

DÁIL ÉIREANN

AN COMHCHOISTE UM IOMPAR, TURASÓIREACHT AGUS SPÓRT

JOINT COMMITTEE ON TRANSPORT, TOURISM AND SPORT

Dé Céadaoin, 15 Bealtaine 2019

Wednesday, 15 May 2019

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair/Members present:

Kevin O’Keeffe,	Frank Feighan,
Noel Rock,	John O’Mahony,
Robert Troy.	Pádraig Ó Céidigh.

I láthair / In attendance: Deputy Aengus Ó Snodaigh.

Teachta / Deputy Fergus O’Dowd sa Chathaoir/in the Chair

Business of Joint Committee

Chairman: Apologies have been received from Deputies Catherine Murphy and Imelda Munster. Before we continue I ask that members turn off their mobile phones completely as they interfere with the recording equipment. Are there any matters that members wish to discuss in private session? Yes. I propose that the committee continues in private session.

The joint committee went into private session at 1.39 p.m. and resumed in public session at 1.54 p.m.

Chairman: Before we commence the main business of the meeting, the committee must agree the minutes of the meetings of 3, 4, 9, 10 and 16 April, which have been circulated. Are there any matters arising? No. The minutes are agreed.

I turn to correspondence. On our recent hearings on governance and related matters concerning the Football Association of Ireland, FAI, we received a significant amount of correspondence. No. 2019/446 (a), (b), (c) and (e) is email correspondence from Ms Rea Walshe, the interim CEO of the Football Association of Ireland; No. 2019/447 (a), (b) and (e) is from Mr. Colm McGinty at Sport Ireland; No. 2019/449 (a) from Mr. Colm McGinty; No. 2019/449 (b) is correspondence between Sport Ireland and the FAI; No. 2019/450 is documentation received from Deputy Catherine Murphy; No. 2019/452 (a) and (b) is from Ms Rea Walshe, interim CEO of the FAI, dated 15 April; No. 2019/453 is an email received from Mr. John Treacy, CEO of Sport Ireland; No. 2019/454 is correspondence from the Minister for Transport, Tourism and Sport, Deputy Ross, providing a letter received from Mr. Donal Conway, president of the FAI; No. 2019/455 is from Mr. John Treacy, CEO of Sport Ireland; No. 2019/457 is an email received from Mr. Tom McNeice on the same issue; and No. 2019/461 (a) and (b) is an email from Mr. Colm McGinty of Sport Ireland. We have discussed these and relevant matters in private session. It is proposed to note this correspondence, which will be published on the website for those who are interested.

No. 2019/459 is an email from Mr. Larry Larkin, with whom it is proposed to schedule a meeting as soon as the committee schedule permits. Is that agreed?

Senator John O'Mahony: What will it be about?

Chairman: He and others want to make a presentation on an anomaly regarding the representation of Irish athletes competing in international competitions. In their correspondence they say that due to some issues, certain athletes cannot be included in national teams. It would be best for them to explain it.

Senator Pádraig Ó Céidigh: That has been gone through before a number of years ago and is an issue with the federation.

Chairman: We can ask them to come in.

Deputy Robert Troy: If it is a repeat, it is a waste of time. We have invited people in to the committee before, and those who advocated that we invite them did not even turn up to the meetings.

Chairman: That is a good start. I am in the members' hands. What will we do? We will note that correspondence.

Deputy Robert Troy: Perhaps we can we defer it to next meeting because I am not even sure what it is about.

Senator John O'Mahony: Can we ask them what solutions they are proposing and who can provide these solutions? I do not believe it is this committee, to be honest.

Chairman: That is the view of the meeting. I propose that the committee will write back to request more detail on their proposals and to come back to us.

Senator John O'Mahony: And to ask what they see as the solution and who is in control of the solution.

Chairman: Okay. No. 2019/460 is an email from Mr. Damien Black of the air navigation services safety and security division regarding pre-legislative scrutiny. I propose to note this correspondence. Is that agreed? Agreed.

No. 2019/462 (a) and (b) is an email from Mr. Darren Clarke at the Department of Transport, Tourism and Sport about the €100,000 loan to Cricket Ireland. I propose that this correspondence is noted. Is that agreed? Agreed.

