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Ab/MOL/8023

7th August, 2009

Mr Cathal Guiomard
Commission for Aviation Regulation
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Alexandra House
Earlsfort Terrace
Dublin 2

RESPONSE TO AIRPORT CHARGES DRAFT DECISION PAPER CP3/2009

Dear Mr Guiomard,

I refer to your draft determination (CP3/2009) issued on the 18th June 2009 and hereby wish to submit Ryanair's formal response to this decision paper as requested.

1. **Ryanair calls for the break up of the DAA airport monopoly and an end to the CAR's failed regulatory regime.**

   The UK Competition Commission (UKCC) has recently completed a two year investigation of the UK's BAA airport monopoly and its regulation by the Civil Aviation Authority (CAA). The UKCC concluded that the CAA had failed to properly regulate the BAA monopoly and confirmed in its report that:

   a. "The BAA's monopoly ownership of airports has adversely effected competition.".
   b. "The way the BAA has conducted its business has adversely effected competition."
   c. "The inadequate regulatory regime operated by the CAA has adversely effected competition."

   The UKCC, recognising that the regulated airport monopoly model had failed in the UK and recommended that the BAA monopoly be broken up in favour of allowing competing airports to deliver what the BAA monopoly and the CAA's regulatory regime had patently failed to.

   Since Ireland's DAA airport monopoly and the CAR regulatory regime was modelled on the now discredited UK model, Ryanair calls for an end to the DAA airport monopoly, through the sale of Cork and Shannon airports in the open market and by allowing a competing terminal(s) to be developed at Dublin Airport which would allow airline users and passengers to choose between the alleged "quality of service" at high costs currently delivered by the DAA monopoly or the alternative of lower cost, more efficient terminal facilities favoured by Ryanair and many other low fares airlines.

Ryanair Ltd.
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V.A.T. REG. NO. 4749148U

2. **The CAR has become a victim of regulatory capture by the DAA**

   Ryanair contends that the Draft Determination supports Ryanair's belief that the CAR has become a victim of regulatory capture by the DAA monopoly.

   The UKCC has exposed the fallacy of the regulated airport monopoly model, and the inadequacy and failure of civil servant regulation which prioritises the protection of excess profits by the airport monopoly under the guise of "financial viability" and subjugates the reasonable requirements of users (who are obliged to pay higher prices for this regulatory capture) who have repeatedly expressed their preference for efficient and timely low cost airport facilities, designed to minimize passenger delays and dwell times in the Dublin Airport terminal.

3. **The CAR has failed to take account of the effect of competition (either competing airports or competing terminals) at Dublin Airport.**

   Despite its substantial staffing and budget resources, the CAR has made no attempt over the period since the last determination to survey, review or study the trends of pricing at international airports or the effect of competition on airports, which has resulted in substantial price reductions for airport users.

   The theory of regulation is that a competent independent body is charged with replicating the effects of competition upon a regulated monopoly or utility in the interests of promoting or replicating the effects of competition and protecting the users/consumers from monopoly abuse.

   There is an extensive body of information available to the Dublin Airport users, which the CAR have failed to enquire into or take account of, all of which show that airport charges at many UK and European airports have been falling in recent years in response to the emergence of low fare air travel, and the stated consumer preference for lower prices and efficient terminal facilities over the outdated regulated monopoly model which delivers expensive, over-specified terminals, and higher users charges because it ignores user needs.

   The CAR has failed to take account of these developments in its draft determination.

   The marked differential in the trend of prices at Dublin Airport compared to a basket of other major city airports across the UK and Europe can be demonstrated by the following table which shows that DAA has been inexorably raising prices (due to the failure of the CAR to properly regulate the DAA) while many other major city airports across the UK and Europe have been lowering prices and developing efficient terminal facilities in order to compete for and win traffic growth.

   It is particularly noteworthy that Birmingham Airport (once freed from the shackles of DAA part ownership and influence) in 2007 has began to significantly reduce user charges in response to competition from other adjacent city airports including Manchester, East Midlands and to a less extend London Stansted.

Airport charges 2006-2008 expressed by reference to 2006 base charges

Airport	2006	2007	2008	Change
Dublin	100			
Paris BVA	100			
Barcelona (Gro)	100			
Edinburgh	100			
Milan (Bergamo)	100			
Birmingham	100			

* **(This table is confidential – contains commercially sensitive information)**

The impact of competition on reducing user charges and improving services has been demonstrated over the past 12 months in the case of Dublin Airport by the emergence of competing carpark providers in the vicinity of the airport.

These commercial carparks, as well as competition from local hotel carparks has forced the DAA to substantially lower its parking charges (and improve its carpark service).

Dublin Airport's response to this competition substantiates Ryanair's long held belief that the most effective way to lower prices and improve efficiency at Dublin Airport is to introduce competition.

This is why Ryanair and other users continue to call for a competing (low cost) terminal facility at Dublin Airport (a development promised in the 2003 Irish Government programme – but subsequently abandoned following pressure from the DAA and the Irish trade union movement) which will significantly lower Dublin Airport's user charges and improve services.

The CAR's draft determination has ignored the impact of competition on Dublin Airport's carpark prices over the past 12 months and has failed to draw the same conclusion as the UKCC which is that competition is the best way to improve and advance the reasonable requirements of users/consumers, particularly in the case of the regulated airport monopoly model which has demonstrably failed to promote competition or meet the reasonable requirements of users.

It is an interesting and revealing fact that the CAR's draft determination allows Dublin Airport to recover all of its recent decline in carparking revenues, through the proposed higher price cap which obliges users to pay higher aeronautical fees to the Dublin Airport monopoly to cross subsidise Dublin Airport's reduced commercial revenues under a single till price cap as the CAR claims to maintain the DAA's "financial viability".

4. The CAR has failed to take account of the reasonable requirements of users

Despite its substantial headcount and budget resources, the CAR has over the past 5 years taken no action to monitor, survey, or enquire into the reasonable requirements of users. Despite the fact that the overwhelming majority of Dublin Airport users have come together to form the DACC, the Commissioner, despite repeated invitations, has regularly failed to attend meetings of the DACC.

Despite widespread user opposition to Dublin Airport's excessive and profligate capital expenditure projects, to many of these unnecessary projects, and the over specification and gold plating of these facilities have been largely ignored and/or dismissed by the CAR in its Draft Determination.

The CAR's failure to take account of, or give appropriate weight to the reasonable requirements of users in its draft determination is evidenced by the repeated failure of the CAR in this document to refer to, take account of, or accept the stated requirements of Dublin Airport users, as expressed in the 2009 CIP User Consultation meetings, all of which were recorded by the CAR in transcript form and which repeatedly exposed Dublin Airport management making false and contradictory claims, dismissing the requirements of users, and engaging in repeated examples of regulatory gaming.

The draft determination is littered with examples of where the CAR and/or its consultants unquestioningly accepts unverified statements, claims and numbers produced by the DAA as facts, in order to support the DAA's proclivity for excessive capex and higher airport charges, while repeatedly ignoring the expressed reasonable requirements of the overwhelming majority of Dublin Airport users as represented by the DACC and individual airlines at these consultation meetings.

These numerous and repeated examples of the CAR's passive acceptance of DAA claims, while ignoring the requirements and factual evidence provided by users is detailed in our attached Paper B "Chapter by Chapter Submission".

5. **Users have been denied the opportunity to make informed analysis and comment on the Draft Determination by the CAR's widespread redaction of information, and an inadequate 7 week period to analyse and respond to the Draft Determination.**

   By redacting large swathes of the Draft Determination and refusing to provide this information to users, the CAR has denied users the ability to understand and/or make informed comment on the Draft Determination. It has denied users the ability to query, validate and benchmark both the redacted data and the assumptions upon which the Draft Determination is based. In so doing the CAR has severely handicapped user ability to submit a reasoned, rational, and informed response to the draft determination

   The timetable imposed (without consultation) by the CAR provides users with an inadequate seven week period in which to read, analyse, understand and respond to a substantial (18 page) Draft Determination published by the CAR. Whereas the CAR and the regulated monopoly have only one airport (Dublin) to address and deal with, Dublin Airport users have not been given sufficient information or adequate time to enable them to participate in an informed way in this process, for just one of the many airports they operate to. For example, Dublin Airport is just one of Ryanair's over 150 airports, which makes it difficult to divert scarce management and regulatory resources over such a short – 7 week – period, to study, understand and respond to such a substantial, heavily redacted and detailed document.

This short 7 week window for user responses would be made considerably easier for users if the CAR published its draft determination in an open and transparent manner. Instead however the CAR has redacted large swathes of cost and efficiency information on which it bases its findings and conclusions. In many cases the CAR claims this redaction is for "confidentiality reasons", a claim which is manifestly inappropriate in the case of Dublin Airport, which has no competitor and therefore suffers no competitive threat as a result of the publication of this information.

