

A SUBMISSION [DRAFT 1.8]

from

The Irish Association of International Express Carriers (IAIEC)

to

The Commission for Aviation Regulation

re

**CP2/ 2001 Consultation Paper on the Maximum Levels of Airport
Charges to be levied by an Airport Authority under the Aviation
Regulation Act 2001.**

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PREAMBLE

Ireland has an open economy heavily reliant upon trade. Apart from that conducted with Northern Ireland, there are no direct surface links to support and facilitate this trade. Therefore the speed reliability security efficiency and competitiveness of air and sea services is of exceptional national strategic importance.

Airports are a pivotal link in this vital transport and communications infrastructure. They are the physical and regulatory interface for especially the high value goods and physical information that arrives in or leaves this State. On behalf of manufacturers service providers users and consumers the members of the IAIEC carry many of these items as international air express consignments¹.

The Commission for Aviation Regulation is now responsible for the economic regulation of airport and aviation charges in Ireland along with access and access fees to the groundhandling market as set out in SI No. 505 of 1998².

Consequently the Commission's views actions and decisions will have a very significant impact upon the cost effectiveness quality flexibility and reliability of the day to day movement of goods and physical information through our airports.

This Submission has been prepared in response to the Commission's CP2/ 2001 Consultation Paper on the Maximum Levels of Airport Charges to be levied by an Airport Authority under the Aviation Regulation Act 2001 (hereafter referred to as the Act). Its content is largely shaped by the need to represent the views opinions and concerns of airport users whose primary responsibility is the movement of goods through the airports being regulated on behalf of a very wide range of enterprises organisations and individuals.

Unfortunately the Aviation Regulation Act 2001 does not identify the strategic importance to the Irish economy of the 'dual mandate' that the regulated airports have to facilitate goods as well as people. Indeed debate on the Act in the Oireachtas was dominated by passenger related issues. Nevertheless the Association trusts that the Commission will consider this broader strategic context when considering how to *facilitate the development and operation of cost effective airports which meet the requirements of users.*

OVERVIEW

The Commission is a pioneer in applying to airports the principles of economic regulation that are now increasingly well developed in the governance of essential public infrastructures such as telecommunications and energy. Consequently there is a significant challenge as well as an opportunity to establish new and strategically positive positions as to how these principles can and should be applied to the movement of goods and physical information as well as of passengers

Therefore before directly addressing the forty-one questions posed in the Commission's Consultation Paper this Submission proposes to first scope the background from the point of view of the Association's members. While its focus will primarily be Dublin Airport, which is currently the 'hub' of their activities in Ireland, the needs and requirements of their activities in Shannon and Cork are also taken into account.

¹ The members of the IAIEC who have assisted in the preparation of this Submission and endorsed its contents are DHL, FedEx, TNT, and UPS. The Association has long standing concerns in regard to how reliable relevant and soundly based the data in the public domain is as an indicator of the scale scope and comparative importance of these companies activities at Irish airports. However anecdotal evidence suggests that by comparison to others it is significant.

² Article 2 (1) (c) of the Air Navigation and Transport Act 1998 specifically refers to *charges levied in respect of the transportation by air of cargo, to or from an airport*. In addition Article 39 (3) (a) requires *the operator or registered owner of an aircraft to make records of the volume or types of cargo they carry as the (airport) company specifies* for the purpose of *facilitating the assessment and collection of airport charges*. However the terms *cargo, freight and mail* are not defined in these pieces of legislation despite being used in all three in a way that strongly implies that they are describing the same activity.

BACKGROUND

How regulation has played a key role in shaping the evolution of courier/express services

Regulation has been hugely influential in shaping the evolution and structure of the global courier and express industry. Admittedly it could not have developed without the existence in the first place of a market demand which has seen its volumes increase year on year well ahead of GDP in most countries where the service is provided. Nevertheless how the service was organised to meet this latent demand was significantly shaped by regulations of one kind or another.

The most evident example of this has been the evolution of the postal monopoly and the impact of postal laws. However a more immediately relevant example would be how, in the largest and most advanced express market, the United States, the Congress was persuaded in the early 1970's by a young and ambitious Fred Smyth (founder and CEO of Federal Express) that they should deregulate cargo as well as airline passenger services. In agreeing to do so they enabled the establishment and rapid development of the 'hub and spoke' system that made possible a new, dynamic and popular service to be pioneered across the North American continent - the overnight air express market.

About the same time international 'overnight' services had to evolve through a different regulatory channel. To re-create the same reliable highly integrated next day services that were growing so rapidly in the US there was no (and still largely isn't) comparable global deregulation of air cargo. As a result dedicated new international all cargo 'hub and spoke' networks could not be quickly developed.

Instead it was a loophole in customs law that provided the initial impetus to international courier and express services. In the early years of aviation those airports which had dedicated freight facilities kept them totally separated from their passenger operations and this included customs clearance which operated on a traditional nine to five basis leading to long queues slow processing and unpredictable clearance times.

The evolution of the computer industry led to the regular occurrence of a computer engineer arriving late in the evening at an airport as a passenger with an urgently needed spare part that could not wait until morning for clearance. To accommodate this, as they thought, occasional occurrence Customs Authorities evolved a 'Merchandise in Baggage' (MIB) facility whereby on arrival a passenger could immediately request clearance in the Red Channel for any commercial item up to £200 in value which they had in their personal luggage.

The early pioneers of international courier services quickly discovered that customs did not restrict the number of items of luggage, or bags, any individual passenger could present for immediate clearance in the Red Channel so long as the total value of commercial merchandise in each one was less than £200. Thus the worlds global passenger hubs and routes and especially Heathrow Airport in London became the early backbone for the fledgling industries rapidly expanding networks.