No. 2019/463 (a) and (b) is correspondence from Mr. John Kavanagh, head coach with the Irish Mixed Martial Arts Association, with regard to a submission. If members agree, the committee could ask the association to come in to give us a presentation at an appropriate time. Is that agreed? Agreed. When the committee looks at its work programme dates, we can take this forward.

No. 2019/464 is correspondence from the Clerk of the Dáil on a Private Member's Bill on road traffic accidents, RTAs, that had been read a second time. I propose that the committee notes this correspondence. Please note that the sponsor of the Bill must make a scrutiny request to the committee in writing. We will await that request. Is that agreed? Agreed.

No. 2019/444 is an email from Mr. Paul Allen of the All-Ireland Cruise Ship Action Group. This is a hot issue for those with boats in the ports, which are under substantial pressure with regard to space.

Deputy Robert Troy: I propose that we bring the affected stakeholders in before the committee.

Chairman: As a member of a different committee, I received a briefing on Dublin Port. It might be worth our while for the committee to go there before the meeting - it might take one and a half hours - to see the pressure that is there.

Deputy Robert Troy: It would take longer.

Chairman: It may take longer if we were to have a tour. I believe it is worth doing because the implications of Brexit for transport are a significant part of it also. If we visit the port and then invite the people who are concerned to attend a committee meeting, would members find that reasonable? Is that agreed? Agreed.

No. 2019/448 is an email dated 8 April 2019 from Donall Ó Buadhucháin concerning bicycles on intercity trains. We will send it to Irish Rail.

No. 2019/451 is an email from Catriona McClean regarding detachable ramps from wheel-

chair accessible taxis. It is proposed to note that correspondence. The Minister is supposed to attend to discuss with us issues regarding disability and transport. He cancelled a couple of weeks ago but we will write to get him in to update the committee. Is that agreed? Agreed.

Nos. 2019/456 and 2019/458 concern an email from the office of the Minister for Transport, Tourism and Sport on future reappointments of two persons. It is proposed to schedule a meeting in that regard as soon as the committee permits. Is that agreed? Agreed. I note to the committee that I have to attend the Topical Issue debate in the Dáil.

Deputy Kevin O’Keeffe: What about No. 2019/457?

Chairman: I apologise. It is an email from Tom McNeice from April about the FAI and the auditing firm. Does Deputy O’Keeffe wish to raise something? He is about to take the Chair.

Deputy Kevin O’Keeffe: The question is why the auditors only woke up when the media took hold of the issue. Should we write to the accountants?

Chairman: Does the Deputy want that correspondence to be sent to the Companies Registration Office, CRO, or FAI? The problem regarding the CRO is that the matter is before the courts now.

Deputy Kevin O’Keeffe: I am talking about the FAI and the auditing firm. Why was it three years later when they decided to go to the corporate enforcement officers? That is the big question. Why is it only now that the accounting firm has decided to lodge a complaint?

Chairman: I do not have a problem writing to them, but the matter is the subject of an investigation that could have a criminal outcome. It is also a matter which is before the High Court. It might be wiser to wait until that process has ceased. I point out that we are in public session.

Deputy Kevin O’Keeffe: I appreciate that. If the question is not resolved, I suggest we revisit it at a later date or even refer it to the Committee of Public Accounts.

Chairman: That is no problem.

Deputy Kevin O’Keeffe took the Chair.

General Scheme of the Aviation Regulation (Amendment) Bill 2018: Department of Transport, Tourism and Sport

Vice Chairman: I ask members, witnesses and those in the Gallery to turn off their mobile phones completely as they interfere with the recording equipment. I welcome Mr. Ronan Gallagher, Mr. Michael O’Connor and Ms Bronagh Treacy of the Department of Transport, Tourism and Sport to the meeting. They are accompanied by Mr. David Hodnett. I draw the attention of witnesses to the fact that by virtue of section 17(2)(I) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name