Ryanair believes that further time should be given to Dublin Airport users – a minimum period of 12 weeks would be reasonable – in order to understand, analyse, benchmark and comment on the CAR's draft determination and that this consultation period should start from the date on which the Commission provides users with a transparent (i.e. non redacted) version of the Draft Determination, with all of the facts, figures and supporting analysis provided in an open, honest and transparent manner by the CAR to Dublin Airport users.

6. **Terminal 2 is not required and should be mothballed until Dublin Airport traffic reaches 30 MPPA.**

Ryanair finds itself in the unusual position of supporting the recent call by SIPTU, that the DAA should mothball Terminal 2 "until such time as passenger traffic is restored to realistically feasible levels". The CAR's Draft Determination proposed optimistic forecast passenger volumes at Dublin Airport of between 21m in 2009 to 23m (MPPA) by 2014.

Recent independent capacity analysis (Appendix A) of existing terminal facilities at Dublin Airport (incl. Pier D) confirms the passenger capacity of Terminal 1 has risen to approx. 30MPPA. These figures confirm that Terminal 2 is significantly oversized (a fact previously affirmed by the CAR) and will not be required at Dublin Airport until some time well after 2014.

It therefore follows that Terminal 2 is not required either by short or medium term traffic forecasts, it does not meet the reasonable requirements of the overwhelming majority of users and it should be mothballed until such time as annual traffic at Dublin Airport reaches 30 MPPA (a figure which looks increasingly unattainable as the DAA raises aeronautical charges and the Irish Government imposes a €10 tourist tax which has inflicted further damage upon Dublin Airport's traffic and growth forecasts).

It makes no financial nor economic sense to open this second terminal, which will result in a substantial (more than doubling) increase in the Dublin Airport's day to day operating costs (Opex) which will then be passed on to Dublin Airport users, all of whom can be comfortably accommodated in the existing Terminal 1 at current opex.

The CAR's final determination should exclude all capex and opex relating to Terminal 2 from the calculation of the price cap until such time as the annual traffic at Dublin Airport reaches 30 MPPA.

7. **The CAR's Draft Determination rewards Dublin Airport for its commercial failure with an 18% higher price cap.**

   In a remarkable demonstration of regulatory capture, the Draft Determination confirms that the price cap imposed on users in the next regulatory period will be "18% higher" than it would otherwise be if the DAA had achieved its own traffic forecasts. The CAR is rewarding Dublin Airport for its commercial failure (to achieve its traffic forecasts) with higher prices.

   Ryanair can confirm that this failure is due to the DAA's policy of imposing high and uncompetitive user fees. The DAA has repeatedly rejected offers from Ryanair of substantial traffic growth in return for lower or discounted fees.

   There is little commercial justification for the current traffic decline at Dublin Airport – other than the DAA's high and uncompetitive costs – when Dublin Airport's largest user, Ryanair, continues to grow traffic by 15% (or 9 million additional passengers) per annum.

   The CAR's policy of rewarding the DAA with a higher price cap because of its own commercial failure, fails to meet the reasonable requirement of users.

   There are numerous other examples in the Draft Determination of where the CAR allows Dublin Airport to cross subsidise declining revenues in other non aeronautical (commercial) areas including declining carpark revenue, vacated office space, the failure of Dublin Airport's inhouse retailing operations to grow in line with the growth rates achieved by concession retailers, the decline in cargo and G.A. revenues, all of which are a result of the commercial incompetence and/or failure of Dublin Airport management. Yet all of these shortfalls are cross-subsidised and made good by higher aeronautical charges under the 18% higher price cap in the Draft Determination.

   The CAR's policy of awarding an 18% higher than otherwise necessary price cap to compensate the DAA for declining traffic, and management failure/incompetence in its commercial activities fails to meet the reasonable requirements of users and fails to promote the development of efficient airport operations at Dublin Airport.

8. **The CAR's Draft Determination fails to address the regulatory gaming by Dublin Airport.**

   As Ryanair's submission (Appendix C) reveals, the Draft Determination has repeatedly failed to address or eliminate regulatory gaming by the DAA in many areas of which the following are just a small sample:

   a. The excessive and inappropriate capex on T2 which includes a 5 storey terminal building (3 stories of which are for commercial activity).
   b. A separate building for deep queuing check-in spaces (at a time when users are moving to web check-in, thereby eliminating check-in queues).
   c. The CAR's own finding that T2 is "substantially oversized", has not been addressed.
   d. Dublin Airport's demolition of the 10 year old Pier C facility to make way for T2 has not resulted in the cost of Pier C being eliminated from the RAB. In fact quite

the reverse, it appears that the DAA have been allowed to recover all of the capital costs or Pier C from users through accelerated depreciation, despite the fact that users have been denied the use of Pier C for over 1 year now.

e. The recently constructed shopping/restaurant extension of Terminal 1 (know as T1X) should (but has failed to) be excluded from the RAB. The DAA repeatedly but falsely assured users that the commercial revenues from this extension would pay for this facility, yet the CAR has allowed this substantial capex, which was not required by airport users, to be included in the RAB.

f. The total cost of Pier D at approximately €130m has been added to the RAB, despite the fact that this design or cost was not required by airport users. Airport users had previously expressed their preference and requirement for the original Pier D which was included in earlier Dublin Airport CIP's at a cost of approx €30m.

   The CAR should (but has failed to) exclude any surplus capex over this €30m figure from the RAB, which was incurred solely because Dublin Airport decided to proceed with an unnecessarily large and overspecified Pier D, with an unnecessarily long and over-specified walkway to connect it to Terminal 1. The DAA falsely claimed that this redesign was required for planning purposes, but this claim has been disproven by the planning authorities of Fingal County Council.

g. The substantial (approx. €800m) proceeds generated by the DAA from the sale of its investments in Great Southern Hotels Group, Birmingham, Dusseldorf and Hamburg airports, all of which were originally funded from high charges and excess profits at Dublin Airport, should have been applied to or deducted from capex at Dublin Airport, and should therefore be deducted from the RAB. As Ryanair's analysis confirms, the CAR has ignored these proceeds in its analysis of the DAA group balance sheet and its financial viability.

   The CAR's use of an FFO – debt ratio as a measure of the DAA's financial viability is inappropriate, as it allows the DAA to engage in regulatory gaming. By retaining these proceeds in cash, rather than applying them to reduce debt, the CAR allows the CAA to reduce this cash figure by 50% for the purposes of this FFO – debt ratio, whereas if these proceeds were simply used to pay down debt, then 100% of the proceeds would be taken into account for the FFO – debt ratio calculation. This is one of many blatant examples of regulatory gaming by Dublin Airport and the CAR in the Draft Determination.

9. **The CAR's Draft Determination has failed to eliminate and in fact rewards repeated examples of commercial incompetence and failure by the DAA, as well as excessive and uncompetitive costs in many areas.**

Ryanair's detailed "Chapter by Chapter" submission (Part B), which in many cases has been hampered and limited by the extensive redacting/suppression of source information by the CAR in the Draft Determination, exposes numerous examples of commercial failure/mismanagement by Dublin Airport, as well as repeated cases of high costs and inefficiency within Dublin Airport and DAA Head Office including the following notable examples:

a. Dublin Airport Security staffing ratio is up to three times higher than the ratio for "unidentified" comparator airports.
b. Dublin Airport roster patterns are "not aligned with passenger throughput".
c. Dublin Airport's cleaning costs "appear very high".
d. Dublin Airport's Commercial Department is "significantly overstaffed" and of questionable competence given the flight of tenants who have vacated high cost commercial space at Dublin Airport in recent years.
e. Dublin Airport's in-house retail operations significantly underperforms compared to the growth of concessionaire retailers at the airport.
f. DAA's Head Office incorporates a paid for "staff nursery" which DAA staff do not pay for, and it is paid for entirely by airline passengers by being hidden in DAA Head Office costs, when it clearly does not meet the reasonable requirements of users.
g. Dublin Airport Head Office contains a "high underlying level of non management staff" and "a very significant staff complement" compared to "unidentified" comparator airports.
h. The Draft Determination confirms that the DAA's airport management and Head Office costs are three times higher than "unidentified" comparator airports.
i. The Draft Determination fails to ringfence the cost and revenues associated with the Dublin Airport City (DAC) speculative property development. Ryanair believes it is entirely inappropriate for a regulated airport monopoly to be engaged in land speculation or speculative property development such as the Dublin Airport City.

