



**NOTICE BY
COMMISSION FOR AVIATION REGULATION
RELATING TO THE DETERMINATION ON THE
MAXIMUM LEVELS OF AVIATION TERMINAL
SERVICES CHARGES
SETTING OUT THE ISSUES TO BE REVIEWED AND
SEEKING REPRESENTATIONS FROM INTERESTED
PARTIES OR THE PUBLIC**

Commission Paper CP3/2004

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1. INTRODUCTION

1.1 Statutory remit and background

Section 35 (12)(a) of the Aviation Regulation Act, 2001 (the "Act") sets out the Commission for Aviation Regulation's (the Commission) functions with regard to a review of the Determination on the Maximum Level of Aviation Terminal Services Charges. In summary, the Act gives the Commission the discretionary power to hold a review if it considers there are substantial grounds to do so on or after the expiration of a period of 2 years following the making of the original Determination dated **26 February 2002** (the "Determination").

In compliance with Section 35 (12)(c) of the Act, the Commission is required, in undertaking a review of a determination, to do the following:-

- publish a notice in a daily newspaper stating that it proposes to make a determination;
- specify a period of not less than 2 months within which interested parties or the public can make representations;
- produce a reasoned report on the outcome of its review of a determination.

If the Commission sees fit to amend the Determination, the amended Determination will in accordance with the Act remain in force for the remainder of the period of the Determination.

1.2 Decision to Review

The Commission has decided to conduct a review of the Determination on the basis of the substantial grounds of an error in the regulatory formula. The details of the error in the formula are set out in section 3 below.

1.3 Representations

The Commission now wishes to invite representations on the proposals to amend the Determination as set out in this Paper. These proposals are preliminary. A decision will, as in the case of the Determination, only be made following the consideration by the Commission of all representations received.

1.4 Submission of Representations

In accordance with statutory requirements, a consultation period of two months is being provided for the making of representations by interested parties or the public with respect to the proposal. Representations, which may be in hard copy or electronic form, should be addressed to;

Mr.Kieran Baker, Head of Administration, Commission for Aviation Regulation, 3rd Floor, Alexandra House, Dublin 2 or at

info@aviationreg.ie

The closing date for receipt of representations is 5.00 p.m. on Thursday 10 June 2004.

This deadline will be strictly adhered to and representations received after this deadline will not be taken into account by the Commission. It should be noted that the time of receipt, whether in electronic form, by post, courier, hand delivery or fax shall be deemed to be the time the response was actually received in the offices of the Commission.

1.5 Indemnity

Any party submitting information to the Commission in response to a document inviting submissions acknowledges that the Commission intends to publish that information on the website of the Commission, in reports of the Commission and elsewhere as required or appropriate. Parties submitting such information to the Commission consent to such publication. Any party submitting

information to the Commission shall have sole responsibility for the contents of such information and shall indemnify the Commission in relation to any loss or damage of whatsoever nature and howsoever arising suffered by the Commission as a result of publication or dissemination of such information either on its website, in its reports or elsewhere.

2. "SUBSTANTIAL GROUNDS"

The Commission has addressed the way it interprets the finding of "substantial grounds" to initiate a review of a determination relating to maximum levels of airport charges. See CP3/2003, CP4/2003 and CP2/2004. The Commission's statutory objective in the setting of aviation terminal services charges is similar to its statutory objective in the setting of airport charges, namely "to facilitate the development and operation of safe, cost-effective terminal services." Accordingly, the Commission has decided to interpret "substantial grounds" in relation to aviation terminal services charges in a similar manner to its previous interpretation of "substantial grounds" in relation to a review of an airport charges determination.

In particular, the Commission draws reference to its finding in CP3/2003 that "The correction of matters of computation, calculation and application arising out of information received by the Commission after the date of the Determination" may be substantial grounds upon which to initiate a review. That principle is applied to the errors identified in the price cap formula here and the Commission in particular notes that the error identified is one which, if left uncorrected, is both material and recurring to the existing determination.

3. MATTER FOR REVIEW

3.1. The correction terms (K & W) in the regulatory formula.

The Commission proposes to amend the price cap formula to take account of a defect in the way that correction terms are calculated.

The intention of the correction term (K) in the price cap formula was to ensure that in a particular regulatory year, IAA either recovers (with interest) any under-charging from the previous regulatory year or repays (with interest) any over-charging from the previous regulatory year.

However, at present the price cap formula is specified in a way that effectively double counts corrections from previous regulatory periods. This feature only has an effect on the calculation of charges beginning with the third regulatory period, as this is the first regulatory period for which a correction term applies. For the regulatory periods subsequent to this, the current price cap formula would accumulate all previous correction terms in the price cap calculation rather than making a one-off adjustment for the previous year only. This may lead to double counting.

Thus the specification of the price cap formula for the IAA price cap is inconsistent with the intentions of the Commission at the time of the Determination.

The Commission, therefore, proposes to amend the price cap formula to address this issue. This requires a separation between the component of the price cap formula that rolls forward the previous period's price cap, adjusting for the X-factor and the change in the Consumer Price Index, and the component of the formula providing the correction term; only the former should be rolled forward into the subsequent regulatory year's price cap, while the latter should apply on a one-off basis.

The amended correction terms would ensure that, over the remainder of the price control period, the average revenue allowance of IAA is equal to the average revenue that IAA would have collected if there were no under-recovery or over-recovery in any regulatory period.

In addition, the current price cap formula includes a further correction factor, the W term. This is intended to make an adjustment for the difference between the Commission for Aviation Regulation's actual costs and expenses and budgeted costs and expenses recoverable through the relevant charges. The current double counting feature applying to the K term also applies to the W term. The Commission therefore proposes to make corresponding amendments to the price control formula in respect of the W term.

4. CALCULATION OF THE YIELDS

There was a cumulative under collection of revenues by the IAA in the first two regulatory years. Accordingly, due to the error in the price cap formula, the price cap for the third regulatory year has been misstated. The current price cap of €2.31 is overstated by €0.31. Please see CP1/2005 Annex 3. It is the intention of the Commission to use the review to restate the current price cap at €2.00 and to correct the formula so that a similar over/understatement does not arise in future regulatory years.