
STATUTORY INSTRUMENTS

1994 No. 426

The Airports (Northern Ireland) Order 1994

PART IV

ECONOMIC REGULATION OF AIRPORTS

Conditions

Discretionary conditions

32.—(1) The CAA may, if it thinks fit in the case of any airport which is not a designated airport, impose in relation to the airport such conditions as are mentioned in Article 31(2), either at the time of granting a permission under this Part in respect of the airport or at any other time while it is in force.

(2) Where, at the time of granting a permission under this Part in respect of an airport (whether a designated airport or not) or at any other time while such a permission is in force, it appears to the CAA that the airport operator is pursuing one of the courses of conduct specified in paragraph (3), then (subject to paragraph (6) and Article 33) the CAA may, if it thinks fit, impose in relation to the airport such conditions as it considers appropriate for the purpose of remedying or preventing what it considers are the adverse effects of that course of conduct.

(3) The courses of conduct referred to in paragraph (2) are—

- (a) the adoption by the airport operator, in relation to any relevant activities carried on by him at the airport, of any trade practice, or any pricing policy, which unreasonably discriminates against any class of users of the airport or any particular user or which unfairly exploits his bargaining position relative to users of the airport generally;
- (b) the adoption by the airport operator, in relation to the granting of rights by virtue of which relevant activities may be carried on at the airport by any other person or persons, of any practice which—

- (i) unreasonably discriminates against persons granted any class of such rights, or any particular grantee of such a right, or unfairly exploits his bargaining position relative to the grantees of such rights generally; or

- (ii) unreasonably discriminates against any class of persons applying for such rights or any particular applicant, or unreasonably limits the number of such rights that are granted in the case of any particular services or facilities,

or which has resulted in the adoption by any other person of a practice that does any of those things;

- (c) the fixing by the airport operator of any charges levied by him at the airport in relation to any relevant activities carried on by him there at levels which—

- (i) are insufficient, even after taking into account such other revenues (if any) as are relevant to the fixing of such charges, to cover the costs of providing the services or facilities to which the charges relate or are, in the opinion of the CAA, artificially low; and

(ii) materially harm (or are intended materially to harm) the business carried on by an airport operator at any other airport in the United Kingdom.

(4) In paragraph (3)(c)(i) the reference to levels at which charges are fixed being artificially low is a reference to such levels being significantly lower than they would otherwise have been—

(a) by reason of any subsidy—

(i) furnished by any person or body to the airport operator in connection with his business so far as consisting of the carrying on of operational activities relating to the airport; or

(ii) furnished to that business by the airport operator out of funds attributable to any other activities carried out by him,

whether by the making of loans on non-commercial terms or otherwise; or

(b) where the airport operator is a company, by reason of any conduct on the part of the company which, in the opinion of the CAA, has resulted, or will result, in—

(i) a failure by the company to achieve a reasonable return on the capital employed by it in carrying on operational activities relating to the airport; or

(ii) a failure by the company to distribute to members of the company a reasonable proportion of the profits available for distribution; or

(iii) a failure by the company to reach a level of borrowing which is appropriate having regard to its equity share capital (within the meaning of the Companies Order).

(5) In determining for the purposes of paragraph (4) what is reasonable or (as the case may be) appropriate in the case of a company, the CAA—

(a) shall disregard the fact that the relevant conduct on the part of the company was in conformity with any policy for the time being of a person having control over the company; but

(b) shall have regard to any circumstances which, in the opinion of the CAA, would affect any company carrying on the business of operating the airport as a commercial undertaking.

(6) Before imposing any conditions under paragraph (2) in relation to an airport, the CAA shall notify the airport operator concerned of the course of conduct within paragraph (3)(a), (b) or (c) which it appears to the CAA that he is pursuing and of the conditions which the CAA proposes to impose; and if, within such period as may be prescribed, the airport operator notifies the CAA that he objects to its proposals, the CAA—

(a) shall not proceed with the implementation of those proposals; but

(b) may instead make a reference to the Commission in respect of the airport under Article 34(3).

(7) In this Article “designated airport” means an airport for the time being designated for the purposes of Article 31.