   The CAR's claim that Dublin Airport City is not sufficiently connected to Dublin Airport to be included in the RAB is untenable, when the DAA's own promotion material for DAC highlights the advantages of the "internal people mover from DAC to the airport terminal, allowing executives a "6 minute journey time" from their desk to check-in.
j. The CAR's Draft Determination has ignored the reasonable requirements of users that the costs of the DAC landbank and its planning, design, development and promotion to date should be ringfenced and excluded from both the RAB and Dublin Airport Head Office costs. The CAR's failure to do so means that Dublin Airport passengers are subsidising the cost of the land speculation and/or speculative property development of DAC in a further blatant example of regulatory gaming.

Ryanair has divided its detailed submissions on the Draft Determination in two substantive parts (A and B) as follows (supported by 5 Appendices as per the attached):

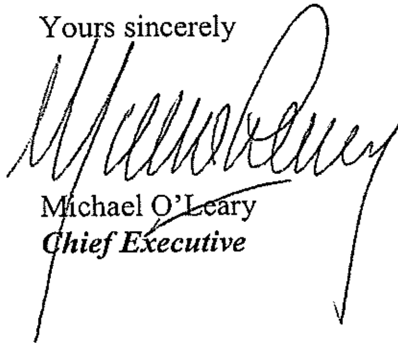
Part A - which is a general submission highlighting those areas in the Draft Determination where the CAR has failed to comply with its statutory obligations and/or has made substantial errors, omissions in its application of economic and regulatory principles in the Draft Determination.

Part B – which is Ryanair's "Chapter by Chapter" Submission to the Draft Determination (or at least those sections which were not redacted) upon which Ryanair has been allowed to make an informed comment. During the short seven week period in which airport users have had an opportunity to finalise submissions on the Draft Determination, Ryanair has been in correspondence with the CAR seeking responses to queries raised well in advance of the Draft

Determination, as well as those arising from the Draft Determination itself. Given the late response by the CAR (just 5 days before the Submission deadline), and the CAR's refusal in many cases to address these queries or provide Ryanair with the information needed to make an informed submission, Ryanair reserves the right to respond in detail to this correspondence from the CAR and append these further responses to this submission to the CAR's Draft Determination.

We look forward to receiving the CAR's response to Ryanair's submission and those of other users to the Draft Determination and to meeting with the CAR over the coming weeks in order to ensure that all of the concerns raised by Ryanair in the attached submission are addressed and that the final determination of the CAR complies with its statutory obligations to meet the reasonable requirements of users to protect the reasonable interests of users and the timely economic development and operation of Dublin Airport.

Yours sincerely



Michael O'Leary
Chief Executive

RYANAIR
SUBMISSION TO THE COMMISSION FOR AVIATION REGULATION ON AIRPORT CHARGES DRAFT DECISION PAPER

Part A	General Submissions
Part B	Chapter by Chapter Submissions

- Appendix A - Capacity Assessment T1 (30mppa)
- Appendix B - Project by Project CAPEX Reconciliation 2006-2009
- Appendix C - CIP 2010 - 2014
- Appendix D - Indecon/Jacobs Opex Analysis
- Appendix E - DAA Cost Saving Claims (*IRN 1/7/09*)

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PART A
General Submissions

7 August 2009

Contents

Section	Description
1	Executive Summary
2	Differential Pricing / Low-Cost Terminal
3	Commercial Revenues; Single Till v Dual Till.
4	Mothballing T2.
5	T1X Incremental Revenues and Remuneration
6	Inclusion of Indexed Depreciation in the yield formula
7	Failure to recognise the benefits of the debt inflation shield when assessing returns to DAA.
8	Inappropriate/unexplained X-Factor
9	Audited Regulatory Accounts
10	Cost of Capital – Equity Risk Premium
11	Cost of Capital – Beta
12	Cost of Capital – General
13	Financial Viability.
	Annex 1 Worked Example A – C

SECTION 1
Executive Summary

a) **Low Cost Facilities & Differential Pricing**
In an era when "low-cost" is the dominant form of air travel, when DAA's biggest customers are, or are seeking to become, efficient low cost carriers and when the trend away from full service and towards low cost, no frills travel is accelerating, it defies logic that neither DAA nor CAR have sought to address the lack of facilities suitable for such low cost carriers at Dublin Airport. Ryanair addresses the need for low cost facilities and differential pricing in Section 2 of this submission.

b) **Single till –v- Dual till.**
The regulatory game is played by DAA so well, and to such an extent, that Aeronautical Revenues are subsidising commercial revenues, the latter being insufficient to cover the fixed costs associated with commercially oriented capital developments at the airport. The only beneficiary of the significant commercially oriented capital expenditure at Dublin Airport is DAA, as it receives "excess profits" through both guaranteed "return on" and guaranteed "return of" such unwarranted investment, sanctioned by CAR and underwritten by users.

The CAR has ignored this subsidisation of commercial activity by aeronautical revenues, has failed to gather the information that would enable the deficiency to be highlighted and is waiting for a suggestion from users regarding whether or not it should inform itself regarding such matters.

Ryanair addresses the need for adequate information to enable relevant parties to assess whether a dual till or the single till regime would better serve the needs of current and prospective airport users in Section 3.

c) **Mothballing of T2**
If the opening of T2 necessitates incurring more operating expenditure in T2 than will be saved as a result of reducing passenger throughput in T1, Ryanair calls for the "mothballing" of T2, since its opening cannot be justified on the basis of current or future traffic forecasts until T1 is operating at capacity. The CAR should set the price cap in a manner that will ensure that this result is achieved.

When passenger throughput is moved from T1 to T2 the depreciation regime for T1 should become unitised rather than remaining time based - which is only relevant and appropriate when it is being worked to capacity. Both issues are dealt with in Section 4.

d) **T1X Incremental Revenues and Remuneration.**
Incremental revenues from T1X are not projected to occur until after 2014. It is inappropriate in such circumstances to remunerate DAA for this facility and the €3.8m per annum that has been included in the yield table on the basis of the DAA submission should be excluded. This issue is dealt with in Section 5.

SECTION 1
Executive Summary

e) Excess Profits through use of Indexed Depreciation to calculate "Return of Investment

In sworn testimony the current Commissioner has asserted that basing depreciation calculations on the indexed RAB would allow the DAA to earn "excess profits". Notwithstanding this sworn testimony, this is precisely what the commissioner is now allowing.

The Commissioner's volte-face was stealthily introduced without adequate notification to users and despite repeated requests he has refused, then and now, to explain, rationalise or consult with users in any meaningful way as to how his now diametrically opposed position can properly be justified.

Ryanair submits in Section 6 that the passage of time does not make right the commissioner's position and that until such time as the commission affords users adequate explanation and appropriate consultation the DAA's "return of" investment should be calculated on the basis of un-indexed historic cost depreciation.

f) Failure to Account for the Benefit to the DAA of its debt inflation shield in assessing returns

Ryanair submits in section 7 that CAR's failure to make appropriate allowance for a debt inflation shield that is well recognised in both financial theory and in the practical assessment of capital investment decisions, is leading to unintended, continuous and materially excessive returns being made to the DAA at the expense of Airport users.

g) Audited Regulatory Accounts

Airport users are disadvantaged by the lack of availability to them of current and historical Audited Accounts of the regulated entity that is Dublin Airport. The CAR has contended that such accounts are not relevant to its determination, whereas Ryanair argues that it a matter of critical importance to the process that users have full access to fully audited accounts of the regulated entity to enable them to adequately consult and make appropriate submissions relating to the draft determination. This issue is dealt with in Section 8.

h) Efficiency and Inefficiency Allowances – The X Factor.

CPI-X price cap regulation sets out to incentivise regulated entities to strive for efficiencies. The X in the title is commonly understood to represent an efficiency factor. If the regulated entity can beat the efficiency factor then, within the period of a determination, it retains the benefit gained from those additional efficiencies.

In the 2002 to 2005 period the Commission used the X factor as an efficiency factor.

From 2007-2009, what had previously been an efficiency factor suddenly became an inefficiency factor, with the DAA being allowed to increase charges to users and by almost double the rate of inflation without consequence, penalty or explanation. The matter is dealt with in Section 9.