or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

Mr. Ronan Gallagher: The Minister has asked me to thank the committee for setting aside the time to facilitate pre-legislative scrutiny of the general scheme of the aviation regulation (amendment) Bill 2018. In November 2018, the Government agreed to draft legislation to give effect to the objectives of the national policy statement on airport charges regulation. Under the Aviation Regulation Act 2001, the Commission for Aviation Regulation, CAR, regulates airport passenger charges levied at by the Dublin Airport Authority, DAA, at Dublin Airport. Under the regulatory process set out in the current Act, the CAR establishes the maximum charge per passenger that the DAA can levy at Dublin Airport over the following five-year period. This is effectively a price cap on what the DAA can charge airlines for the various services it provides. Within the limits of this overall price cap, the DAA sets variable annual charges in respect of specific services, such as aircraft landing and parking. In 2015, the Department initiated a review of this regulatory model. This involved an independent economic assessment and report by Indecon international economic consultants and a public and industry consultation process. As a result, the revised regulatory policy, the national policy statement on airport charges regulation, was drafted and approved by Government and was published in September 2017. The general scheme contains the necessary legal amendments required to give full effect to the revised policy as set out in the statement.

The key points of that policy statement, which the general scheme addresses, are as follows. Dublin Airport will continue to be subject to price regulation in recognition of its significant market power. The primary purpose of the regulatory regime will be to protect and advance the best interests of current and future customers who use Dublin Airport. The CAR will no longer be mandated to have specific regard to the financial sustainability and viability of the DAA in making a regulatory determination. There will be a single stage appeals process which will involve taking appeals directly to the High Court. The statutory basis for ministerial directions relating to the price determination process will be replaced with a requirement on the CAR to have regard to current Government aviation and airport policy and other relevant stated policy positions, including national economic development and climate change. While ministerial directions are justified to ensure alignment with Government policy and issues of national significance, ministerial directions on issues already incorporated into or which are potentially at odds with statutory objectives may undermine the independence and authority of the CAR.

It is further proposed in the general scheme to provide the CAR with powers of direction in its relationship with the DAA to ensure there is effective consultation and transparency in setting the individual airport charges within the overall price cap and that charges do not unfairly discriminate between airport users. Currently, the CAR has a similar power of direction in its relationship with Irish-registered airlines under section 45A of the Aviation Regulation Act 2001. That section applies where an airline is failing to comply with EU regulations on passenger compensation and assistance for delayed flights. The general scheme also proposes to transfer the existing ministerial functions relating to transparency of airfares to the CAR. It proposes providing a statutory basis for the periodic review of the regulatory regime. It proposes to require the CAR to produce strategy statements and provide a statutory basis for performance reporting against published objectives and goals by the CAR. Finally, it proposes to provide the CAR with the power to make regulations to allow the DAA and airlines to make

some commercial agreements in a fair and transparent manner on a bilateral basis without direct regulatory instruction. Taken together, the proposed amendments represent a strengthening of the CAR's hand in its relationship with the DAA.

While it is fair to say that the DAA would probably prefer a different policy direction, the approach is in keeping with the Government's broader regulatory reform agenda. That agenda, which is set out in the Government policy statement on sectoral economic regulation, represents a meaningful change in the overarching purpose of economic regulation by placing the rights and interests of the consumer formally ahead of those of the regulated industry, which in this instance is the airport company. The focus of the reform proposals is to secure, through price regulation, outcomes that are in the best interests of the people who use the airport rather than necessarily the airport itself. However, a highly connected, financially stable and service-focused airport with a properly funded medium-term investment plan is in the interests of the users of the airport and of the company.

With the agreement of the committee, I propose to give a brief overview of the main parts of the general scheme of the Bill, which comprises ten heads. Head 1 is a standard provision that provides the Short Title and the commencement. Head 2 is a standard provision that sets out the interpretation. Head 3 amends the Minister's ability to make a direction to the CAR which relates to its decision making around airport charges. In its place, head 6 will expand on the criteria that the CAR will need to use in making a regulatory determination. Head 4 puts the requirement for the CAR to produce and publish a statement of strategy on a statutory footing and requires it to report on the progress being made. Head 5 enables the CAR to provide through regulations for regulatory flexibility.

Head 6 outlines the hierarchy of objectives that the CAR must strive to achieve. It provides that the CAR's primary objective is to protect and advance the best interests of the users of the airport. It sets out that the CAR must have due regard to Government policy on aviation, climate change and the promotion of competition. Head 7 replaces the appeal process, whereby the Minister would appoint a panel of aviation experts to review a determination of the CAR, with an appeal directly to the High Court. Head 8 provides for a review of the airport charges regulatory regime at least every seven years. This is in line with the Government policy statement on sectoral economic regulation.