In time highly integrated door to door delivery systems developed to ensure each and every individual shipment travelling from consignor to consignee through these air networks was moved to and from the airport's they took off from and landed in with the greatest possible degree of speed, reliability and control.

In some instances companies developed either collective or, in the case of the very largest operators who handle the great majority of shipments, their own facilities for processing and sorting shipments within the airport complex. These facilities often, but not always, had airside access. However the great majority of usually smaller operators has always and generally continues to prefer to deliver or collect their consignments from the third party airlines they are using and/or their groundhandling agents.

This pattern of airport usage became more pronounced as the largest international operators began, largely in response to the rapid growth in the shipments of goods in smaller quantities but much higher volumes, to bring their own aircraft on stream in order to develop dedicated all cargo air networks. This significant

shift in commercial demand from documents to the higher value added of small packages and express freight services created a need at each airport for larger more extensive facilities either leased by themselves, which at their own hub airports could be quite extensive, or provided by a third party groundhandler with airside access.

Today this is the dominant form of usage amongst the members of the IAIEC. For example at Dublin Airport DHL has its own warehouse facilities with direct airside access and can operate either as a third party groundhandler or self handler while TNT have warehouse facilities on the airport and wish to self handle. Meanwhile UPS and FedEx use a third party groundhandler (Serviceair) but may wish to self-handle in the future.

The facilities at Dublin Airport for moving goods are currently at or close to full capacity. In recent weeks Aer Rianta have gone on record as stating it is their intention to eject the cargo operations from this location and convert the space to facilitating passengers. Unfortunately as yet there are no precise plans to develop alternative facilities with equivalent and direct airside access that are specified costed and timetabled for completion, although bi lateral discussions between Aer Rianta and some individual members on what their needs might be have commenced.

Nevertheless collectively the members of the IAIEC remain very concerned that access to the existing facilities will be barred before adequate and cost effective new arrangements are operational.

What has proven to be the economic value and impact of these services?

As early as 1986 Coopers & Lybrand undertook an economic study on the impact of courier express services in this country and came up with most positive findings. In the intervening years the Association has not commissioned any further research on this question as the impact has appeared to be self-evident.

As Government policy Enterprise Ireland and the IDA have successfully helped to move manufacturing enterprise and employment in this country up the value chain of the global economy so the demand for and dependence upon international express services has grown commensurately. As a result today this country has one of the most dynamic and competitive courier and express sector's in Europe.³

For example the high value adding companies and especially FDI's that are particularly important to the Irish economy are disproportionate users of air express services. For these companies Ireland is an integral element of diverse manufacturing processes where goods are constantly being exchanged within a complex web of plants locations and suppliers. Therefore to be competitive from this Island it is essential they can use a reliable competitive and adequate communications infrastructure to get their goods delivered.

Notwithstanding the absence of objective third party evidence (which perhaps the Commission will seek to remedy after its initial work is completed) it seems reasonable therefore to assert that express services are a core element of the transport and communications infrastructure which is essential to this country's global trading activities. As a result their efficiency reliability scope and cost effectiveness has a direct impact upon national competitiveness.

Who tends to use these services and why?

It is likely that close to one hundred per cent of exporters either use international express services regularly or have at some time turned to them in an emergency. In addition a very large number of enterprises organisations and individual business people and consumers who do not export but need to secure or purchase goods or physical information from beyond this island call upon the services of express operators.

³ While there are no reliable third party figures in the public domain, this growth has not been confined to the members of the IAIEC. In 1991 for example it was estimated that outside of the Association there were possibly only three to four dedicated air express operators. Today the most reliable estimate is that there are at least thirty five.

This used to happen most often when delivery was needed quickly and with some degree of certainty and control. For example, shipments can be tracked on the Internet or re-routed while still in transit. However today these services are often used on a routine basis and/or because they are part of the consignor's logistics and supply chain process.

Thus as business to consumer and especially business to business e-commerce gathers momentum the traditional users of express services are finding new ways use express services to support their core business. These usually 'old economy' companies of Fortune 500 to small regionally based SMEs are being joined by a new generation of 'new economy' survivors who increasingly realise that a successful physical delivery remains essential to the completion of many electronic e-commerce transactions.

Where do airports most impact upon an express operator's competitiveness?

It may seem a self-evident truth that the needs of passengers and goods or physical information are not identical when it comes to getting on and off aircraft and moving to and from their destinations in the region served by the airport. Nevertheless it has not always been evident to the members of the IAIEC that the implications of this truth have been thoroughly understood and appreciated by Aer Rianta.

Fundamentally airports are a pivotal link between the air and ground elements of the integrated collection sortation transportation and delivery chains. These sophisticated networks for moving goods and physical information are operated and managed by companies who own or lease their own aircraft and have developed leading edge track and trace capabilities to provide time sensitive and time defined door to door air express services which are universally accessible and globally comprehensive in their coverage.

The implications of this for individual operators are significant. While they clearly can influence the costs of those aspects of their service that they directly control they are far less able to so for external infrastructure such as airports. As a result the efficiency and cost effectiveness of how their goods move through our airports can have a significant impact their operational competitiveness.

Thus the competence of the airport manager in their essential tasks, the degree to which they understand and encourage the very different needs of operators who move goods rather than people and the cost competitiveness of how they charge for the facilitating access to these essential facilities are crucial determinants in the competitiveness reliability and flexibility with which express services can operate.

There has been little evidence for some time that Aer Rianta understand or appreciate this pivotal economic role. However (coinciding?) with the formal arrival of the Commission there is some evidence beginning to emerge that they may be doing something concrete to address these concerns. For example a new facility or 'cargo village' has been spoken about for some years at Dublin Airport but has only now begun to receive concrete consideration.