SECTION 1
Executive Summary

i) **Cost of Capital**
It is inappropriate to correlate the risks of holding equities in general with the risks of holding equities in regulated entities where the financial viability is statutorily guaranteed. Ryanair's submissions in relation to Equity Risk Premium as a constituent of the cost of capital are set out in section 10

It is equally inappropriate to incorporate into the cost of capital any amount designed to compensate investors for systematic risks when the regulatory process has the de facto effect of eliminating those systematic risks. Ryanair's submissions in relation to Beta are set out in Section 11.

j) **Financial Viability**
The approximately €800 million proceeds received by the DAA from the sale of its investments in GSH and Birmingham, Düsseldorf and Hamburg Airports were originally funded by excess profits generated from monopoly charges at Dublin airport. Any manipulation of airport charges required to massage Financial Ratios in order to maintain credit ratings would be wholly inappropriate whilst such a cash pile exists in the balance sheet of the company

SECTION 2
Differential Pricing and Low Cost Terminal

a) In CP6/2007 the Commission indicated that;

i. *"The commission supported the principle of users being charged different prices for different levels of service"*

ii. *"The costs of future capital expenditure plans to improve the quality of service in T1 (or T2) would only be included in the RAB if users of the terminal indicated a willingness to pay for the improvements. Where users indicated a preference for lower charges rather than higher service quality, the DAA should seek to meet these requirements."*

iii. *"The commission reiterates that it is keen for the DAA to tailor services for users at Dublin Airport so that if different users would prefer different mixes of quality and price, these options should be provided where possible. The building of a second terminal will afford the DAA more opportunity to do this. Airlines should be offered non discriminatory access to both low-cost and high cost facilities, when both are available."*

iv. *"If T1 users indicate a preference for a lower quality of service and lower airport charges, the commission will expect the DAA's plans to reflect these preferences"*

v. *"In respect of the call from certain users for low-cost facilities, the DAA argued that airlines may not represent the needs of passengers using Dublin Airport. The DAA presented research it had commissioned that it suggested demonstrated a uniformity of willingness to pay for service enhancements across all passengers"*

vi. *"The commission is willing to consider evidence of a discrepancy between the preferences of passengers and their airlines when assessing development plans at the airport."*

b) It is DAA's position that there is a uniformity of willingness to pay for service enhancement across all passengers. Ryanair disagrees with DAA's position, and submits that it (Ryanair) is ready, willing, able, and should be permitted to build and operate its own low cost terminal at Dublin airport at no cost to DAA.

c) If the DAA's assessment that user needs are better understood by the DAA than by Airlines is correct, then it will have little to fear from this Ryanair initiative as passengers will – if the DAA's research is to be believed - gravitate towards the high cost, full service facilities offered by the DAA notwithstanding the cost differential. In such circumstances, Ryanair would be left nursing its investment in its own underutilised terminal.

SECTION 2
Differential Pricing and Low Cost Facilities

d) If on the other hand, Ryanair's assessment is correct, then the needs of users (present and future) will be more fully and properly catered for as passengers gain the ability to choose between various service qualities in competing and differentiated facilities, at a variety of appropriate costs.

e) Ryanair submits that such differences of opinion as exist between DAA and Ryanair on this matter should be embraced as the real drivers of competition and efficiency that they would truly represent in an open market.

f) That the Commission has chosen not to address the inexorable rise in popularity of and demand for low cost air travel by ensuring that appropriate facilities are made available at Dublin Airport to meet the present and future needs of low cost airlines and low cost travellers alike, demonstrates how fundamentally flawed Irish Aviation's regulatory process has become in stark contrast to the break-up ordered of the BAA Airport monopoly in the UK by the Competition Commission in that jurisdiction.

g) Providing a dedicated low cost terminal is critical to addressing the needs of present and future airport users. This was recognised as far back as 2001 by the Competition Authority in its submission to the commission when it stated:

> *"A relatively recent innovation in terms of aviation is the emergence of low-cost point-to-point operators in the mould of Southwest Airlines in the US. These operators have pared costs down to a minimum by offering a basic service of point-to point travel without many of the service elements that are common to most airlines.*
>
> *Such Airlines make much less intensive use of airport resources, having significantly lower turn-around times etc. and demand a much lower level of service than may be acceptable to traditional operators.*
>
> *The emergence of these operators has been an important innovation in the airline industry and has delivered substantial benefits to consumers. It is important that the interests of these airport users (and their passengers) are met in the regulatory environment. This has implications for both pricing (there should be a menu of options that low-cost operators should be able to opt out of) and for investment (the low cost operator may require a much lower specification in terms of terminal facilities than will a traditional operator). Whilst the pricing and service issue can be relatively easily addressed to ensure that low-cost airlines are not forced to consume services that they do not require (thus raising their costs) the issues around investment are much more problematic.*

SECTION 2
Differential Pricing and Low Cost Facilities

Given the vastly different planning horizons of airports and airlines, how can a low cost operator credibly commit to use facilities into the future, in a manner that will ensure that the airport operator has an incentive to deliver such tailored infrastructure? Given the paucity of low cost operators (relative to traditional operators) it may be that, given the potential cost of retrofitting a higher level of specification is high enough, the airport operator may be unwilling to build tailor-made infrastructure for low cost operators.

This may be overcome by the building of competing terminal infrastructures or by some joint venture arrangement between the airline and the airport operator."

h) Given that in the years since 2001, when the Competition Authority made the above submission to the CAR;

- The preponderance of growth in air travel has been delivered by low cost carriers.
- The rate of change from full service to low cost carriers is accelerating.
- Ryanair has grown to become Europe's largest airline and will carry 67 million passengers this year.
- Ryanair is Dublin Airport's largest customer by route and by passenger numbers.
- Ryanair is in a position to and has offered to build its own terminal at no expense to the DAA.

It defies all logic that suitable low cost facilities are neither available nor contemplated at Dublin Airport which remains one of the two most expensive airports in the Ryanair network of 140 European airports.

i) Ryanair submits that no determination that meets the reasonable requirements of users and prospective users can properly be made or should be finalised until the issues of appropriate facilities, appropriate service levels and differential pricing are properly and adequately addressed by the CAR and by the DAA.

SECTION 3
Commercial Revenues; Single Till v Dual Till

a) Arising from guaranteed "returns on" and "return of" investment, guaranteed recovery of Opex and the financial viability guarantees afforded to it by the regulator, there is little, if any, incentive for the DAA to efficiently manage its airport assets under the single till regulatory regime that is being used by the regulator.

b) Rather than providing an incentive to achieve efficiency, the DAA is incentivised to maximise investment in infrastructure on which the regulated "return on" and "return of" investment will be guaranteed.

c) Regardless of the overall level of profitability of commercial activities captured within the single till, the regulator assures the DAA of its return through periodic price cap determinations.

d) In theory under single till regulation, the price cap is set to capture the revenues from both aeronautical *and* commercial services, so it can be assured that commercial revenues cover a portion of the airport's overall fixed costs and the single till price cap for aeronautical services gets reduced accordingly.

e) The dual till approach in contrast, tries to separate out the two airport business activities by attributing a proportionate share of airports' costs to aeronautical and commercial activities. Under the dual till, in theory, the price cap for aeronautical costs would be set in order to ensure that aeronautical charges are covered by revenue from aeronautical activity.

f) In practice at Dublin Airport, the single till aeronautical revenues are subsidising commercial activities. This arises because commercial activities are not meeting the fixed cost ("return on" and "return of") of investments made in commercial infrastructure.

g) Although constrained in our analysis by a lack of sufficient information on the constituents of the RAB, of Opex and of Commercial Revenues, Ryanair estimates that Commercial Activities captured within the single till are not sufficiently profitable to pay for the fixed costs properly attributable to commercial activities never mind make a contribution to the fixed costs of aeronautical activity as would be the normal expectation in single till regulation.

Commercial Activities Yield Table - Estimate

	assumed	2010	2011	2012	2013	2014
		€ m	€ m	€ m	€ m	€ m
Commercial Revenues		127.40	130.60	135.00	141.00	148.90
Commercial Opex	50% of total	(92.05)	(90.95)	(89.90)	(91.20)	(92.75)
Incremental Income		35.35	39.65	45.10	49.80	56.15
Share of Capital Costs	35% of total	(40.81)	(47.08)	(49.81)	(51.14)	(52.68)
Contribution towards passenger charges		(5.46)	(7.43)	(4.71)	(1.34)	3.48
Passengers (million)		20.70	21.20	21.80	22.70	23.80
(loss)/profit per pax	€	(0.26)	(0.35)	(0.22)	(0.06)	0.15

SECTION 3
Commercial Revenues; Single Till v Dual Till

h) As a result at Dublin Airport, the only beneficiary of DAA's over-investment in commercial infrastructure is the DAA itself. It receives regulated "return on" and "return of" investment, together with all of the hidden benefits resulting from indexed depreciation, from failure to account for the debt/inflation shield and from the unwarranted risk premium allowed to it within the regulated return, as set out elsewhere in this submission. All of these returns are entirely underwritten by airport users as a result of the elimination of practically all risk for the DAA as a result of regulatory failure.

i) Ryanair submits that in advance of making any final determination for the 2010-2014 period the Commission should adequately inform both itself and airport users of the true costs and revenues associated with each sector (aeronautical and commercial) of the airport's activities.

j) Sufficient information should be made available to both the commission and to users to enable both aeronautical and commercial revenues to be separately considered in light of the true fixed and variable costs required for each.

k) Such analysis would assist in enabling appropriate appraisal to be made regarding whether a move away from the single till approach - whether to a dual till or some other form of regulation – might rectify the deficiencies in the regulatory system that currently lead to excessive profits and inflated returns being earned by DAA.

l) Ryanair suggests that a dual till approach with appropriate apportionment of fixed costs and a regulated per passenger charge being paid by the commercial sector to the aeronautical sector in recognition of the fact that by an overwhelming majority commercial activity at Dublin airport is driven by airline passengers, would best approximate real market competitive economics given the current monopoly which prevails at Dublin Airport.