Head 9 provides the power of direction to the CAR to ensure there is effective consultation and transparency in setting airport charges and to ensure the charges do not discriminate among airport users. Head 10 transfers functions relating to transparency of airfares to the CAR from the Minister. There is an obligation on carriers to make the prices of airfares more transparent. This can involve making available information on the full price to be paid for an airline ticket, including all taxes and charges, at all stages of the booking process and in advertisements. These functions are currently with the Minister. However, the Department considers that the CAR is the appropriate body for these functions, given its existing consumer protection roles relating to air passengers.

The general scheme set out the proposed changes to the current regulatory regime for setting airport charges at Dublin Airport, as set out in the national policy statement on airport charges regulation. The measures will enhance regulatory performance and oversight and strengthen the authority and independence of the CAR. They will also streamline the appeals process. The overall approach, as with many of the measures proposed in the general scheme, is in keeping with the principles set out in the Government policy statement on sectoral economic regulation, which was published in 2013.

The proposed amendments strengthen the regulator's hand in its relationship with the DAA. They refocus the overarching purpose of economic regulation by placing the rights and interests of the consumer formally ahead of those of the airport company. It is intended that the general scheme will form the basis of an aviation regulation (amendment) Bill, which is to be drafted with the legal advice of the Office of the Attorney General. To assist the committee with its consideration of the general scheme, I have provided a number of documents which outline the policy context and implications, including the 2017 national policy statement on airport charges, the 2013 Government policy statement on economic regulation, a departmental briefing document and a regulatory impact assessment. My colleagues and I look forward to assisting the committee in its consideration of this general scheme.

As the committee will be aware, last week the CAR published its draft regulatory decision for the period ahead. This draft decision will now be the subject of a statutory consultation phase. As we are now in that phase, my colleague from the CAR and I are restricted in what we can say about the specifics of the draft determination. Nevertheless, we will endeavour to be as helpful as we can around the mechanics of it.

Vice Chairman: I ask Deputies to speak to the particular heads of the Bill. We will take questions on each respective head.

Senator Pádraig Ó Céidigh: Gabhaim buíochas leis na finnítithe as ucht teacht isteach inniu. Cuirfidh mé na ceisteanna i mBéarla. I am not going to be long. My questions are quite general. I cannot be specific because all we have here are the heads of the draft legislation. Is it not the case that at the moment, the overarching purpose of the CAR is totally focused around the passenger? It is there already. I am questioning why we are looking at strengthening something that is already in some areas.

Mr. Ronan Gallagher: The background to this is an independent assessment by Indecon-----

Senator Pádraig Ó Céidigh: In 2015.

Mr. Ronan Gallagher: That was an extensive study of the DAA's market power. There was consultation. The industry participated fully in that process. Indecon made a series of recommendations. The Senator is right when he says that this does not represent a fundamental reshaping of the regulatory regime. While I would not describe the measures as tweaking, they are certainly an improvement because they involve nudging towards rebalancing. Provisions in the current Act require the CAR to have regard to the financial stability of Dublin Airport. When that is put into the criteria, in terms of making a determination, it places an onus on the regulator to make sure the airport is financially stable. The Department's view is that this is a matter for the management of the airport in the first instance. It considers that the regulator should be more concerned with setting a reasonable price cap that allows the airport to function over a period of time, and setting service standards within that. It is a matter for the company, rather than the regulator, to secure the financial stability of the company.

Senator Pádraig Ó Céidigh: Absolutely. I thank Mr. Gallagher for that reply. I have a couple of questions. It appears to me that the Department is moving some of its responsibilities to the CAR. I think Mr. Gallagher referred to that in his statement. I do not know whether this transfer is a good thing or a bad thing. I think it needs to be discussed and debated. Having said that, from my own experience outside here, I find the CAR absolutely first class and very professional. I think the biggest challenge the CAR might have in this context relates to its resources. That leads to another question.

The Department is talking about putting significant extra responsibilities and duties on the CAR. Greater accountability would be required of the CAR and the DAA in this matter. I am not sure whether sufficient resources are available or may be made available. I would ask questions about the respective roles of the Department and the CAR as we go forward. As I have said, it looks like there has been some delegation of powers or responsibilities from the Department to the CAR.