RESPONSE

It is proposed to respond specifically to Consultation Paper CP2/2001 by answering the key points made and the questions posed in the order that they appear. In doing so it is hoped that the Commission is willing to accept the Association's starting point for this analysis that each of the regulated Airports has a 'dual mandate' to facilitate *the cost-effective* movement of goods and physical information as well as people.

The Commission is required by law *to aim to facilitate the development and operation of cost-effective airports which meet the requirements of users*. The Association submits that in the context of moving goods and physical information users must be defined to include those who send and receive the items being moved and not just the service provider undertaking the task and thus directly interfacing with the airport and its facilities. This point is particularly important in the context of who might actually pay the cost of any additional charges approved and imposed.

In regard to what the Commission is required to have due regard to when realising its statutory objective the Association would submit:

1.1 Statutory Background

The level of investment in airport facilities, in line with safety requirements and commercial operations, in order to meet current and prospective user needs.

Should include an objective appraisal at each airport of investment to date by both the airport manager and the airport users which has specifically and exclusively facilitated the movement of goods and the extent to which it has been established by precedent what are and are not 'essential facilities' for such operations.⁴

A reasonable rate of return on capital employed in that investment in the context of the airport's sustainable and profitable operation.

Should include rigorously examining the contribution to the cost effective development of Dublin Airport's facilities for moving goods of the proposed joint venture development of a 'cargo village', especially given that the airport manager has let it be known that the reason this new facility is required is to facilitate (presumably the sustainable and profitable operation of) passengers.

Efficiency and effectiveness in the use of all the airport's resources

Should include a close consideration of the effectiveness from a users perspective of the essential facilities required to move goods at the airports, and in particular the extent to which to date the airport manger has invested the management time attention and resources that are required to deliver efficiency and effectiveness on the ground on a day to day basis.⁵

The contribution of the airport to the region in which it is located

⁴ For example if an integrator wishes to self-handle their own aircraft they must make a significant investment in the necessary equipment additional personnel and specialist safety training.

⁵ There are numerous examples one could quote. Such as the absence of a dedicated cargo manger at Dublin Airport, the time and energy expended to get meetings and attention for goods issues, the failure for long periods to address practical issues such the creation of additional airside access or equipment storage areas, the arbitrary imposition of minor charges (such as a so called 'security charge' at Cork to get past the security gate to a plane). From a regulators perspective these may well appear merely to be minor irritants. But when a airport users business is defined by ensuring that **every** step in their process works with equal efficiency and reliability every time for every item it is surely not unreasonable to request that this same attention to detail in delivery is a factor when the Commission comes to evaluating the efficiency and effectiveness of the operation of a cost effective airport manager?

Should include taking account of the value and necessity of having the capacity to move goods by air on the same day that they have been produced within a region, the relatively inelastic nature of this demand and its contribution to enabling the development of the regions outside of Dublin. It should also take account of the fact that it is usually physically impossible to get such goods to one of the other regulated airports (or to use flights at any time other than as late as possible in evening for departure and as early as possible in the morning for arrival) other than by air. Thus for example to cost effectively meet the needs of users of express services in the Dublin Region the only realistic airport option is almost certainly Dublin Airport. Likewise to ensure that international deliveries can be made next day for packages from the South West it is more than likely essential to fly them from Shannon Airport to Dublin, before then being flow onto their destination.

The airport authority's level of income from airport charges and other revenues at the regulated airports or elsewhere.

Should to ensure transparency and fairness include a collation by the Commission of the full range of charges currently being paid by the movers of goods across the range of their usage of both essential and non essential facilities and services at the Airports.

The airport authorities operating and other costs at the airport

Should in order to enable a proper and appropriate allocation include an identification of where and to what extent those who move goods are incurring these costs in the first place and to what extent they are users of the shared infrastructure by comparison to passenger service providers. Due account should also to be taken of the fact that while many passengers may be flexible in their willingness to use the airport at off-peak times express services are generally unable to do and meet the expectations of their customers.

The level and quality of the airport's services and the reasonable interests of service users

Should at all times include a concerned informed and vigilant interest as to what are the reasonable interest of goods service users and just what is the level and quality of the airport's services to them.

The airport's cost competitiveness and operational efficiency vis-à-vis international practice

Should incorporate appropriate benchmarks for moving goods as well as passengers

The minimisation of restrictions on the airport authority consistent with the Commissions functions

Should take appropriate account of the Commission's parallel responsibilities in regard to SI 505 of 1998. It should also at least in the short term not require restrictions so minimal that the process of ensuring all parties act in accordance with both the requirements and the spirit of this regime is in no way undermined.

Relevant national and international obligations

Should include taking due account of those that refer to goods as well as to people.

2.1 Why Regulate?

When it comes to facilitating passengers particularly at Dublin Airport *where competition is feasible* has been a contentious matter for some time. In regard to moving goods the parameters for such an evaluation are different in crucial respects.

When an aircraft carrying goods shipments and especially one only containing cargo comes to a halt the goods on board can be formally 'cleared' into the country before they leave the plane. Where these shipments are being self handled and are for delivery in the region served by the airport they can thus be taken of and moved directly to a physical facility which no regulation states needs to be located at the airport. There may be internal operational reasons for an operator to have such a facility at or close to the

airport (and this would certainly probably be the case for a third party groundhandler) but there is no law that the IAIEC is aware of that requires it to be so.

Therefore it is important that when the Commission is determining what are essential services for the movers of goods that these realities are taken fully into account. Thus for example the Commission might conclude that for Aer Rianta proposed 'Cargo Village' the maximum level of charges that they could apply should be no greater than those that might be proposed by any of other party that could conceivably be in a position to provide a comparable non essential facility comparable to its warehousing. Especially where no duplication of the necessary infrastructure is not required (such as for example the need for a new passenger terminal building!).

