
STATUTORY INSTRUMENTS

1994 No. 426

The Airports (Northern Ireland) Order 1994

PART IV

ECONOMIC REGULATION OF AIRPORTS

References to Commission

References to Commission in relation to imposition or modification of conditions

34.—(1) Where the CAA is, by virtue of Article 31(9) required to make a reference to the Commission under this paragraph in respect of any airport, that reference shall be so framed as to require the Commission to investigate and report on—

- (a) the question as to what are the maximum amounts that should be capable of being levied by the airport operator by way of airport charges at the airport during such period of five years as the CAA may specify in the reference; and
- (b) the questions specified in paragraph (2).

(2) Those questions are—

- (a) whether the airport operator has, at any time during the relevant period, pursued—
 - (i) in relation to any airport charges levied by him at the airport; or
 - (ii) in relation to any operational activities carried on by him and relating to the airport; or
 - (iii) in relation to the granting of a right by virtue of which any operational activities relating to the airport may be carried on by any other person or persons,a course of conduct which has operated or might be expected to operate against the public interest; and
- (b) if so, whether the effects adverse to the public interest which that course of conduct has had, or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to it.

(3) Where the CAA is, by virtue of Article 32(6), authorised to make a reference to the Commission under this paragraph in respect of any airport, that reference shall be so framed as to require the Commission to investigate and report on the questions—

- (a) whether the airport operator has, at any time during the relevant period, pursued the course of conduct referred to in the CAA's notification under Article 32(6); and
- (b) if so, whether any such course of conduct has operated or might be expected to operate against the public interest; and
- (c) if so, whether the effects adverse to the public interest which that course of conduct has had, or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to it.

(4) The CAA may, at any time, by notice given to the Commission vary any reference under paragraph (3) by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receiving such a notice the Commission shall give effect to the variation.

(5) In determining for the purposes of this Article whether any particular matter has operated, or might be expected to operate, against the public interest, the Commission—

- (a) shall have regard to the objectives specified in sub-paragraphs (a) to (d) of Article 30(2); and
 - (b) in the case of a matter relating to the granting of a right by virtue of which any operational activities relating to an airport may be carried on by any person or persons, shall in addition have regard to the following objective, namely the furtherance of the reasonable interests of persons granted such rights.
- (6) In this Article “the relevant period”—
- (a) in relation to any reference in respect of an airport under paragraph (1), means—
 - (i) in the case of the first reference in respect of that airport under that paragraph, the period of twelve months ending with the date of the reference; and
 - (ii) in the case of any subsequent such reference, the period ending with the date of that reference and beginning with the date of the reference immediately preceding it; and
 - (b) in relation to any reference in respect of an airport under paragraph (3), means the period of twelve months ending with the date of the reference.

Supplementary provisions relating to references

35.—(1) For the purpose of assisting the Commission in carrying out an investigation on a reference under Article 34, the CAA may—

- (a) in the case of a reference under paragraph (1) of that Article, specify in the reference—
 - (i) any view that the CAA has formed as to what the maximum amounts referred to in sub-paragraph (a) of that paragraph should be;
 - (ii) any course of conduct which, in its opinion, has been pursued by the airport operator in relation to any of the matters specified in paragraph (2)(a) of that Article and has operated, or might be expected to operate, against the public interest;
 - (iii) any effects adverse to the public interest which, in its opinion, any such course of conduct has had or might be expected to have; and
 - (iv) any conditions or modifications of conditions by which, in its opinion, its view as to those maximum amounts could be implemented or (as the case may be) those adverse effects could be remedied or prevented;
 - (b) in the case of a reference under paragraph (3) of that Article, or a variation of such a reference, specify in the reference or variation—
 - (i) any effects adverse to the public interest which, in the opinion of the CAA, any course of conduct specified in the reference or variation has had or might be expected to have; and
 - (ii) any conditions or modifications of conditions by which, in its opinion, those adverse effects could be remedied or prevented.
- (2) It shall be the duty of the CAA, for the purpose of assisting the Commission in carrying out an investigation on any reference under Article 34, to give to the Commission—
- (a) any information in the possession of the CAA which—
 - (i) it is within the power of the CAA to give; and

- (ii) relates to matters falling within the scope of the investigation; and
 - (iii) either is requested by the Commission for that purpose or is information that it would in the CAA's opinion be appropriate to give to the Commission for that purpose without any such request; and
- (b) any other assistance which the Commission may require, and which it is within the power of the CAA to give, in relation to any such matters;

and the Commission shall, for the purpose of carrying out the investigation, take account of any information given to them in pursuance of sub-paragraph (a).

(3) The following provisions of the 1973 Act, namely sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) and Part II of Schedule 3 (performance of functions of the Commission), together with section 24 of the 1980 Act (modification of provisions about performance of Commission's functions), shall apply in relation to references under Article 34 as if—

- (a) the functions of the Commission in relation to such references were functions under the 1973 Act;
 - (b) the expression "merger reference" included a reference under that Article;
 - (c) in section 70 of the 1973 Act, references to the Secretary of State were references to the CAA and the reference to three months were a reference to six months;
 - (d) in paragraph 11 of Schedule 3 to the 1973 Act, the reference to section 71 of that Act were a reference to Article 34(4); and
 - (e) paragraph 16(2) of that Schedule were omitted.
- (4) The CAA shall—
- (a) publish particulars of any reference under Article 34, and of any variation of such a reference, in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
 - (b) send a copy of the reference or variation to the Department and to the airport operator concerned.

Reports on references

- 36.**—(1) In making a report on any reference under Article 34, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating proper understanding of those questions and of their conclusions;
 - (b) where they conclude that any course of conduct specified in the reference has operated, or might be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which that course of conduct has had or might be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by the imposition of any conditions in relation to the airport in question, or by the modification of any conditions already in force in relation to it, shall specify in the report the conditions that should be imposed or (as the case may be) the modifications that should be made.