My third question relates to the appeals procedure. If this legislation goes through in the form currently being proposed, it appears that the CAR will have practically absolute or full authority without easy access to appeal. It appears that the only means of appeals being provided for here will be through the High Court. This is incredibly onerous and very difficult. It takes a lot of time and is very expensive. I believe there should be a more accessible and less expensive way of appealing.

My final question relates specifically to the DAA. I am aware from my previous experience that airlines use mobile assets, whereas airports have fixed assets in the ground. The tarmac cannot be moved. An airline can move from one airport to another. Dublin Airport carries approximately 85% of all passengers in and out of Ireland. I understand it expects to cater for approximately 32 million passengers this year. When an airport seeks to attract an airline, it is in competition with other airports in the UK and Europe for international traffic. I am concerned for us to ensure there is some form of safeguarding to allow our airports to compete on a level playing field. I question whether this type of regulation or legislation is in existence for other airports. As far as I know, Heathrow Airport is the only airport for which something like this is in existence. In the preliminary research I have done, I have not come across the existence of this type of approach in respect of other EU airports, or most other airports in Europe. I ask Mr. Gallagher to enlighten me in response to the questions I have asked.

Mr. Ronan Gallagher: I will take them in turn, starting with the Senator's question about the transfer of responsibilities. Within the general scheme, we are talking about one set of consumer protection powers around transparency and airfares. The rationale for it is that it is not policy rather it is the implementation of consumer rights. It was to bring clarity. The CAR has established a profile and a reputation, certainly in recent years. In other words, people know it is in place and what it does-----

Senator Pádraig Ó Céidigh: They do, yes.

Mr. Ronan Gallagher: -----albeit it took some incidents to draw attention to that. It is a type of a one stop shop to which consumers can make complaints and from which they can seek advice. That was the logic behind it. We are always in discussion with the CAR about resources. That happens on a rolling six-monthly basis. If there are resources that come from those extra functions, we will consider those. It is not clear with this one that it fundamentally changes what it needs to do but that is something we will discuss with it. We certainly will not be asking it to do things that it does not have the resources to do.

In terms of the other changes in the general scheme proposed, our view is that they do not add additional responsibilities on or accountability to the CAR but they certainly give it extra powers and authority, and that probably will make its job that bit easier in terms of compliance.

On the appeals procedure, that is something we will debate as the general scheme progresses to being a Bill. That proposal essentially falls in line with Government policy under the 2013 economic regulation policy which, among its recommendations, provides for streamlining the

appeals process and the use of the commercial courts. Currently, the Minister, as an interim step - obviously, one can always go to the courts as a final step - appoints an expert panel. In terms of Government policy, there are *ad hoc* panels in various pieces of legislation and often their impact is to provide a stepping stone. If a matter is substantive it ends up in the High Court anyway and the idea is to shorten that so that we would have some regulatory certainty.

With respect to costs, while I have not been involved in it, I understand that through even the *ad hoc* appeals process, depending on who it is that is appealing - let us be clear the appeals are by either Dublin Airport or the two big airlines, Ryanair and Aer Lingus - the various parties lawyer up and it is an expensive process. This is not High Court access to individual users. They tend not to be and so far have not been parties to the regulatory process. It is the airport and the two big airport customers that engage in the process.

On the overall regulatory policy, the fundamental principle around price regulating at Dublin Airport is established existing policy but we tested that with the Indecon review. The advice from that process was that the DAA had substantive market power and that this dominant position justified a continuation of price regulation. The Senator pointed out that Heathrow has a similar level of regulation. That represents Heathrow's market power within the British market, albeit that it has substantially more competition where it has competitive advantages in terms of its scale and connectivity. There are the other London airports and Manchester and Birmingham airports but the other London airports do not have anything like Heathrow's connectivity and Manchester and Birmingham airports are not near London, therefore, Heathrow is in a dominant position. The market assessment of Dublin Airport's power was that its customer base essentially was the entire island, albeit that the other airports provide services and are able to compete. If Dublin Airport was left unregulated, the risk would be that it would extend its market power and that would have a negative impact on the regional airports and the other two State airports as well as the airports in the North.