Such an approach would certainly seem to be a reasonable way to promote economic efficiency and cost effectiveness.

Question 1 Are their other types of framework that should be considered by the Commission in the regulation of airport charges?

At this point it appears to us that the Commission has well identified, defined and articulated the most reasonable options.

Question 2. What regulatory framework do you advocate for the economic regulation of airport charges?

Of the options put forward by the Commission Incentive Regulation would appear to be the most appropriate to the current circumstances of the operational realities at Irish airports and the wider regional and national macro economic factors from both the airport manager's perspective and that of airport users.

However from the particular perspective of those who move goods two additional comments could be made. Firstly the structure of any price regime as applied to goods will be critical. The Paper makes the point that a very tight price cap has immediate benefits but less scope for investment. The fact that there is considerably less need (in terms of absolute scale or scope as distinct from the accumulated legacy of past failures to act) for such investment to facilitate the movement of goods as distinct from people underlines the attraction of this option.

That said because the cost base may be significantly lower for moving goods the danger of regulatory commitment must be correspondingly high. Therefore the Commission should vigilantly guard against this danger. For example by determining that a fixed rather than per transaction fee of some kind (such as a rental fee) would be an appropriate way of capping charges to freight operators.⁶

Finally the IAIEC wholeheartedly agrees that a regulator must be aware of the danger that price regulation may in the absence of explicit measures in respect of quality give the regulated firm an incentive to reduce quality in order to achieve cost reductions and boost retained earnings.

⁶ It may be of interest to the Commission to know that a charge which Aer Rianta previously imposed on a per item basis as a so called 'freight facilitation fee' to collect payments for customs clearance has been replaced by direct payments to customs. This new arrangement remunerates Customs for the overtime they provide (and invoice for) under an administrative arrangement provided by Revenue called a Merchants Request. While not precisely 'fixed' it is time defined by the amount of customs overtime that the 'merchants' using the service request and on which customs base their hourly charge for providing such overtime. This arrangement is organised collectively on behalf of its members by the IAIEC and it has removed a significant cost overhead and is working very satisfactorily from the perspective of both users and customs.

The second element which the original charge was claimed to cover (the cost to Aer Rianta of accommodating customs) will we presume be an important element of the Commissions wider brief as to how Aer Rianta as a state owned operator under this new regime should treat the cost and provision of its facilities to other arms and agencies of the State at its airport's.

Arguably this process may already have been happening in regard to goods. Therefore it is essential that the Commission sufficiently informs itself by way if necessary of detailed requests to all of those who move goods and physical information at all of the airports as to what exactly constitutes (a given) 'quality of service' and thus what may be the 'flanking measures' required.

Question 3: What structure of pricing would be most effective in achieving allocative efficiency at Ireland's regulated airport's? Responses should include relevant quantitative evidence to support opinions.

Making airport services available to those who express the greatest willingness to pay for those services is a sound economic principle. However its application to the movement of goods needs to be considered carefully. For example while traditional air cargo may not always be time sensitive, courier express services tend to be. Thus the former may be in a position to use an airports facilities outside of the peak times for moving goods (early in the morning and in the evening) the latter will not be. As the user of such value added services is paying a premium for these services it could be argued that the operator is in a position to do so to the airport manager. However the critical issue is how the charge can be structured in a fair objective and non discriminatory manner?

These are issues that have already been dealt with in some detail by the IAIEC in its initial response to and appeal against Aer Rianta's application to impose a new freight charge. Therefore it is not proposed to peruse the question at this point. Hopefully the issue will be considered in detail during this parallel but very pertinent consultative process.

In regard to the second question the IAIEC has for some time been concerned about the almost complete absence of relevant and objective quantitative evidence on the movement of goods and physical information through the airports. Collating this data is a not insignificant task but it is hoped that the Commission might consider taking the first step by requesting those involved to co-operate with it in such an exercise.

Question 4: In the context of any knowledge or experience that you may have in terms of the success or failures of economic regulation of airports abroad, are there lessons to be applied in Ireland drawing on such international experience?

The global experience of IAIEC members of the economic regulation of airports elsewhere is, to the extent it has been possible to collate it for this submission, limited. It appears that generally airport managers/owners have been sufficiently aware of the need and value of having a positive and mutually co-operative relationship with the movers of goods that agreements on charges and access to facilities have usually been satisfactorily concluded on a bi-lateral basis. Certainly this has been the case in the UK.

Question 5: What set of services provided by an airport operator should be considered to be financed from the five airport charges specified in the Act?

First for the movement of goods and physical information the Commission needs to establish to its own satisfaction what the Act means by *cargo*. The Act does not define the term but the Commission must adopt a working assumption if its determination is to be relevant objective and non-discriminatory. Therefore the IAIEC would like to propose the term it uses throughout this submission. That is cargo in this context means:

The movement by air of goods and physical information to and from an airport.

Having adopted such a definition the Commission may then decide to add some useful subsidiary clarifications such as does an airport mean any airport or only those airports being regulated by the Commission? ⁷ How best should the Commission distinguish between operators' own 'in-house' goods

⁷ This point is important because a very significant proportion of what is formally categorised as 'air cargo' actually only takes off or lands in an aircraft at an airport beyond this island such as Heathrow, Schipol or Paris.

and those it carries on behalf of others? Is it useful to distinguish between the goods carried in all cargo aircraft and those in passenger aircraft? Should there be a clear distinction between traditional air cargo express freight and mail for the purpose of implementing this Act? Are these clarifications consistent and compatible with the implementation of SI 505 in regard to groundhandling and self handling?

The list of aviation and aeronautical related services which IAIEC members use to move their goods and thus should be taken into account in determining airport costs are shown in Appendix 1.

Question 6: How should the costs of other airport services be paid for?

