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Ms. Anne Moloney
Deputy Head of Economic Affairs
Commission for Aviation Regulation
36 Upper Mount Street
Dublin 2
IRELAND

25 April, 2002

Dear Ms. Moloney

The Implementation of the Levy

European Air Transport N.V., a wholly owned subsidiary of DHL Worldwide Express, welcomes this opportunity to comment on the Consultation Paper on the Implementation of the Levy (Commission Paper CP4/2002) published on 4 April, 2002. European Air Transport is the entity responsible for providing air transport operations to the DHL network in Europe and Africa using its own, as well as wet leased/chartered, aircraft.

Our views are based on our wide-ranging experience in operating an international freighter network to some 150 airports in Europe and Africa using a fleet of approximately 110 aircraft.

1. Inclusion of Costs of Judicial Review

While we have comments on some of the specific detailed items which are discussed below, there is a fundamental issue with the inclusion of the anticipated costs of the Judicial Review that we wish to discuss separately.

It is no secret in the aviation industry that the relationship between Aer Rianta and the Commission is a fraught one. Ignoring the rights and wrongs of this situation, it is our opinion that it can only lead to inefficient regulation and unnecessary additional costs for users of Aer Rianta airports. This is compounded when, as appears to be the case currently, almost every matter ends up in the High Court.

So for example, in the judicial review before the Courts we are now faced with a situation where one public body owned by a second public body is seeking a review of the actions of a third public body established by legislation drawn up by the second public body; and all of this in one of the most expensive forums in the country.

In the event that the Regulator loses a case in the High Court it is not right that this cost is automatically passed on to airport users who have had no involvement in the case or its conduct. Likewise if Aer Rianta or another public body loses a case and incurs costs as a result, these should not be recovered from the airport users. This is in line with the situation that would happen if a non-government body took a case against the Regulator under the legislation and lost. There would be no question of these costs being automatically recovered from the airport users at large.

In our view the Airport users should not be burdened with additional costs arising from intra-Departmental disputes and the forecast figure of €1.7 million should not be included in the levy. Any costs incurred on this matter in 2001 should also be excluded.

2. Allocations of 2001 Expenditure

a. Fundamental Principle

The basic method used should ensure that costs are allocated based on the relevant cost driver. The costs allocated to a project should reflect the amount of effort (and cost) dedicated to that project.

b. Allocation of Personnel

▪ *Allocation based on Time for all Staff*

It is proposed to apportion a number of cost items by reference to a percentage of the total time spent by staff on particular projects.

This works in a situation where all staff members cost the same amount or where all staff members spend the exact same proportion of their time on different projects.

It does not provide an accurate allocation where staff are paid different amounts and/or are spending different amounts of time on various projects. For example, a senior member of staff may earn double a more junior staff member. Say 75% of the Senior staff member's time is spent on project A and the balance on project B, while the Junior Staff member spends 75% of their time on Project B and the balance on Project A. If the allocation is based on a straight hours allocation, Project B will bear an excessive cost.

The system as proposed is too crude an instrument and does not accurately reflect the cause and effect impact of this cost driver – people.

▪ *Use of weighted costing*

The Commission is already tracking the time of each staff member.

It would be a simple exercise to calculate a weighting of the time based on a “weighted cost factor” or “charge out rate” driven by the relative personnel cost. This is common practice in organisations such as legal or public accounting firms where different grades of staff are charged at different rates. Administratively it need not be an onerous assignment to do this as it probably need only be done on an annual basis.

▪ *Basis of allocation - Staff Costs*

In our opinion direct personnel costs should be tracked using a “weighted cost factor” or “charge out rate” system as outlined above and allocated on that basis.

c. Accommodation Costs

In paragraph 4) of section 5 (Page 10) it is proposed that Accommodation costs will be split out based on the number of people working in the Travel Trade Licensing. We presume that this means that certain staff can be identified as working almost exclusively on particular topics.

In this case, the costs of accommodation should be split out as proposed and the non-specific element apportioned based on the total hours worked in each of those non-specific cost centres.

d. Costs to be Allocated on same basis as Accommodation Costs

The following costs should be treated in the same way as the accommodation costs:

- Equipment & Software Costs
- Depreciation
- Central Costs

e. Other Costs

We agree with the method of allocation proposed by the commission for the following items

- Travel & Subsistence
- Postage
- Communications and Media Relations Costs

f. Finance Costs

For reasons outlined in Section 1 above, Finance costs should exclude the cost of funding legal actions.

Where a financing requirement can be identified with a particular project, the cost of that financing should be assigned to the relevant cost centre.

The remaining cost should be allocated based on the proportion of total hours worked on a project.

3. **Undertakings Liable to Pay and their Liability**

a. Basic Principle

In our opinion the undertakings benefiting from the rulings and structure put in place by the regulator should fund the levy. **We estimate that, based on invoices received so far this year, we will pay over 40% more under the new regime than would have been the case under the previous one. This is despite the non-imposition of the Cargo Levy. Increases of this magnitude, and greater, have been experienced by most other members of the Cargo industry.**

Given that the Regulator has put a ceiling on Aer Rianta's total income we assume that other airport user sectors have received material reductions in their airport charges and in our opinion users benefiting should bear the cost of the levy.

b. Method of Recovery Levy

- *Simplicity of the Charging Method*

A charging method should not be used on simplicity grounds alone.