Senator Pádraig Ó Céidigh: Consideration should be given to having some sort of an appeal process in terms of the CAR before a case, as sometimes happens, would go to the High Court. There are quite a number of small airlines. The two larger airlines carry in the region of 80% of all passengers in and out of Dublin Airport. I would be supportive of the CAR. It has done a brilliant job. Also, the airport charges at Dublin Airport are, on balance, on the lower end of charges for airlines compared to other European airports. The CAR has much involvement in the success of that from a passenger perspective. I am concerned to ensure we would be fair to the DAA. It does a critically important job. I would like to keep it very much in focus with respect to its ability to do its job as effectively as it possibly can. Obviously, that needs an oversight. I fully agree with that. I am also concerned about the Department's ability to give ministerial direction and so on. That is a key area. I would like to hear what is the purpose of that or from where is that coming.

Mr. Ronan Gallagher: It is specifically in regard to the regulatory decision that the CAR makes. There are general powers of direction the Minister can give around other issues and we are retaining that. What we are specifically doing is removing the ability of the Minister to engage in or cut across what the CAR might be deciding based on its analysis and the regulatory process. That is a point of policy principle around what independent economic regulation looks like. As long as one has the fall-back of a Minister being able potentially - not that it has ever been done - to instruct the regulator what the outcome needs to be, that does not lend itself to being described as independent regulation. Part of this is to strengthen that. To be clear, as we take that away, we require that the CAR has full regard to national aviation policy and other

relevant Government policies, including climate change. That puts the onus on the Minister and the Department to be very clear what their aviation policy is and to make sure it is up to date so that the CAR can reflect on that. We certainly are not weakening the Minister's authority. It is just one area where the Minister has agreed it is not really appropriate that he retains that.

Senator Pádraig Ó Céidigh: If this goes through and is in legislation to whom will the CAR be accountable?

Mr. Ronan Gallagher: We are inserting in the Bill that is must, on a statutory basis, produce statements of strategy and performance indicators and that it must report to the Minister on the basis of that.

Senator Pádraig Ó Céidigh: It is accountable to the Minister and to the Department.

Mr. Ronan Gallagher: Yes, to the Minister and to the Oireachtas.

Senator Pádraig Ó Céidigh: It will continue to be accountable to them.

Mr. Ronan Gallagher: Absolutely, yes.

Senator Pádraig Ó Céidigh: Thank you.

Deputy Robert Troy: I thank the officials for appearing before us today. Senator Ó Céidigh hit on a key point of the current charges being set down. This has been done in amending the charges currently being charged by the DAA at Dublin Airport. It is the only airport that will be affected by this. How competitive is Dublin Airport with respect to its existing charges compared to its counterparts across Europe?

Mr. Ronan Gallagher: I am not sure if I have that specific detail. Generally, the DAA in terms of Dublin Airport is good value and competitive on price. I would say we have the specific information but I do not have it to hand.

Deputy Robert Troy: I am told it is the second most competitive airport in its category in Europe.

Mr. Ronan Gallagher: Yes, that is probably true and it is a good thing.

Deputy Robert Troy: It is a great thing. That fact that it is so cheap means it is able to attract the most people to utilise the airport and the bottom line is the passengers benefit the most from competitive charges.

Mr. Ronan Gallagher: It maintained that level competition while building terminal 2 and expanding its asset base.

Deputy Robert Troy: If it is so competitive on an international basis, why is there a need to change the structure in the way the charges are being applied? If it was the case that they were out of sync with our European counterparts or that there was price gouging going on, with unrealistic prices being charged and passengers being ripped off, there might be some justification for amending the practice. What is the justification for these amendments now?

Mr. Ronan Gallagher: This speaks to an earlier point. The regulatory review that was undertaken found fundamentally that the current regulatory regime is working, which speaks to the Deputy's point that there is not a huge amount broken. However, the review contained a series of recommendations for improvements that could be made. We certainly would not

characterise them as being fundamental improvements and nor do we say we think they would necessarily result in fundamentally different outcomes. The review came about a year or two after the broader economic regulatory review undertaken by the Department of An Taoiseach and the decision was made to make those minor improvements around how the regulation is pitched. This means being clear that first and foremost it is the customers, that is, individual people walking through the airport, who have primacy of import when the regulator is thinking about the future development of the airport. As to whether that gets us to a different point in five years' time in terms of regulatory determination, I do not know but the view was that improvements could be made. We are committed to doing periodic regulatory reviews, a practice which is now becoming embedded in legislation. While it is rare enough that we will do a review every five or seven years and find fundamental flaws, if we do not make incremental improvements as we go through, we may have to make fundamental improvements at some stage. The idea is that we just make incremental changes and the Deputy is correct in characterising this as something that is not obviously broken. It is a tidying up exercise.