Where the movement of goods incur a cost over and above those services considered to be essential for the movement of goods listed in answer to the above question and where they are material to the charge in terms of their share of the allocated cost then applying the 'user pays' principle would appear to be most objective relevant non discriminatory and transparent.

Question 7: What are the advantages and the disadvantages of regulating a number of airports on an aggregate basis?

The IAIEC would cordially submit that in the absence of having information on the relative cost of using each airport both on a current and historical basis it is premature at this point to offer definitive answer to this question. Nevertheless it could be observed in response to the Commission's analysis that:

- Conditions at the three airports do vary for a whole host of cultural, political, historical, economic and organisational reasons. However until the Commission's view as to which amongst these are pertinent to airport charges has been spelt out it is not possible to provide a realistic and relevant opinion on the impact and advisability of aggregation from a users perspective.
- Dublin Airport has reached its current capacity for goods but this fact is not acting as an incentive *per se*, and neither is Aer Rianta inclined to enable competition.
- The viability of competition between airports cannot be judged in isolation to the condition of the wider economic infrastructure, at least for goods and probably for people. For if offering a national as distinct from a regional service the enormous concentration of economic activity in the Dublin Region is, on a purely pragmatic commercial level, impossible to ignore.⁸
- Members of the IAIEC have and continue to make considerable investments in internal air links and ensuring the availability of the supporting ground services to ensure there customers have access to a comparable quality of service (as defined by cut off times for collections and deadlines for deliveries) irrespective of where on the island they are located.⁹

Question 8: Should Dublin Cork and Shannon airports be regulated separately or on an aggregate basis?

The above points apply equally to this question. In addition the practical experience of the individual members who use all three airport's is that despite sharing a common ownership structure local management operate with considerable and at times surprising degree of independence. Thus it will be an important decision for the Commission to determine if it wishes to work with or against this reality.

⁸ For example for a short time in the mid eighties one member was able to overcome the very serious delays then occurring in securing customs clearance for their goods in Dublin Airport by flying them into Shannon and getting clearance there. Such a solution is inconceivable now given the congestion on our roads, although in the future as the National Development Plan is rolled out it may be although probably on North/South rather than East/ West basis.

⁹ For example the fact that Dell Computers is located in Limerick whereas Gateway are located in Dublin has not been a factor in creating any competitive disadvantage for Dell.

Certainly to the IAIEC it would appear to be prudent for the Commission to first seek to establish separately the costs of those services which any charges are required to recoup at each airport.¹⁰

Question 9: Should the maximum charges set by the Commission apply to individual charges, to a basket of charges or to the total charges?

Amongst the options outlined by the Commission the logic of the IAIEC's arguments up to this point tend to support the application of an overall ceiling with sub-caps on individual charges. In addition the Association would argue for the inclusion of exemptions from certain charges where merited and justified, such as where a company invests in the necessary training equipment and resources to self handle their own aircraft.

Question 10: If more than one limit on which categories of charges?

Those that apply to the movement of goods and physical information.

Question 11: How should the determination on maximum airport charges be expressed, having regard to the options contained in section 32 (6) of the Act?

To be consistent the Association would direct the Commission to what it describes in 4.4.3 as the hybrid cap on individual tariffs and a total revenue cap. In regard to the Commissions comments in this section the IAIEC would add:

- That for the services essential to moving goods (and listed in Appendix 1) the costs should be largely fixed rather than variable as the scope and extent of their demand does not in relative terms vary anywhere nearly as significantly as for people;
- Thus an extra ten thousand small packages for example does not generate a need for the airport manager to provide a lot of new car parking spaces and dining facilities or even necessarily airport warehouse facilities;
- Consequently the Commission should seek to establish a cost for the provision of essential services for the movement of goods and physical information and then what *additional production* may be required to service the different categories of operators in terms of their use of non essential airport services and facilities.

Fundamentally the IAIEC calls on the Commission to incentivise the minimization of a total fixed cost which fairly and transparently in a non discriminatory manner enables the movers of goods to respond to their customers on-going and compelling demands for increases in the quality and reliability of services while at the same time reducing the overall cost the services provided.

Question 12: Are there any alternative ways by which the contribution of each of the factors specified in section 33 to the achievement of the statutory objective may be assessed?

The start of this Submission contains some detailed comments on the contents of Section 33. Therefore in response to this particular question and the Commission's comments the IAIEC would add that:

¹⁰ It was interesting for the IAIEC to receive evidence of this recently from a member. It concerned the very same 'Rules of Conduct' which the Association have appealed to the Commission on the basis of Aer Rianta's advice that they applied universally. It appears that this view is not shared by Aer Rianta management in Shannon who have asked the local airport users committee to circulate them to their members and expressed a willingness to take on board comments or concerns.

- It fully supports the application of the principle of productive efficiency where Aer Rianta would be required to produce a given level of (essential) services at the minimum cost.
- Dublin Airport's capacity to move goods is under pressure, especially as the facilities currently being used are being re allocated by Aer Rianta to passengers, and an alternative is being actively developed.
- While the Commission may not see itself as automatically having a role in determining this matter it could be strongly argued that it is relevant to the level and quality of airport services and the reasonable interests of users;
- *Users* in the context of goods and physical information must be defined inclusively to ensure the needs of those who rely on the movement of goods through the airports to do their business are taken into account;
- The Commission must be particularly careful that the factors it must take due regard of in section 33 are applied appropriately when seeking to maximize the economic welfare to users of the services provided by Aer Rianta to enable the cost effective movement of goods and physical information through their airports.

Question 13: How should an airport operator relate Capex decisions to the current and prospective user needs? How should the Commission assess the degree to which the airport operator is doing so successfully?

