

21<sup>st</sup> February 2007

Ms Bridin O'Leary,  
Economist,  
Commission for Aviation Regulation,  
3<sup>rd</sup> Floor, Alexandra House,  
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Dublin 2.

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**Re: Commission Paper CP10/2006 Draft Determination**

Dear Ms. O'Leary,

I refer to the above and to your letter of the 13<sup>th</sup> February.

As with the Commission's previous determination on the maximum levels of Aviation Terminal Services charges, Aer Lingus supports the general economic principles that are proposed in this draft determination insofar as they contribute to the development and operation of safe, cost-effective terminal services which meet international standards. Accordingly, we support the Commission's position that additional analysis of cost competitiveness looking to the future is appropriate.

It is stated that it is the Commission's intention to seek further explanation and justification of the Irish Aviation Authority's (IAA) planned capital expenditure. The current approach to deciding capital expenditure allowances for the purposes of determining maximum levels of Aviation Terminal Service (ATS) charges would benefit from an independent review of the costs of investments. We submit that, in line with legislation, developments ought to be cost effective and necessary from a safety and maintenance point of view. The IAA has failed to undertake meaningful and appropriate consultation with the users of the terminal navigation charge services to which this proposed expenditure relates. Therefore, we submit that no allowance should be made to recover this expenditure until such consultative process is undertaken.

Until receipt of Commission Paper CP10/2006, Aer Lingus was unaware of the stated requirement to build new control towers at Dublin and Cork airport. In addition, the Commission states that there is some uncertainty as to whether the Dublin Airport Authority (DAA) or IAA will have responsibility for constructing and financing the proposed control towers. At no time during the consultation process with DAA on its capital investment programme has this issue been raised. We would also question whether synergies could have been achieved if the IAA and DAA had resolved this issue earlier in the development of the master plan for Dublin Airport.

This uncertainty as to responsibility for the construction and financing of the works calls into question the determination of a starting asset base for pricing purposes. It is inappropriate to accept a valuation of the IAA's fixed assets without considering the implications for operating and maintenance expenses of the possible construction of two new control towers. In the case of the IAA, this valuation would arguably be overly subjective as it would involve judgements over the type of technology required to provide a given service. Different technology to that currently used to provide certain services is likely to have different levels of associated operating and maintenance costs. Aer Lingus endorses the Commission's intention to seek further explanation and justification of the Irish Aviation Authority's (IAA) planned capital expenditure.

On the issue of volume risk, we would welcome a proposal that would allocate future financial risk associated with traffic volatility between air navigation service providers and users of such services. It is submitted that it is within the ambit of the Commission to attribute a greater share of risk in return for lower ATS charges. The extent to which the IAA is prepared to accept risk on traffic volumes could be incorporated into the pricing model. For example, it may involve a review of pricing should traffic volumes fall below or rise above specified levels, with the IAA rate of return adjusted accordingly. However, it is agreed that the pricing framework should contain provisions to ensure adequate funding is available to promote safety, regulatory or other issues of concern.

Aer Lingus would welcome some explanation from the IAA of its requirements for rises in certain cost categories. Further detail is required to allow consultation as to the appropriateness of these increases given the implication they have for relative cost effectiveness of the service. We believe that it is unacceptable for the IAA to forecast costs that suggest a decline in its relative cost effectiveness in an industry which is lowering its costs and prices

to customers. The IAA's allowed rate of return should possibly therefore be reviewed, given that while it is subject to no competitive or commercial risk, its relative cost effectiveness appears to be in decline.

Aer Lingus welcomes the opportunity to participate in the consultation towards determination of the maximum levels of Aviation Terminal Service charges. In light of the arguments stated above, Aer Lingus supports the indicative price cap of an average of €2.12 in 2006 price terms for the years 2007-2011 given that it excludes all of the cost of constructing two new control towers and 20% of the cost of other capital expenditure projects.

Yours sincerely,

**DERMOT KILBANE**  
**LEGAL ADVISOR**