset it against the costs for 2002.
- (ix) Invoices in relation to 2002 will be issued as follows;
- a. Airport Charges – Invoices in respect of the first 3 quarters of 2002 will be issued with immediate effect. The invoice for Quarter 4 will be issued on 1st October 2002.
 - b. Aviation Terminal Services Charges – Invoices in respect of the first 3 quarters of 2002 will be issued with immediate

¹ The Annual Fee appropriately reduced to apply to the (approximately) 10 month period 27th February to 31st December 2001.

effect. The invoice for Quarter 4 will be issued on 1st October 2002.

- c. Slot Allocation – Invoices in respect of budgeted expenditure for 2002 will be issued with immediate effect.
- d. Ground handling – For ground handlers approved prior to 1st Jan 2002 invoices for the Annual charge for 2002 of €250 will be issued with immediate effect. For ground handlers approved later in 2002 this fee will be time apportioned.
- e. Air Carriers – Invoices for the Annual charge for 2002 of €500 will be issued with immediate effect.
- f. Travel Trade – See 2(f).
- g. Payment Terms: 30 calendar days from the date of the invoice.
- h. Payments Methods:
 - i. The Commission's preferred method for receipt of funds is by electronic payment into the Commission's Bank account details of which are as follows:
Bank: Bank of Ireland Branch: 2 College Green Sort Code: 90-00-17 Account Number: 19410683 SWIFT Address: BOFI IE2D
 - ii. The Commission is happy to accept payments in Euro, or any other currency.