The IAIEC entirely concurs that an assessment of the required Capex program and its efficiency is central. It cannot agree however that future demand remains as much a mystery as the paper appears to suggest at least for goods. The Irish economy is emerging from a period of unprecedented economic growth. Predictions as to the level to which growth will now fall back vary but thankfully no economists are predicting zero growth.

Consequently by collating data as to what has been happening over the last ten years the Commission should be in a reasonably well informed and strong position to predict the impact on demand at the airports as a result of GDP developments over the next ten to fifteen years.

Question 14: How should Capex be funded? Should one of the five regulated charges be earmarked for investment spending or, instead, should the revenue from charges be pooled (perhaps along with other incomes as allowed for under the Act) to fund both Opex and Capex?

IAIEC members do not have a view on how Capex should be funded at this point and they do not believe that one of the five regulated charges should be earmarked

Question 15: When should investments be included in the assets on which a reasonable return is applied in the calculation of airport charges – before construction of the new facility commences, once the investment is in progress, or only once it is in use?

Capex expenditure proposed by Aer Rianta at Dublin Airport to relocate some of the existing freight facilities provides a useful illustration of the backdrop to this question. Aer Rianta has told the freight community that they intend to move their operations because they need the space to expand the passenger terminals. At his moment an alternative site has not been confirmed, although the one suggested which the airport manger does not own or have planning permission for would appear to have no direct access to the apron without closing a public road building a bridge or excavating a tunnel.

For all of these reasons it is suggested it not just a question of when such investments should be included but what investment justifies inclusion in the first place. For example, who would be the primary beneficiary of this investment, the dislodged movers of goods or the passenger operators who secure expanded access beside their current location? For the freight community such judgements will wholly depend on the cost effectiveness quality and accessibility of whatever new facilities are built.

What can be said at this point is that the IAIEC members are strongly of the view that with so many crucial imponderables they should not in principle be required or requested to pay for any work related to this project or any equivalent before it has even commenced or is in progress.

Question 16: What assets should be included in the regulatory base?

Those which support essential services.

Question 17: On what basis should those airports assets that are used to provide airport services and other services at Irish airports be valued?

The IAIEC has no view.

Question 18: How should the rate of return of the airport operator be defined and measured?

The IAIEC has no view.

Question 19: How should the cost of capital of the airport operator be calculated?

The Commission's suggestion that a regulator should allow a rate of return equal, over the medium term, to the company's cost of capital would appear to be reasonable and fair so long as:

- Where the capital invested refers to essential facilities and the allocation to users moving goods is proportional relevant objective and non-discriminatory
- Where the capital invested relates to facilities developed on a joint venture basis the rate of return should be appropriate to an essential facility unless it does not fall into this category
- The need to borrow capital has not been created in the first place by the company undertaking expenditure programs in other jurisdictions on airports or airport related activities;

Question 20: Has the capital asset pricing model a role to play in estimating the cost of capital, given that the equity of the company is not publicly traded? What firms or industries in Ireland or elsewhere have a similar risk profile to the airport operator and could therefore be used as benchmarks for determining the value beta in the CAPM?

The IAIEC does not have a view on whether or not the capital asset pricing model has a role to play, but clearly the circumstances of a company whose shares are traded publicly are very different to those of a company 100% owned by the State.

In regard to relevant benchmarks it strikes the IAIEC that the ports and the performance of port management companies are not unreasonable benchmarks. Especially as they are in comparable business and at least some of that business can use either a port or an airport (indeed a significant and growing volume of time defined express shipments as well as 'trucked' air cargo use both and often for the same shipments).

Question 21: What rate of return should the airport company be allowed to earn relative to its cost of capital?

As the Paper points out the higher the rate of return permitted the higher airport charges will be. Therefore the IAIEC would encourage and support the Commission in determining the lowest possible rate of return that is both feasible and realistic.

Question 22: How should the efficiency and effectiveness of resource used by the airport authority be assessed?

In regard to the movement of goods and physical information and defining resources not just as the physical assets of the built environment but also the often more important human and professional interaction that in essence a service comprises of, the Commission might consider the following criteria:

- The location and proximity of the stands allocated for aircraft carrying cargo and especially all cargo aircraft to the groundhandling or self handling facilities and the consequent ease of access for operators;
- The reliability and consistency of those support services for which the airport operator is directly responsible;
- The responsiveness and flexibility to quickly respond to and co-operate with the evolving needs of the various operators
- The willingness and capability to deliver on undertakings and promises according to pre-agreed timetables and budgets
- The respect and appreciation of the user community in general for the professionalism dedication and concern for their interest which is manifest in the airport managers day to day operations and interactions with their customers and clients
- A willingness and desire to facilitate and enable what operators are doing or wish to do within reasonable and accepted safety parameters
- A strongly sympathetic and supportive appreciation and understanding that the spirit as well as the letter of legislation must be adhered to and respected at all times by the airport operator, because of who they are as much as because of what they are (that is a body that assumes to itself the right to govern the actions of others).
- A recognition that the future holds significant challenges that will come from outside the communities at each airport that will require all concerned to work together in a spirit of mutual trust and a shared concern.

Question 23: At the overall level, relative to the comparable airports or businesses, is there evidence of either inefficient or ineffective use of resources the Irish Airport operator?

The answer to this question could be extensive on the basis of anecdotal evidence. Perhaps it is sufficient to say at this point that as Aer Rianta has begun its recently launched consultative process with airport users it has begun to acknowledge at least informally that it has been seriously overlooking the needs of cargo for quite some time. As this process unfolds it is likely that this neglect will become ever more evident (on the basis that the problems were always there and should have had the solutions now being proposed).

Question 24: In the event that Irish Airport charges change, does efficiency and effectiveness in the use of all of the airport authority's resources require that change be phased in over the period of the control or implemented in full at the beginning of that period?