Deputy Robert Troy: That raises the question as to why, at a time when the Department is very busy prioritising legislative proposals and coming forward with legislation, including finalising the Aircraft Noise (Dublin Airport) Regulation Bill 2018, there is an urgency around this. Why are scarce resources being committed to putting through a Bill that is not going to result in any fundamental difference? Mr. Gallagher has acknowledged that today. This makes me wonder if there is another agenda at play. I am not suggesting officials have another agenda but is there an attempt here to bring in a mechanism which would force the airport to reduce its charges further, in terms of taking out the point which acknowledges that the viability of the airport must be part of the consideration? This is our main gateway for connecting much of our high-end produce with overseas markets and for our tourism industry. Sometimes the importance of that indigenous industry to this country is forgotten but 280,000 jobs rely on the tourism sector. I have a fear that these changes could result in the DAA pulling back from carrying out much needed infrastructural investment, some of which would be critical if the airport is to grow. The Department has acknowledged that the current charging regime facilitated terminal two, something which its current political master railed against when he was in opposition. Enormous investment is needed to provide new landing spots, new gates, new taxiing facilities and, of course, a second runway. The officials are here as part of the pre-legislative scrutiny process and we are at a very early stage with this legislation but I am concerned that the proposed changes will have a negative impact on DAA's ability to do what is needed. We cannot lose sight of the fact that we must be on the side of the passengers going through the airport. We must ensure that they are getting value for money and are not being charged exorbitant fees but it has been acknowledged today that Dublin is the second most competitive airport in Europe. I am questioning the need for this at this point in time.

Mr. Ronan Gallagher: This Bill follows on from a commitment in the national aviation policy to carry out a review and to implement the findings of same. It is true that this is not a fundamental shift or change but is a rebalancing or refocusing. Fundamentally, we are dealing with an airport that has a market-dominant position. While it would not be fair to characterise it as a monopoly, it is as close as one could get to that. The review spoke to the fact that we have an effective regulatory regime but that it dates from 2001. Provisions such as the ministerial directions are of their time and speak to a period when policy makers were not fully convinced about what independent regulation looked like. If one looks at legislation from the 1990s, one will see the Government or Departments setting prices for various things, including electricity. We have had to step away from that, in line with European regulations and general regulatory trends. What we are doing is updating the regime, while also acknowledging that it was pretty

well conceived at the outset. In the context of the principles of independent regulation, the idea that the Minister would have this power of direction does not sit well. Is this critical legislation for which the Oireachtas should set aside time now? No, it is not. If it does not progress, will the country be worse off? No, it will not. This is legislation that is nice to have but not urgent. We are certainly not pushing it forward as something that has to happen immediately. That said, we think it represents an improvement on what we have now. We can test that as we go through.

In terms of the impact or any ulterior motives, the Bill strengthens the CAR in terms of how it engages with the DAA. The Department would view that as a good thing. Obviously, the DAA is an important national asset but it is well able to look after itself in all its dealings. The CAR will have to have regard to national development policy, economic policy and aviation policy. In that respect, it will have to ensure that we have an airport that is functioning properly and is financially stable. When one reads through the legislation, one sees requirements on the regulator to make sure that the airport is financially stable which looks a bit strange, given that there is a board and a senior management team who are well resourced and whose job it is to run the airport. To have a statutory obligation on the independent regulator to be concerned about that sits a little oddly.

Deputy Robert Troy: I have no difficulty in the board's ability to run the airport because we can all see how it has thrived over the last decade, in terms of passenger numbers and the fact that Dublin Airport is the second most competitive airport in Europe. The DAA is ticking all the boxes in terms of doing the right thing but my concern is that if there is a possibility of driving the charges down further, it could have a direct impact on the airport's ability to grow and make much needed investment. If such investment is not made, it will have a negative impact on the airport's ability to generate further employment and to ensure that passengers can go through the airport in a timely and efficient manner. If we do not have an appropriate number of landing bays and taxiways there is a possibility of ongoing delays, which will have an impact on the quality of service the airport can provide to passengers. While the charges might be a small bit lower, passengers' experiences could be adversely affected. I am concerned about that.