SECTION 4
"Mothballing" of T2

a) Ryanair believes that the rationale for operating T2 no longer exists given the traffic forecast for Dublin airport during the period 2010 -2014.

b) In setting the price cap the CAR should ensure that any Opex increases arising from an unnecessary opening of T2 are excluded.

c) This is particularly important in a contracted market, as any increase in airport charges is likely to have a further incremental negative impact on passenger volumes, affecting both aeronautical and commercial revenues.

d) Whereas a rationale can be found for reducing the price cap (and thereby airport charges) in circumstances where excess terminal capacity becomes available, thereby creating incentive to increase passenger throughput with consequent increases in both aeronautical and commercial revenues, Ryanair can see no commercial logic that would support increasing the price cap in order to facilitate recovery of the incremental Opex costs that will arise from operating two under-utilised terminals.

e) A more rational and efficient approach would be to "mothball" T2 until such time as the capacity of T1 has been exceeded (see York Aviation Report indicating T1 Capacity) or until the passenger numbers can be re-grown to the levels anticipated by DAA in planning the development of T2. The Commission should set the price cap accordingly.

f) Ryanair further submits that arising from the likelihood that Aer Lingus and its passengers will transfer from T1 when T2 becomes operational, the method of depreciation applied to T1 should be changed so that from that point forwards T1 is depreciated on a unitised basis rather than on the basis of the passage of time. If unitisation is appropriate for an underutilised T2, then it must be equally appropriate for an underutilised T1.

SECTION 5
T1X Incremental Revenues and Remuneration

a) Ryanair has difficulty in understanding why allowance has been made within the price cap to remunerate DAA for its investment in T1X at the rate of €3.8million per annum when the allowance is based on nothing more substantive that a DAA projection of incremental revenues.

b) The Commission previously committed to users that T1X would not be remunerated until it could be demonstrated that it was self financing i.e. until incremental net revenues at least matched incremental returns to the DAA.

c) Ryanair is alarmed at the Commission's confirmation that a return on DAA's T1X investment of €3.8million per annum has been included in the Yield Table on the basis that *"the figure of €3.8 is equal to the incremental revenues associated with T1X, as indicated by the DAA in its submission to the commission"*

d) Ryanair believes that users might reasonably expect more diligence from the commission in relation to its work and its determinations than simply accepting the validity of a €19million charge on airport users over the period covered by the determination on the basis of an indication offered in a submission by the DAA.

e) It is apparent from the figures extracted from the commission's own spreadsheet model as set out hereunder, that commercial revenues at Dublin Airport have fallen dramatically from the high achieved in 2007 when the commission committed not to remunerate T1X until incremental net revenues exceed incremental returns to the DAA.

DAA outturn (to 2008) and projection (2009(e) - 2014) - all figures are REAL 2009 PRICES

	2007	2008	2009	2010	2011	2012	2013	2014
Direct retailing and retailing/caterinç	67.34	63.39		57.09	58.63	61.00	64.29	68.65
Property and Concessions	37.83	37.79		32.24	32.81	33.68	34.87	36.42
Car Parking	39.70	34.31		28.84	29.41	30.30	31.51	33.08
Other Activities	7.14	6.41		9.21	9.77	10.05	10.36	10.74
Total Commercial Revenue	152.01	141.90	131.03	127.38	130.62	135.02	141.03	148.90

f) It is further apparent that at no point during the 2010 -2014 period covered by the determination under review is it projected that commercial revenues will attain those 2007 levels again. In such circumstances it appears fanciful to suggest that €3.8million of incremental net revenues attributable to T1X will accrue to the single till per annum during the period covered by the determination. It would be remiss of the commission to accept such fanciful projections as realistic without question or query and accordingly Ryanair submits that the remuneration of €3.8million per annum should not be approved by the commission and should be excluded from the yield table in its determination.

SECTION 5
T1X Incremental Revenues and Remuneration

g) Ryanair wishes to highlight further, with respect to the commission's assessment of incremental revenues at T1X , that under the single till approach only revenues generated at T1X that are not at the expense of revenues at other retail areas within the airport should be considered when assessing incremental revenues for the purposes of the current or future determinations. Ryanair is unsure how the Commission intends to accurately assess such revenues but would suggest that consideration of a dual till approach might enable a resolution of what is likely to be an otherwise intractable problem.

SECTION 6
Inclusion of Indexed Depreciation in the Yield Formula

a) Ryanair considers that the policy currently adopted by the Commission to calculate the depreciation / "return of" investment on the basis of the indexed or inflated value of the RAB is flawed, and that this flawed methodology has consistently led to, and will continue to lead to DAA earning "excess profits".

b) The flawed methodology originated as a result of significant changes made to the method of calculation of depreciation or "return of" investment that were essentially hidden from users in CP4/2003.

c) Inadequate and inappropriate notification was given to airport users of the decision of the Commission to change from the methodology used by the Commission in earlier determinations.

d) In Judicial Review Proceedings in 2002 the commission's vehement opposition to the methodology that it immediately thereafter adopted and still uses was pleaded in the affidavit of Cathal Guiomard sworn on 30 September 2002 which states:

> *"First I wish to stress that the decision to index the RAB on the one hand and to base depreciation calculations only on non-indexed RAB was a deliberate policy decision taken after significant deliberation by the respondent [i.e. the CAR]*
>
> *It was considered that to base allowed depreciation calculations on the indexed RAB would allow the company to earn excess profits and it was for that reason that then decision was taken."*

e) This, so far as Ryanair is aware, was the last occasion on which the Commission openly and clearly set out its position regarding indexed depreciation.

f) Notwithstanding the above sworn testimony and the absence of any explanation, rationalisation, consultation or adequate notification, the commission immediately thereafter commenced using the directly contradictory methodology of calculating depreciation on the basis of indexed depreciation, and allowed this change without making necessary adjustments to prevent excess profits (of which the Commission was aware) being gifted to the DAA.

g) On its introduction, the effect of the increase in airport charges arising from the change in methodology was masked by the correction of a separate manifest error (of opposite direction) that the commission accepted had been made by it in its preceding determination.

h) Ryanair is concerned that the Commission's as yet unexplained and inadequately notified policy volte-face - from vehement opposition to the flawed methodology to full adoption of it - without any explanation or consultation, occurred contemporaneously with the setting aside of pleadings at Judicial Review proceedings relating to an enormous and embarrassing catalogue of catastrophic errors that had been argued in sworn testimony by the DAA and levelled at the Commission.

SECTION 6
Inclusion of Indexed Depreciation in the Yield Formula

i) In such circumstances Ryanair submits that it is incumbent on the Commission to now explain rationalise and consult with users regarding the policy volte-face that occurred at that time, the effect of which has resulted in excessive return on capital to the regulated entity in all subsequent years.

j) The unjustified and unsupported return will continue should the commission not address this flawed methodology which the Commissioner himself swore on affidavit would lead to "excess profits".

k) Ryanair submits that until such time as the commission affords users adequate explanation for the policy volte-face, and adequate opportunity to consult regarding the manner in which depreciation for inclusion in the yield formula is calculated, such depreciation should be allowed only on the basis of un-indexed historic cost depreciation.

l) The Commission's vehement defence of its indefensible policy at the time of the Judicial Review Proceedings (through the affidavits of the current Commissioner, as previously referred to) calls into question the competence of the Commission to regulate.

m) That an indexed depreciation policy was introduced without adequate notification to users in a manner that masked its effects, calls into question either the competence or the integrity of the Commission.

n) That the Commission has steadfastly refused despite requests to explain its policy volte-face also calls into question its integrity.

o) That the indexed depreciation policy introduced by the commission as replacement for its previously flawed policy can be shown to be equally flawed (as set out in the sections that follow) compounds the issue of competency and, inter alia leads Ryanair to the conclusion that it should have no confidence in the ability of the Commission to appropriately and properly regulate.