Frankly on the record of past performance there should be no change in the current charges being paid to Aer Rianta by those who move goods until there is evidence their efficiency and effectiveness has increased substantially as per the criteria outlined above.

However if at some point a charge does become justifiable and hence liable then it would most certainly need to be phased in to ensure that the Commission had the maximum possible leverage to ensure delivery of whatever additionality has been promised and payment of the new costs identified as required to be met.

Question 25: How should the contribution of the airports to the regions in which they are located be assessed?

The contribution of those who move goods to the economies of the regions has already been referred to a number of occasions in this submission. Although the Commission is likely to be gathering objective evidence it is clearly significant and substantial assisting greatly in eliminating the disadvantages of operating on the economic edges of an island itself on the edge of Europe.

Question 26: What is the contribution of the airports to the regions in which they are located?

There are other parties who will no doubt give detailed and comprehensive answers to this question. Suffice for the IAIEC to say that the point made in the previous question is as equally valid in answer to this one.

Question 27: Should airport users obtain any financial benefit from other income that the airport authority derives from airport activities? In other words, should airport regulation be based on a single or a dual till principle?

There is little evidence that the movement of goods has in any substantial or meaningful way benefited from the surplus that Aer Rianta has consistently generated from its other activities. Indeed many have harbored the suspicion that goods movement is a net contributor to those surpluses. Whether this is correct or otherwise is now about to be explored for the first time

Therefore in the absence of concrete evidence as to how the costs which Aer Rianta's activities are designed to recover are allocated, the IAIEC would prefer to suspend judgement on this point until the next phase in the Commission's consultation process.

Question 28: If a single till is used what other revenues should be included in it and how should the airport charges relate to them?

Again the IAIEC does not feel it has sufficient of the facts at this point to answer the question in any kind of comprehensive fair or useful manner.

Question 29: How should the cost effectiveness of Irish Airport's be assessed?

The Commission's paper articulates precisely the feelings of IAIEC members, that operating costs at the regulated airports should be no higher than necessary in order for services of a given quality to be provided to users. As to how to precisely define the effectiveness of the services provided by the Airport manager for the movement of goods perhaps it is important to point out that:

- There is no definition of *given quality* agreed collectively with all movers of goods
- There is considerable dissatisfaction (now recognized and acknowledged by Aer Rianta) amongst those companies to whom individual commitments were given at various times that these have not been met
- While there may at last be discussions and consultations there is no concrete and substantive effort by Aer Rianta to demonstrate that they understand and wish to act according to this principle, such as by dropping their application for a new freight levy until the Commission have made their initial determination as a gesture of goodwill.

- Nor is there a concrete sense that Aer Rianta wishes to even now agree what precisely is *necessary* to facilitate and enable the movement of goods through their airports in accordance with the wishes of those who carry out this activity every day.
- Instead for example at Dublin Airport the solution to the problem Aer Rianta created in the first place (the need to move where freight is handled) and which they are now energetically promoting is what appeared from the outset to be their preferred solution - a joint venture with a third party provider.

Question 30: What costs of operating an airport are joint costs? How should such costs be allocated among users?

This is critical and fundamental question. Therefore it is somewhat surprising that the Commission has provided such a relatively short introduction on the background to the question and what its own thinking on the matter might be. In the absence of such an introduction the IAIEC does not intend to attempt anything other than a relatively straightforward answer.

This submission has already put forward a list of essential facilities most of which are in some way shared with other operators and thus could be classified as common facilities. The degree to which they are shared both with the movers of passengers generally and amongst the individual movers of goods does vary. However generally the use of these common facilities for moving goods is a relatively small and occasional occurrence by comparison with the volume of their use for passengers.

It may be that Aer Rianta is in a position to provide facts that contradict this assumption. If not the Association anticipates that whatever formula the Commission decides to adopt when making its determination on allocating costs will reflect this usage in an objective relevant non discriminatory and transparent manner.

As to how joint costs should be allocated among users that is an equally complex question on which the Commission in its wisdom has provided no guidance. In the absence of knowing the costs that have to be allocated one is therefore essentially 'shooting in the dark'. Nevertheless the IAIEC does not wish to be unhelpful and so proposes to suggest that:

- Some kind of separation is recognized as being required for moving goods and physical information unless this use is of such a nature as to be immaterial to the cost of provision;

Question 31: Should some of the costs of operating an airport be recovered directly from passengers?

Passengers already pay what they may understand to be a tax when purchasing their ticket. Thus many might feel this should cover the cost of using the airport which would make this quite a politically sensitive point.

Nevertheless were there to be new charge imposed upon freight it is almost certain that it would in some form be passed onto the customer, and for express consignments this would in the majority of cases be the sender (ie the exporter). Therefore in practice the result would be that any additional operating costs imposed at Irish airports would be passed on to the equivalent of the passenger (ie the sender of the goods).

Question 32: How should the Commission seek to prevent a price maximum being evaded by a lessening of service quality? What incentives could an airport operator be given to provide appropriate service quality?

It would seem to the Association that the Commission has itself already provided the answer to the first part of this question when (in 4..5.6) it refers to seeking to ensure that services *necessary (and of a) given quality* would be provided to users. Thus it would appear that the Commission will be establishing its own definitions and standards of service quality.

Having set the necessary benchmarks the Commission could then either actively monitor their delivery or ensure that users would be sufficiently acquainted with these service quality standards to know what they should be getting and encouraged to complain if they do not.

The incentives the airport operator should have other than the 'name and shame' approach implied above should be focussed on the principle of compensation for service failure. The Commission will have established and published relevant appropriate and transparent benchmarks as to what the quality of service should be. These will be firmly routed in the day to day commercial needs of the operators themselves.