(2) The Commission's conclusions on a reference under Article 34(1) so far as relating to the maximum amounts referred to in sub-paragraph (a) of that provision shall take the form of recommendations as to what those maximum amounts should be during the five years in question;

and any such recommendations may do any of the things referred to in sub-paragraphs (a) to (c) of Article 31(5).

(3) Where, on any reference under Article 34, the Commission conclude that an airport operator is a party to an agreement to which the Restrictive Trade Practices Act 1976(1) applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, have operated, or might be expected to operate, against the public interest; and sub-paragraph (b) of paragraph (1) shall have effect subject to the provisions of this paragraph.

(4) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Commission on references under Article 34 as it applies to reports of the Commission under that Act.

(5) A report of the Commission on any reference under Article 34 shall be sent to the CAA.

(6) On receiving such a report, the CAA—

- (a) shall send a copy of the report to the Department and to the airport operator concerned; and
- (b) subject to any direction given by the Department under paragraph (7), shall publish the report in such manner as the CAA considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(7) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, it may, before the end of the period of 21 days beginning with the day on which it receives the copy of the report, direct the CAA to exclude that matter from the report as published under paragraph (6).

Imposition or modification of conditions following Commission's report

37.—(1) Where the CAA—

- (a) is required to impose any such conditions as are mentioned in Article 31(3), or to make any such modifications as are mentioned in Article 31(4), in respect of any such maximum amounts as are there mentioned; and
- (b) has received a report made by the Commission under Article 36 and containing their recommendations as to what those maximum amounts should be,

the CAA shall impose any such conditions in accordance with Article 31(3) or make any such modifications in accordance with Article 31(4) (as the case may be).

(2) Where the CAA has received a report of the Commission on a reference under Article 34 and the report—

- (a) includes conclusions to the effect that any course of conduct within the scope of the reference has operated or might be expected to operate against the public interest;
- (b) specifies effects adverse to the public interest which that course of conduct has had or might be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by the imposition of any conditions in relation to the airport in question or by the modification of any conditions already in force in relation to it; and
- (d) specifies conditions or modifications by which those effects could be remedied or prevented,

the CAA shall, subject to paragraph (3), impose such conditions, or make such modifications of any conditions already in force, in relation to the airport in question as the CAA considers appropriate for the purpose of remedying or preventing the adverse effects specified in the report.

(3) In the case of a report of the Commission on a reference under Article 34(1), the Department may, if it thinks fit, direct that, notwithstanding that the report satisfies the requirements of sub-paragraphs (a) to (d) of paragraph (2), the CAA shall not impose any conditions or make any modifications as mentioned in that paragraph.

(4) Before imposing any conditions or making any modifications as mentioned in paragraph (1) the CAA shall have regard to the recommendations referred to in sub-paragraph (b) of that paragraph; and before imposing any conditions or making any modifications as mentioned in paragraph (2) the CAA shall have regard to the conditions or modifications referred to in sub-paragraph (d) of that paragraph.

(5) Where the CAA has imposed any conditions or made any modifications as mentioned in paragraph (1) or (2), it shall publish the following matters, namely—

- (a) particulars of the conditions or modifications in question; and
- (b) in so far as those conditions or modifications do not accord with the recommendations referred to in paragraph (1)(b), or (as the case may be) with the conditions or modifications referred to in paragraph (2)(d), a statement of the CAA's reasons for not implementing the Commission's report,

in such manner as it considers appropriate for the purpose of bringing those matters to the attention of persons likely to be affected by them.

Charges to be paid by airport operators in respect of Commission's expenses

38.—(1) The Department may, in accordance with the following provisions of this Article, provide by regulations for annual charges to be payable by airport operators in respect of the expenses incurred by the Commission in carrying out investigations, and reporting, on references to which this paragraph applies.

(2) Paragraph (1) applies to any reference made to the Commission under Article 34 other than a reference under paragraph (1) of that Article which relates to the first period of five years for which any such conditions as are mentioned in Article 31(3) are to be in force in relation to a particular airport.

(3) Any such regulations as are mentioned in paragraph (1) shall—

- (a) require the Commission—
 - (i) to prepare, in such form and including such information as may be prescribed by the regulations, an annual statement containing an assessment of the expenses incurred by it as mentioned in paragraph (1) in the preceding period of twelve months; and
 - (ii) to send a copy of any such statement to the CAA;
- (b) prescribe the circumstances in which airport operators, being persons having the management of airports in respect of which permissions under this Part are in force, are to be liable to charges under this Article in respect of the expenses of the Commission specified in any such statement;
- (c) provide that, where a particular airport operator is liable to such a charge, the amount of the charge payable by him shall (subject to sub-paragraph (d)) be a proportion of the expenses referred to in sub-paragraph (b) to be determined by reference to such matters or circumstances as may be specified in the regulations; and
- (d) prescribe the maximum amount of any charge under this Article.

(4) Without prejudice to the generality of paragraph (3)(b), any such regulations may provide for an airport operator falling within that provision to be liable to a charge under this Article notwithstanding that none of the expenses there referred to relate to a reference made in respect of an airport managed by him.

(5) Where by virtue of any such regulations a charge under this Article is payable by any airport operator, the CAA shall notify him that he is required to pay that charge to the CAA; and where an airport operator has been so notified the amount of any such charge shall be recoverable from him as a debt due to the CAA.

(6) Any sums received by the CAA by virtue of this Article shall be paid to the Secretary of State, who shall then pay them into the Consolidated Fund of the United Kingdom.