SECTION 7
Failure to account for the benefit to DAA of its debt inflation shield when assessing returns to DAA

a) The cash flows that accrue to the DAA arising from the commission's allowed "return on" and "return of" investment are yielding significantly higher rates of return (i.e. excess profits) to the DAA over and above those stated to be allowed by the Commission.

b) This arises because the commission refuses to acknowledge or account for the benefits that accrue to the DAA from the fact that in inflationary periods the present day value of fixed nominal debt repayments reduces as scheduled payments stretch out into the future.

c) Whereas it is accepted by the Commission that DAA should be compensated by users for the erosion caused to DAA's assets by inflation, the corresponding benefit that accrues to DAA arising from the diminishing value of the company's debt is neither acknowledged nor taken into account by the Commission in its calculations, methodology or allowances.

d) This arises from the Commission's apparent belief that because its uses a "real" Weighted Average Cost of Capital ("WACC"), as opposed to nominal WACC, to calculate returns to DAA, that the returns themselves are real returns as opposed to nominal returns.

e) The commission's belief is incorrect.

f) The commission's position fails to recognise the equivalence of (i) applying a real WACC to an indexed RAB, and (ii) applying a nominal WACC to an un-indexed RAB.

g) Academically this equivalence is widely accepted and has been formally proven.

h) Arising from this equivalence, notwithstanding that the commission sets the WACC as a "real" figure, the application of this "real" WACC to the indexed RAB yields a "nominal" return to the DAA.

i) Arising from the fact that the returns to the DAA are "nominal", and that debt is proportionately represented in the calculation of WACC, the calculation of returns <u>must</u> make full allowance for the benefit that accrues to the DAA from the diminution in the NPV terms of fixed nominal debt repayment obligations over time.

j) From an accounting perspective, the issue can be proven and seen clearly by setting out and reviewing the cash flows in worked examples. Annex 1 includes worked examples that demonstrate the effect of ignoring the debt/inflation shield when assessing returns to the DAA.

k) Whilst the commission has accepted in correspondence that these benefits exist, it refuses to make any allowance when approving the rates of return allowed to the DAA.

SECTION 7
Failure to account for the benefit to DAA of its debt inflation shield when assessing returns to DAA

l) The Commission's failure to make such an allowance is theoretically and practically unjustifiable and results in materially abnormal excess profits being transferred from airport users to the DAA over and above the returns that are stated to be allowed by the commission. This in turn results in the objectives of regulation and the integrity of the regulatory process being undermined.

m) Ryanair submits that returns allowed to the DAA should be reduced to account for the substantial benefit that is currently gifted to it annually as a result of the commission ignoring the excess profits that accrue to the DAA as a result if the failure of the Commission to recognise and take into account the DAA's debt/inflation shield when assessing allowed returns.

SECTION 8
Inappropriate and Unexplained "X-Factor" – inefficiency bonus.

a) The X-Factor employed by the commission in its price cap methodology is not adequately explained or supported by the Commission. As a consequence, adequate consultation with users regarding the appropriateness of the X-Factor used by the commission has not occurred.

b) Ryanair understands that the size of the X-Factor (as incorporated into the formula for adjusting the price cap from one year to the next) derives from the combined effect of key policy variables that enter into the calculation of the allowed yield, in particular the efficiency improvement required of the regulated firm by the regulator, the Capex and the traffic forecast.

c) Ryanair notes that the most appropriate context in which to view the X-Factor is to consider that the Price Cap will be allowed to increase from year to year by "CPI minus X" so that in each year of the determination governing the period 2002-2006 for example, X was stated to be +3.7% and so the annual variation amounted to CPI minus 3.7%. If CPI increased in any year by say 4.2%, then the price cap would, in that year be allowed to increase by 0.5% only (being 4.2% minus 3.7%).

d) In the 2005 Determination "X" was stated to be "- 4%" (i.e. minus 4%). Accordingly, if CPI increased in any year of the 2006 – 2009 period by 4.2% the price cap would be increased by 8.2% (being 4.2% minus minus 4%, because the double minus created a positive, this got rewritten as 4.2% + 4%).

e) The effect of the change in signs from a "positive" to a "negative" X was not explained to users.

f) No explanation was offered or consultation with users solicited regarding the significant change from CPI minus 3.7% in the previous determination to CPI plus 4% in the 2006 – 2009 determination.

g) In its draft Determination for 2010-2014, the commission proposes that X will be " - 3.8%" (minus 3.8%). Ryanair had understood, on the basis of the application of the "minus X" figure, as in the previous 2006-2009 determination, that once again the double negative would create a positive in the CPI –X formula and that as a consequence the price cap would change by CPI plus 3.8% throughout the period of the 2010-2014 determination.

h) However, Ryanair has been assured by the confirmation received from the Commission on 31 July 2009 the *"the X-factor of -3.8% means that the annual price cap changes each year by CPI minus 3.8%"* and this avoids the necessity to make a lengthy submission regarding the double negative, save to submit that it would now appear that the application of the double negative in the 2006/2009 regulatory period, such that increases of CPI plus 4% were granted throughout, in light of the clarification issued on 31 July 2009, must have been an error that now requires to be retrospectively corrected and refunds made to users.

SECTION 8
Inappropriate and Unexplained "X-Factor" – inefficiency bonus.

i) It is clear from a review of the analysis set out below that in years 2, 3, and 5, when X was set at a positive value and the price cap was allowed to increase in each of those years by CPI – X, the regulatory methodology was being employed by the Commission as a driver of efficiency, incentivising the DAA to become more efficient each year in order to maintain income levels. This conforms to our understanding of the objectives of CPI-X Price Cap Regulation.

Historical Analysis of Application of X Factor

Regulatory Year	Compliance Paper	Calendar Year	CPI	X	CPI - X
2	CP2/2003	2002/03	4.21%	7.80%	-3.59%
3	CP2/2003	2003/04	3.10%	7.80%	-4.70%
5	CP10/2004	2005	2.70%	3.70%	-1.00%
7	CP11/2006	2007	3.90%	-4.00%	7.90%
8	CP10/2007	2008	4.78%	-4.00%	8.78%
9	CP7/2008	2009	4.00%	-4.00%	8.00%

j) It is equally clear with respect to years 7, 8 and 9, when X was set at a negative value, that the double negative resulted in the Commission allowing the DAA to become more and more inefficient each year whilst allowing user charges to increase annually by almost double the rate of inflation. This does not conform to Ryanair's understanding of the objectives of CPI-X Price Cap Regulation.

k) What was an efficiency incentive from 2002 to 2005 became an inefficiency allowance for the period from 2007 to 2009.

l) We have requested but have not received clarification from the Commission regarding how X is calculated and we submit that there should be full transparency regarding how the Commission actually arrives at its proposed X-Factor so that users can be afforded the opportunity to consider and make appropriate submissions.

SECTION 9
Audited Regulatory Accounts

a) Ryanair considers that users are disadvantaged as a result of the lack of availability to them of current and historical audited accounts of the regulated entity. The Commission has asserted to Ryanair in correspondence, that the accounts of the regulated entity were "not central" to the 2005 determination, nor to the 2007 Interim Review and has questioned the basis on which Ryanair concluded that it needs information about the accounts of the regulated entity to consult on the airport charges price cap determination.

b) Ryanair's opinion that users need the accounts of the regulated entity in order to allow the transparency necessary for users to consult properly on the airport charges price cap determination, arises inter alia from the commission's position that the accounts are not central to the determination.

c) The basis on which assets, liabilities, revenue and expenses of the DAA are allocated from the DAA's statutory audited accounts into the accounts of the regulated entity is hidden from users. The Commission has indicated that the methodology by which this allocation is calculated was agreed with the DAA many years ago and has not changed.

d) The Commission has indicated that it does not see it as any part of its function to interfere in, monitor or control this allocation process or to reconcile the accounts of the regulated entity with the statutory audited accounts of the DAA.

e) Arising from the extraordinary abdication of responsibilities by the Commission both regarding the allocation process and regarding the monitoring of the accounts of the regulated entity, the scope for abuse and for gaming (both of the regulator and of users) is rife. The non transparent allocation process and lack of monitoring or use of historical accounting information by the commission must be addressed.

f) The Commission has indicated that it ordinarily accepts independently audited accounts and that this is so with regard to the regulated accounts that the DAA provides to the Commission.

g) Ryanair contends that in the absence of any or sufficient transparency regarding the allocation process to enable its appropriateness and its consistency as between different regulatory periods to be verified, and further in the absence of any confirmation from the Auditors of the regulated entity that the audited accounts and their basis of preparation renders them suitable for purpose, and further in the absence sight of unqualified opinion as to the truth and fairness of the accounts for that purpose by the Auditor, it is wholly inappropriate for the Commission to accept those accounts at face value and without any further query or overview.

h) Ryanair contends that it is a matter of critical importance to the process that users have full access to the fully audited accounts of the regulated entity to enable them to adequately consult and make appropriate submissions relating to the Draft Determination.

