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Commission for Aviation Regulation
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By email

Re: Response to Draft Decision on Interim Review of the 2019 Determination

Dear Sir / Madam,

I refer to Commission Paper 2/2021 ("CP2/21"), dated 22 October 2021, regarding the above matter. Please find below Ryanair's comments on CP2/21.

The intention of CAR in conducting interim reviews of the 2019 Determination should be to lower costs at Dublin airport in order to stimulate traffic and deliver recovery for the Irish economy after the initial shock of the COVID-19 crisis. Unfortunately, this second interim review of the 2019 Determination follows the theme of the first review related to 2020 and 2021, in that it is aimed at assisting DAA's financial position and financeability at the expense of airline users, and ultimately passengers.

CP2/21 outlines the lengths CAR has gone to cushion State-owned DAA from the effects of the pandemic, with an estimated €200m - €220m being delivered to DAA through regulatory interventions over the period 2020 – 2022. No such efforts have been made by CAR to ease the financial burden on airlines using Dublin airport, which have equally suffered during the COVID-19 pandemic. It is insulting to airlines that CAR is at pains to point out how much it has saved DAA without pointing out that these interventions come at the cost of airlines.

The proposed actions outlined in CP2/21 are premature, and in the case of the forthcoming State aid to DAA, entirely absent. We have always advocated the "no review" option as the most appropriate CAR action in these interim reviews. We reiterate that there is still significant uncertainty as to how traffic will recover as the economy recovers from the crisis. The aviation industry needs to settle into a steady state before any CAR intervention should take place. The end of the current regulatory period in 2024 appears to be a reasonable time for renewal of the regulatory settlement at Dublin airport, albeit we believe it would be irrational and unlawful for CAR not to take into account the forthcoming State aid to DAA in the 2022 price cap.

It appears CAR has already made up its mind to adopt the proposals in CP2/21 therefore we will keep our comments on the specific proposals limited. To the extent the proposals in CP2/21 simply roll over from the previous interim review, we maintain our comments from our submissions on the previous review.

Reintroduction of inflation adjustment

We believe the reinstatement of the inflation adjustment to be premature. The rate of wider consumer inflation is not being tracked by air fares, which are at record lows in order to stimulate demand. Fares will stay low well into 2022 and it is irrational that airport charges would have the CPI reintroduced when airlines will need to heavily discount fares (our primary revenue stream), while simultaneously being exposed to (likely high) inflation on our cost base.

Suspension of the clawback of allowed capital costs associated with unspent capex

We maintain that leaving DAA to benefit from airport users continuing to fund a number of triggered capex projects that have not commenced and are unlikely to be commenced within the foreseeable future is not acceptable and is irrational. Airport users will continue to pay for projects that have not commenced and, indeed, are no longer required and may never commence.

Service quality metrics for 2022

The reintroduction of a financial penalty system for quality of service (QoS) failures is a necessary step, however CAR does not go far enough. Reintroducing only a limited financial penalty system for only two QoS metrics (security queue times and wait times for passengers with reduced mobility) will not have any real impact on DAA's incentives to improve its QoS. DAA has had 18 months to adjust its operation to maintain QoS so we do not see any reason why the full QoS regime, as outlined in the 2019 Determination, would not be re-established for 2022. The CAR proposal to simply "monitor and report performance" regarding the other QoS metrics will provide no incentive to DAA to improve performance in these areas.

State aid gift to DAA

We are extremely concerned that DAA's proposed incentive programme for Winter 2021/2022 is being funded by circa. €90m State aid from the Irish government, yet CP2/21 does not make any adjustment to the price cap / regulatory settlement to account for this fact. In the absence of CAR intervention, DAA will likely under-collect on permitted average revenue per passenger due to the incentive schemes, which will allow it to: (a) increase published charges to an irrational level in order to hit the price cap[1], and/or, (b) collect the under-recovery from airlines in future years through increased charges. Unless CAR treats the State aid to DAA as aeronautical revenue for the purposes of 2021 and 2022 price cap compliance, DAA will receive an immediate windfall gain of circa €90m through making up for the "lost" revenue due to the incentive scheme through increased published charges, and/or, eliminating the positive effect of the Winter 2021/2022 incentive schemes through future charges increases to make up for the artificial "under-recovery". CAR must confirm that DAA will not be permitted to recover any under collection associated from the receipt of State aid through the K Factor in any future periods.

[1] DAA is proposing price increases of between 5% and 9% on its runway and per passenger departing charges for 2022 in its on-going consultation with airport users on 2022 charges, demonstrating their intent to increase charges to hit the cap.

CAR notes in CP2/21 that its COVID-19 price cap interventions have been worth €200-220m to DAA. It is now time that CAR adjusts the regulatory settlement to remove this perverse outcome, which will essentially leave DAA in the same financial position without penalising airlines by forcing them to pay for an artificial "under-recovery" against the price cap.

2023 Building Blocks Review

We note the CAR intention to conduct a building blocks review in time for 2023. As noted previously, we think this is premature and the process is likely to be distorted by continuing uncertainty over passenger demand, possible reintroduction of border restrictions, required Capex and Opex, and streams of commercial revenues. Ryanair will obviously engage with the process but it is likely to be extremely difficult to reach consensus on the building blocks amid continuing uncertainty. A regulatory settlement that is reached when the building blocks are subject to a wide variation in outcome is likely to be subject to more interim reviews after 2023. The least disruptive outcome for all stakeholders is to continue with the 2019 Determination until 2024, which would at least deliver some certainty on the price cap until 2025.

Yours sincerely,

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Eoin Kealy
Head of Competition & Regulatory