- *Over-recovery of levy*

Under the Aviation Regulation Act, 2001 the Commission is not permitted to recover in excess of its costs.

Any charging method adopted by the Commission for Aviation regulation may result in an over-recovery of costs.

If an excess is merely used to reduce the amount to be recovered in the following year then entities, which significantly reduce their activities in the second year relative to the first year when the levy was over recovered, will be unable to benefit from the rebate.

In the event of an over-recovery, the excess should be refunded to the parties that contributed to that excess of income in proportion to its total payments for the relevant portion of the levy.

- *Based on Turnover*

We strongly disagree with the suggestion that the Levy be recovered by a method based on the turnover of an entity.

This might be a reasonable option if all the entities had their home base at an Aer Rianta airport. However many of the airlines using Aer Rianta airports are not Irish based and have significantly greater turnover than Irish Airlines based at Aer Rianta airports. In the case of EAT a tiny part of our turnover relates to our operations to Irish airports. There is no justification for using "non Irish related" revenue to calculate a charge relating to Ireland. This suggestion could leave foreign airlines with say four or five flights a day to Aer Rianta airports paying a materially greater share of the levy than Irish Airlines such as Ryanair or maybe even Aer Lingus.

- *Based on Activity*

The Commission paper has suggested two "activity" based charging methods, a fee per aircraft movement or a fee per passenger.

In our opinion use of either method would lead to unfair charges to some users. For example a charge based on passengers only will benefit airlines such as ourselves who are non-passenger operators. On the other hand a charge based solely on aircraft movements would lead to airlines that do not carry passengers bearing a disproportionate share of the cost.

In addition, the activity is significantly different from the anticipated level there will be an under or over recovery with all the complications this will cause.

- *Based on Total Charges by Aer Rianta*

Another option would be to charge based each entity's share of the total charges raised. We do not support this method as it further penalises airport users who have suffered considerably under the new regulatory regime.

- *Charging via Aer Rianta and the IAA*

If the levy is to be recovered by a body other than the Commission for Aviation Regulation it should be clearly and separately charged. This should include any administration fee the invoicing entity is permitted to charge by the regulator.

c. Regulation of Airport Charges

As an alternative to the Commission's suggestions, the share of the levy relating to the Airport charges for each airport user should be in proportion to the savings achieved by that user compared to what they would have been charged under the old system. The costs relating to 2001 and 2002 would be recovered using the 2002 savings as the base for the calculation of the recovery amounts. Thus users who have gained the most as a result of the Commissioners rulings would pay most.

A simple programme using the Aer Rianta invoicing database would allow the calculations to be done efficiently at the end of each invoicing or accounting period.

In subsequent years the Levy would be calculated based on a comparison of the current year versus prior year savings.

Excess recoveries would be repaid in proportion to the original amounts of the Levy paid.

d. Regulation of Aviation Terminal Services Charges

These services are effectively incurred on a per movement basis. The cost for this Cost Centre should be recovered via the IAA in a clearly identifiable charge on that basis.

Excess recovery should be refunded to the airlines in proportion to the total amounts paid.

e. Slot Allocation and Co-ordination

This service is driven by airlines wishing to operate at times of congestion. In effect the need for this service is driven by the larger users of airports.

We agree with the suggestion that the cost is split between the Airport Operator and the airlines and that the charge to Airlines should be limited to those airlines which individually account for 5% or more of Air Traffic movements at Dublin Airport. However, any slot co-ordination costs relating to Cork and Shannon should be recovered based on the movements at those airports.

f. Other Cost Centres

The other cost centres; ground handling, air carrier licensing and travel trade licensing should be charged to the relevant operators, carriers and travel agents/tour operators directly by the Commission for Aviation Regulation.

This could be done based on the turnover of the entity given that they will probably have a separately identifiable turnover relating to their activity in Ireland or at Aer Rianta airports.

4. **Estimated Operating costs and expenses of the Commission for 2002**

The accommodation cost shows a very large increase, the bulk of which we presume relates to the cost of the move. We think that in the interests of transparency the non-recurring element should be separately disclosed for all cost categories.

5. **Other Items**

a. Proposed Payment Terms

In our opinion the levy should be charged in arrears based on the method described in 3 c, d, e and f above. In our view it will be difficult to charge in advance unless it is decided to charge a fixed amount to each user without reference to activity or some other variable determining factor.

b. Payment

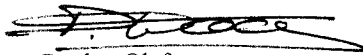
Payments should be made to the entity invoicing the charge. Having one entity raise a charge and requiring the payment to be made to another increases the risk of the payment being paid into the wrong account. This will be especially so if the invoicing entity is already invoicing for other services and requiring them to be paid to a different account.

c. Credit terms

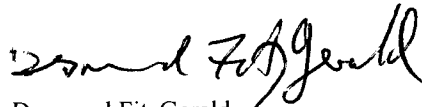
The Commission should bear in mind that the fact that an invoice bears a certain date does not mean it has been sent out or even prepared on that date. For example, we have received some invoices from Aer Rianta some two weeks or more after the date they bear. The Commission should also be aware that international bank transfers take up to four or five working days to be credited to a recipient's account after the instruction has been given.

To avoid penalising foreign undertakings the Commission must ensure that the users receive invoices promptly.

Yours sincerely,



Gordon Olafson
Managing Director



Desmond FitzGerald
Financial Controller