Therefore it can be reasonably presumed that any failure by Aer Rianta to deliver the given quality of service will result in a cost to these users. Consequently the airport operator should share the cost of this service failure in the form of reasonable compensation to the affected party.

Question 33: How should the international competitiveness of Irish airports be assessed?

The IAIEC suspects with great difficulty. No doubt the Commission will receive much detailed evidence on this point.

The truth is that individual agreements based upon bi-lateral negotiations have characterized such relationships in the past. In addition airport charges have regularly been used as a tool to achieve other public policy objectives such as supporting tourism or regional development.

The Commission is in reality pioneering the application to airport charges the modern multilateral approach that is becoming familiar to other users and providers of economic infrastructure. Therefore it would seem appropriate that the Commission would see itself as having the discretion to take into account the wider macro economic criteria of the impact on national competitiveness of cost effective airports in addition to those which it may conclude are specifically relevant to airport operations and the airport operator.

Question 34: Does benchmarking have a role to play in evaluating the efficiency of Irish airports? If so against which entities should Irish airports be benchmarked?

The IAIEC is not in a position to offer a view at this point.

Question 35: Are there any difficulties associated with reliance on international comparisons?

The IAIEC suggests there may be two important difficulties:

- Firstly securing reliable data and information on what are the actual charges at comparable airports, especially across the euro zone
- Secondly comparing 'like with like' especially in the context of evaluating the impact on any particular set of charges of either direct or indirect assistance from Member State or regional governments and in particular recovering or otherwise the value and cost (if any) of the basic assets that every airport needs in order to operate, whether it is in public or private ownership.

Question 36: Is it appropriate to minimize regulatory restrictions according to the extent of competition faced by an airport operator or airport service provider? Is there a more appropriate method?

The IAIEC is very concerned that it may not be possible to fully and adequately explore this complex issue in the relatively very short time that has been given to make the first determination. Therefore the Association submits that the Commission should proceed on the basis that currently there is little or no effective competition certainly for the airport operator as well as for many airport services.

Consequently the IAIEC would submit that the Commission should proceed on the basis that strict economic regulation is needed in every aspect of the airports operations unless it can be proved to their

total satisfaction that there is a real effective and adequate level of competition. And this exercise may well take some time after the initial determination has been completed.

Question 37: Which airport services if any at the regulated airports are exposed to competition? Are there services for which airports possess market power? Are there services where the degree of competition faced by suppliers might be increased?

As stated in answer to Question 36 these are three complex questions to which there are no easy answers. For example as the Commission is well aware it has a parallel responsibility for the implementation of SI 505 of 1998 on opening access to the groundhandling market. For the movement of goods at least this responsibility is inextricably intertwined with the issues posed in this question.

Indeed in a number of respects how the Commission decides to discharge its responsibilities in regard to implementing the SI will crucially shape the eventual answers adopted to these questions.

Question 38: Are current airport services and the associated prices satisfactory to airport users? Is the present combination of services and prices such as to warrant some form of performance measurement as a condition of a determination on airport charges?

As the Commission is well aware if the term *current* is meant to be taken as including those charges for which Aer Rianta have applied for approval as well as those which they are already being paid the answer is a very categorical no. If however the Commission is asking this question purely in regard to all of the charges currently being collected either directly or indirectly by Aer Rianta from members of the IAIEC then the answer will depend on which member and what charges.

Therefore because at least some of these charges are the result of individual agreements with Aer Rianta the members the Association would like to propose that Commission request details of such charges from them directly as and where deemed appropriate.

In regard to the second question it is wholly consistent with the views expressed throughout this submission to not just support this principle but to suggest that it is warranted, especially in the context of such judgments being measured against the given quality of service to users necessary to monitor operating costs.

Question 39: In the current extent of industry consultation about airport services, prices and related matters satisfactory? In particular are the arrangements for consultation and negotiation such as to suggest that, in some area, agreement could be reached by those involved without recourse to the regulator?

The current extent of consultation although belatedly improving remains far from satisfactory for IAIEC members.

In principle the members of the Association would hope that where appropriate and clearly provided for and approved by the regulator individual agreements could be reached with the airport operator. However that point has not been reached and there is as yet no certainty as to, if it can, when this will be.

Question 40: With a view to minimizing regulatory restriction, which services should form part of the regulatory regime? In what areas might regulation be unnecessary or ineffective even in the absence of market competition?

The IAIEC believes this to be another pivotal issue and so is surprised at the absence of any introductory remarks or indications as to the Commission's thinking. The Association has already expressed its views in some considerable detail on these matters in its concurrent dealings with the Commission. Therefore it will hopefully be satisfactory to answer at this point that all of those services which this submission has described as essential should certainly form part of the regulatory regime.

In regard to the second part of the question the IAIEC has already stated that it believes that pending a full and rigorous examination of all of the issues the Commission should consider that at least initially there is no area in which regulation is unnecessary.

Question 41: What national and international obligations are relevant to the regulation of airport charges?

The IAIEC has no view at this point,

CONCLUSION

The IAIEC has attempted to give clear concise and satisfactory answers to the questions the Commission has posed.

In essence the Association's case is that for consistency completeness and cohesion the 'dual mandate' of Ireland's airports to facilitate the movement of goods and physical information as well as people must be adequately reflected in the Commission's determination.

In doing so the Commission would be appropriately and responsibly fulfilling its legislative mandate *to facilitate the development and operation of cost effective airports which meet the requirements of users*

APPENDIX 1

The suggested essential minimum services for moving goods and physical information are

- Runway Provision and maintainance
- Taxi way provision and maintainance
- Air-Field lighting and supervision
- Fire Service
- Bird-scaring and snowclearing
- Air-Side and perimeter security
- Apron control of Aircraft stands, parking, and maintainance
- Guidance systems
- Certain access facilities