

4 October 2006.

Anne Moloney,
Deputy Head of Economic Affairs

Comission for Aviation Regulation
3rd Floor, Alexandra House
Earlsfort Terrace
Dublin 2

The logo for bmi (British Midland International) is displayed in a bold, lowercase, sans-serif font.

Dear Anne

Response to Comission Paper CP6/2006 - Public Consultation on the carrying out of an interim review of the September 2005 determination on the maximum levels of Airport Charges at Dublin Airpor

bmi welcome the opportunity to comment on the issues raised in the consultation paper.

Our response to the questions raised directly in the Commission's Paper are as follows;

1. Given the statutory obligation to decide whether substantial grounds exist to review a Determination, the Commission has not presented any evidence in the Paper regarding the existence of 'substantial grounds'. bmi do not concur with the Commission's belief that the 'substantial grounds' criterion should be interpreted consistent with the Commission's statutory objective in making a determination – to promote economic efficiency. bmi maintain that 'substantial grounds' must be founded on a fundamental change in circumstances since the determination was made.
2. bmi does not consider the degree to which airline users of Dublin Airport have revised their anticipated requirements for airline facilities provides any basis for exceptional circumstances.
3. Until CIP 2006 is published it is not possible to determine the scale of change in capital investment since the plan presented for the Determination in September 2005. Therefore, we do not consider it appropriate for the Commission to undertake a review prior to this information being presented, and the degree of exceptional circumstance determined. Neither can we assess the financial or other impacts of any change in CIP without full information and a revised CIP being presented and reviewed, and again therefore we do not know whether these will be large enough to compromise the Commission's statutory objectives.

4. bmi does not consider the unavailability of a finalised CIP at the time of the 2005 Determination to have been in any way exceptional. The CIP by its nature will be forever subject to change and refinement as projects progress towards conclusion. Clearly a line has to be drawn at a point in time for the regulatory review process, as for all other elements that contribute to the Determination. It is expected that draft CIP and projected spends by the airport would include a certain element of contingency. We therefore do not consider the circumstances outlined to be 'exceptional'.
5. bmi considers that the short timescales may well have been outside of the control of the DAA, however, this does not constitute an exceptional circumstance. There are many circumstances which occur during, or prior to any particular 5 year period which are outside of the control of either the DAA or the airport users, and these are considered to be part of the risk associated with doing business. The aviation industry has been subject to quite significant change in various ways in recent years, which gives rise to ever changing requirements reflected in changing business plans. However, the latest plan has to be considered at the time of a Determination.
6. bmi does not consider that there is any grounds for review at this point based on the available information, or lack thereof. For 'substantial grounds' criterion to be interpreted as the Commission has based on the financial changes that the DAA is alleging are to be detailed in its 2006 CIP, the details of this would have to be available prior to expending the time and effort necessary to carry out a review. We also suggest that it is difficult to review change in any one element in isolation, and reiterate that there has to be fundamental and exceptional change to warrant an interim review.

To conclude bmi does not consider that, based on available information, there are grounds for review at this time. Further we are only 1 year into the current 5 year regulatory period, and relevant information has not been presented such that we maintain it is inappropriate to consider an interim review at this stage. The fact that DAA claim to have had insufficient time to properly prepare a CIP for Sept 2005 determination is not grounds in itself.

Yours sincerely,

Jane Irving
Airport & ATC Fees Manager