SECTION 9
Audited Regulatory Accounts

i) The manner in which the Commission is dismissive of all queries relating to the historical audited accounts of the regulated entity and the lack of understanding displayed by Commission regarding the importance of those accounts is a matter that is of concern to Ryanair.

j) It defies logic that ex-post analysis of audited regulatory accounts is not carried out by the commission and made available to users that would or could substantiate whether or not super-normal profits are being earned by the regulated entity.

k) It is equally illogical that the commission could elect to fix a price cap without a detailed knowledge of the most pertinent information about the cost base of the company that can only be gained from a detailed understanding of and familiarity with both the process of cost allocation from the DAA into the regulated entity, and from an understanding of the cost base of the company gained from a knowledge of its historical performance.

l) Ryanair submits that no determination can or should be finalised until such time as this substantial information deficit is rectified. It should be confirmed that the requisite skills exist within the office of the regulator and that those skills are being applied analytically, on an ongoing basis as an integral part of the process of determining price caps for Dublin Airport.

m) Ryanair has seen no evidence that such skills either exist or are being utilised within the office of the Commission.

SECTION 10
Cost of Capital – Equity Risk Premium

a) The Equity Risk Premium is a measure of the incremental return that would be required to entice an investor to invest funds in equity rather than in risk free assets.

b) The ERP relates to the difference between the generality of equities and the generality of risk free investments and is not company specific.

c) Once an assessment is made of the ERP it becomes one of the components of the cost of equity that is incorporated into the WACC.

d) The commission has indicated that for the Draft Determination it has assumed an ERP of 5% in calculating its weighted average cost of capital having concluded that it believes that an ERP within the range 4% to 5% is reasonable.

e) The commission, in arriving at its decision has used the Credit Suisse Global Returns Sourcebook 2009 which estimates the historical mean returns for equity investments relative to the returns for bonds was 4.6% for the world, 5% for Europe and 4.4% for Ireland. The study reviewed data from 17 countries over the period from 1900 to 2008.

f) Ryanair contends that it is wholly inappropriate to correlate the risks of holding equity in regulated entities with the risks of holding equities in general.

g) Ryanair agrees with the commission's statement that the ERP cannot be measured directly in the market place as there is uncertainty associated with future returns from equities.

h) Ryanair would point to the substantial certainty that is associated with the returns from investments in classified regulated entities as indicating that the ERP should be all but eliminated for the purposes of assessing the appropriate WACC for such classified entities.

i) By way of note that the normal equity risk classifications are inappropriate when assessing how to classify the regulated entity, page one of the Commission's executive summary confirms that;

> *"A lower passenger forecast results in a higher average annual per passenger price cap, all else equal.....The Commission estimates that the proposed average annual price cap is perhaps 18% higher that it would be if the 2007 passenger forecast for this period remained valid"*

j) Ryanair would further point to the inappropriateness of blindly assessing ERP based on recent or any regulatory decisions in Ireland or in the UK and would point out that the regulatory process in so far as it concerns the British Airports has been so discredited by the competition authorities in that jurisdiction that they have ordered the urgent/early break up of the BAA airport monopoly.

SECTION 11
Cost of Capital – Beta

a) Beta is the term used to define the systematic risk associated with investment in a particular stock.

b) Systematic risk excludes "idiosyncratic" or "stock specific risk" as Kearny and Hudson have pointed out at Appendix VI of CP8 /2001;

> *"It is only the systematic risk of the stock that investors should expect to be compensated for in terms of additional return. This is because it is easy for investors to diversify their portfolios such that idiosyncratic risk is washed out"*

c) Ryanair believes that excluding any measure of the idiosyncratic risk of the regulated portion of the DAA's business results in the Commission allowing a significantly higher cost of equity than can properly be justified.

d) This arises because just as it is easy for investors to diversify their portfolios such that idiosyncratic risk is washed out, it is also easy for investors to gravitate towards investments were idiosyncratic certainty is available.

e) Idiosyncratic certainties are available to investors in the DAA arising from the nature of and the objectives of the regulatory process.

f) It is inappropriate to isolate and eliminate the benefit of this idiosyncratic certainty, the effect of which is to eliminate the systematic risks that Beta sets out to capture.

g) The "elephant in the room" when assessing the risk associated with investing in the DAA, whether in the form of equity or in the form of debt, is the idiosyncratic certainty that "returns on" and "returns of" investment in addition to recovery of OPEX and of approved CAPEX are all guaranteed as a result of the regulatory process.

h) The Commission's statutory obligation to ensure the financial viability of Dublin Airport is acknowledged and confirmed by its confirmation that;

> *"The Commission will also have regard to its duty to enable the DAA to Operate Dublin Airport in a sustainable and financially viable manner: should the building blocks approach generate a price path that would not – in conjunction with all relevant obligations and objectives – enable the DAA to operate Dublin Airport in a financially sustainable manner, the commission will address this matter by adjusting the calculation leading to the price cap."*

i) Ryanair believes that it is inappropriate to incorporate into the cost of capital any amount designed to compensate investors for systematic risks when the very nature of the regulatory process for which the estimated cost of capital is required has the de facto effect of eliminating those systematic risks.

SECTION 12
Cost of Capital – General

a) Ryanair submits that arising from the noted statutory imperative (obligating the commission to ensure the financial viability of the regulated entity), and from the Commission's confirmation that it will make whatever adjustments are necessary to ensure the financial viability of the regulated entity, (i) the equity risk premium, (ii) the debt risk premium, and (iii) the company beta that have been used by Commission to establishing its suggested WACC are all inappropriate.

b) Ryanair submits that the WACC should be calculated without any allowance for normal equity or debt risk premiums and that the Beta should be similarly adjusted to reflect the certainties that are assured to the entity.

SECTION 13
Financial Viability

a) The Commission should ensure that the approximately €800 million received by the DAA from the sale of its investments in Great Southern Hotels Group and Birmingham, Düsseldorf and Hamburg Airports are not isolated and treated by DAA in such a manner as to exclude these funds from Commission's financial viability analysis.

b) The investments sold were originally funded from excess profits generated from monopoly charges at Dublin Airport. Ryanair believes that any manipulation of Airport charges necessitated to massage Financial Ratios to maintain credit ratings is wholly inappropriate whilst an €800million cash pile generated from investments funded by monopoly charges exists in the balance sheet of the company.

c) Ryanair submits that the proceeds should be used by the DAA to pay down debt.

ANNEX 1 – Worked Example A

Worked Example with Indexed Depreciation and no Debt

		Last Day Y0	Y1	Y2	Y3	Y4	Y5
Return of Investment							
1 Opening Assets HC			1,000.00	800.00	600.00	400.00	200.00
2 Asset Purchased HC	(Given)	1,000.00					
3 Depreciation Straight Line HC	(Given)		200.00	200.00	200.00	200.00	200.00
4 **Closing Assets HC**		1,000.00	800.00	600.00	400.00	200.00	-

		Y1	Y2	Y3	Y4	Y5
Return on Investment						
5 Unindexed Opening Assets	(Line 1)	1,000.00	832.00	648.96	449.95	233.97
6 Inflation	(Given)	4.00%	4.00%	4.00%	4.00%	4.00%
7 Indexed Opening Assets	Calculated	1,040.00	865.28	674.92	467.94	243.33
8 Indexed Depreciation = Return of Investment	Calculated	208.00	216.32	224.97	233.97	243.33
9 Indexed Closing Assets	Calculated	832.00	648.96	449.95	233.97	-
10 WACC	(Given)	5.70%	5.70%	5.70%	5.70%	5.70%
11 Return on Investment	(Line 8 x Line 10)	59.24	49.28	38.44	26.65	13.86

		Last Day Y0	Y1	Y2	Y3	Y4	Y5
12 **Loan Account**							
13 Opening Balance		0	-	-	-	-	-
14 Loan Finance Obtained				-	-	-	-
15 Loan Repayment, as defined				-	-	-	-
16 **Closing Balance**		-	-	-	-	-	-
17 Loan Interest Rate (Nominal)	Given		6.81%	6.81%	6.81%	6.81%	6.81%
18 Loan Interest Expense (Nominal)	(Line 17 x 16)		-	-	-	-	-
19 Return on Investment (Line11)	(Line 11)		59.24	49.28	38.44	26.65	13.86
20 Return of Investment	(Line 8)		208.00	216.32	224.97	233.97	243.33

		Last Day Y0	Y1	Y2	Y3	Y4	Y5
Cash in flows							
21 **Equity**		**1,000.00**					
22 Loan finance Obtained	(Line 14)	-					
23 Return on Investment, as defined	(Line11)		59.24	49.28	38.44	26.65	13.86
24 Return of Investment, as defined	(Line3)		208.00	216.32	224.97	233.97	243.33
Cash Outflows							
25 Asset Purchased, as defined	(Line 2)	(1,000.00)					
26 Loan Repayments	(Line 15)		-	-	-	-	-
27 Nominal Interest Payments	(Line 18)		-	-	-	-	-
28							
29 **Net Cash Inflow/(Outflow)**		-	**267.24**	**265.60**	**263.41**	**260.62**	**257.19**
30 NPV Factor	9.9236%	1.0000	1.0992	1.2083	1.3282	1.4600	1.6049
31 **Discounted cashflow**		**1,000.00**	**243.11**	**219.81**	**198.32**	**178.51**	**160.25**
NPV		0					