Will the strengthening of the CAR and the responsibilities being transferred to it result in it requiring additional resources in terms of personnel or is it adequately resourced to meet its new obligations should this legislation be passed?

Is there any indicative timeframe as to when the legislation will be brought to Second Stage? What is the timeframe for moving to the next stage?

Mr. Ronan Gallagher: I will touch on the risks and threats presented by reducing capped charges. To help the committee understand the regulatory process, the mechanics of which will not change under this proposal, the DAA and the airlines make substantive submissions to the CAR on their five-year or medium-term development plans and their forecasts for passenger growth. The regulator takes account of the existing capital stock, what it takes to maintain that stock, and the DAA's returns on it. It also takes account of depreciation. It estimates future operating expenditures and what an efficient operation would look like. It then subtracts the commercial revenues the DAA can make from car parking, retail and so on. This, combined with passenger forecasts, gives the CAR a basis for determining a reasonable revenue and income stream to allow the DAA to provide facilities for the identified passenger growth into the future. It determines this for a period of five years but, if things happen in between that run counter to some of those assumptions, it can go back and look at it afresh.

The points of disagreement between the regulator and the regulated company centre, as

these things do, around the margins, that is to say, around how much the company believes it needs to grow and how much the regulator does. That kind of tension is a good thing. In a way, the whole point is to replicate competition. There is no doubt but that the CAR's job is to put downward pressure on the DAA's costs. That is what it is trying to do but, at the same time, it is statutorily required to make sure that the airport succeeds. Over the period of all the determinations the CAR has made, the cap has fluctuated. It has been as high as more than €11 in 2010 and has been as low as €5.50 in 2005. It varies depending on the airport's capital projects and on what passenger growth is set to be. There is no risk of the CAR having a medium-term or long-term impact on the DAA's ability to do what it needs to do for the economy. It is about the nature of the regulatory debate and the argument around the margins. That is probably a healthy thing for the DAA to be run through.

With regard to resources, there is ongoing engagement with the CAR. It has carried out a general review, which it is discussing with us, of its capacity and resilience both in the context of this Bill and the broader context of the CAR's consumer protection functions. That work has been done by the CAR. At the moment we are in discussions and are seeking to determine what extra resources it needs. It is a small unit. Mr. Hodnett may have a different view, as he is entitled to, but I do not see the proposals in this general scheme driving a huge demand for resources, although the CAR faces a challenge with regard to resources generally. We are looking at that.

With regard to a timeframe, we would like to have this in place before the end of the year with, perhaps, a draft Bill in autumn. It would be good to bring the Bill to Second Stage at that time. Obviously, there are other Bills which are a priority so we will have to see where we end up on the list.

Vice Chairman: Before we conclude, I will ask one question. Given that this proposed legislation is all about comparing the status of Dublin Airport with that of other major airports in Europe, will there be a knock-on effect, either positive or negative, on the operations and costs of our smaller airports? Cork Airport, for example, depends on the DAA.

Mr. Ronan Gallagher: That is a matter of some debate. None of the other airports in Ireland is regulated so they are free to set their prices as they wish. The price set for Dublin Airport essentially becomes a market price or reference point for other airports. If Dublin Airport was not regulated it would be able to take a very dominant position in the market. It is reasonable to conclude that would not necessarily be good for the other airports as regards Dublin Airport's ability to encroach on their customers. The regulation is a good thing in terms of keeping the DAA growing. There is no direct link between the price set for Dublin Airport and those set for other airports, but it represents a reference point.

Vice Chairman: I thank our witnesses, Mr. Ronan Gallagher, Mr. Michael O'Connor and Mr. David Hodnett. Is it agreed that the committee has concluded its consideration of the general scheme of the legislation and will report to the Minister accordingly? Agreed. The transcript of this meeting shall be deemed to be the report of the joint committee.

The joint committee adjourned at 2.45 p.m. until 1.30 p.m. on Wednesday, 29 May 2019.