35 WACC (post tax)	5.70%	Line 10	WRD =[0.5 (.026 +.011) x 0.868] + WRE [0.5 (.026+(.06 x .93))]
35 Inflation	4.00%	Line 6	
37 Real Cost of Equity	8.18%	Given	
38 Real Cost of Debt	3.70%	Given	
39 Tax Rate	13.20%	Given	
40 Nominal Pre-Tax interest Rate	7.85%	Lines(38 & 35)	1.04(.037) + .04
41 Nominal After Tax Interest Rate	6.81%	Lines(40 & 39)	7.85 x (1-.132)
42 Nominal After Tax Cost of Equity	12.5072%	Lines(35 & 37)	1.04(.0818) +.04
43 Nominal WACC	9.9236%		1.04(0.056958) + .04

ANNEX 1 – Worked Example B

Worked Example with Indexed Depreciation and 50% Debt Finance & Annual Loan Repayment

		Last Day Y0	Y1	Y2	Y3	Y4	Y5
Return of Investment							
1 Opening Assets HC			1,000.00	800.00	600.00	400.00	200.00
2 Asset Purchased HC	(Given)	1,000.00					
3 Depreciation Straight Line HC	(Given)		200.00	200.00	200.00	200.00	200.00
4 **Closing Assets HC**		1,000.00	800.00	600.00	400.00	200.00	-
Return on Investment			Y1	Y2	Y3	Y4	Y5
5 Unindexed Opening Assets	(Line 1)		1,000.00	832.00	648.96	449.95	233.97
6 Inflation	(Given)		4.00%	4.00%	4.00%	4.00%	4.00%
7 Indexed Opening Assets	Calculated		1,040.00	865.28	674.92	467.94	243.33
8 Indexed Depreciation = Return of Investment	Calculated		208.00	216.32	224.97	233.97	243.33
9 Indexed Closing Assets	Calculated		832.00	648.96	449.95	233.97	-
10 WACC	(Given)		5.70%	5.70%	5.70%	5.70%	5.70%
11 Return on Investment	(Line 8 x Line 10)		59.24	49.28	38.44	26.65	13.86
12 **Loan Account**		Last Day Y0	Y1	Y2	Y3	Y4	Y5
13 Opening Balance		0	500.00	400.00	300.00	200.00	100.00
14 Loan Finance Obtained		500.00		-	-	-	-
15 Loan Repayment, as defined			100.00	100.00	100.00	100.00	100.00
16 **Closing Balance**		500.00	400.00	300.00	200.00	100.00	-
17 Loan Interest Rate (Nominal)	Given		6.81%	6.81%	6.81%	6.81%	6.81%
18 Loan Interest Expense (Nominal)	(Line 17 x 16)		30.65	23.84	17.03	10.22	3.41
19 Return on Investment (Line11)	(Line 11)		59.24	49.28	38.44	26.65	13.86
20 Return of Investment	(Line 8)		208.00	216.32	224.97	233.97	243.33
Cash in flows		Last Day Y0	Y1	Y2	Y3	Y4	Y5
21 Equity Raised		500.00					
22 Loan finance Obtained	(Line 14)	500.00					
23 Return on Investment, as defined	(Line11)		59.24	49.28	38.44	26.65	13.86
24 Return of Investment, as defined	(Line3)		208.00	216.32	224.97	233.97	243.33
Cash Outflows							
25 Asset Purchased, as defined	(Line 2)	(1,000.00)					
26 Loan Repayments	(Line 15)		(100.00)	(100.00)	(100.00)	(100.00)	(100.00)
27 Nominal Interest Payments	(Line 18)		(30.65)	(23.84)	(17.03)	(10.22)	(3.41)
28 Return to Equity Holders							
29 **Net Cash flow to equity**		-	136.58	141.76	146.38	150.41	153.78
30 NPV Factor	13.7240%		1.1372	1.2933	1.4708	1.6727	1.9022
31 **Discounted cashflow**		500.00	120.10	109.61	99.53	89.92	80.84

32 **Actual Return to Equity**	13.7240%
33 Required Nominal Return to Shareholders	12.5072%
34 Excess Return on/of Investment	1.2168%

35 WACC (post tax)	5.70%	Line 10	WRD =[0.5 (.026 +.011) x 0.868] + WRE [0.5 (.026+(.06 x .93))]
35 Inflation	4.00%	Line 6	
37 Real Cost of Equity	8.18%	Given	
38 Real Cost of Debt	3.70%	Given	
39 Tax Rate	13.20%	Given	
40 Nominal Pre-Tax interest Rate	7.85%	Lines(38 & 35)	1.04(.037) + .04
41 Nominal After Tax Interest Rate	6.81%	Lines(40 & 39)	7.85 x (1-.132)
42 Nominal After Tax Cost of Equity	12.5072%	Lines(35 & 37)	1.04(.0818) +.04

ANNEX 1 – Worked Example C

Worked Example with Indexed Depreciation and 50% Debt Finance & Bullet Debt Paydown.

		Last Day Y0	Y1	Y2	Y3	Y4	Y5
Return of Investment							
1 Opening Assets HC			1,000.00	800.00	600.00	400.00	200.00
2 Asset Purchased HC	(Given)	1,000.00					
3 Depreciation Straight Line HC	(Given)		200.00	200.00	200.00	200.00	200.00
4 Closing Assets HC		1,000.00	800.00	600.00	400.00	200.00	-

		Y1	Y2	Y3	Y4	Y5
Return on Investment						
5 Unindexed Opening Assets	(Line 1)	1,000.00	832.00	648.96	449.95	233.97
6 Inflation	(Given)	4.00%	4.00%	4.00%	4.00%	4.00%
7 Indexed Opening Assets	Calculated	1,040.00	865.28	674.92	467.94	243.33
8 Indexed Depreciation = Return of Investment	Calculated	208.00	216.32	224.97	233.97	243.33
9 Indexed Closing Assets	Calculated	832.00	648.96	449.95	233.97	-
10 WACC	(Given)	5.70%	5.70%	5.70%	5.70%	5.70%
11 Return on Investment	(Line 8 x Line 10)	59.24	49.28	38.44	26.65	13.86

		Last Day Y0	Y1	Y2	Y3	Y4	Y5
12 Loan Account							
13 Opening Balance		0	500.00	500.00	500.00	500.00	500.00
14 Loan Finance Obtained		500.00		-	-	-	-
15 Loan Repayment, as defined				-	-	-	500.00
16 Closing Balance		500.00	500.00	500.00	500.00	500.00	-
17 Loan Interest Rate (Nominal)	Given		6.81%	6.81%	6.81%	6.81%	6.81%
18 Loan Interest Expense (Nominal)	(Line 17 x 16)		34.06	34.06	34.06	34.06	17.03
19 Return on Investment (Line11)	(Line 11)		59.24	49.28	38.44	26.65	13.86
20 Return of Investment	(Line 8)		208.00	216.32	224.97	233.97	243.33

		Last Day Y0	Y1	Y2	Y3	Y4	Y5
Cash in flows							
21 Equity Raised		500.00					
22 Loan finance Obtained	(Line 14)	500.00					
23 Return on Investment, as defined	(Line11)		59.24	49.28	38.44	26.65	13.86
24 Return of Investment, as defined	(Line3)		208.00	216.32	224.97	233.97	243.33
Cash Outflows							
25 Asset Purchased, as defined	(Line 2)	(1,000.00)					
26 Loan Repayments	(Line 15)		-	-	-	-	(500.00)
27 Nominal Interest Payments	(Line 18)		(34.06)	(34.06)	(34.06)	(34.06)	(17.03)
28 Return to Equity Holders							
29 Net Cash flow to equity		-	233.18	231.54	229.35	226.56	(259.84)
30 NPV Factor	18.9510%		1.1895	1.4149	1.6831	2.0020	2.3814
31 Discounted cashflow		500.00	196.03	163.64	136.27	113.17	(109.11)

32 Actual Return to Equity	18.9510%
33 Required Nominal Return to Equity	12.5072%
34 Excess Return on/of Investment	6.4438%

35 WACC (post tax)	5.70%	Line 10	WRD =[0.5 (.026 +.011) x 0.868] +	WRE [0.5 (.026+(.06 x .93))]
35 Inflation	4.00%	Line 6		
37 Real Cost of Equity	8.18%	Given		
38 Real Cost of Debt	3.70%	Given		
39 Tax Rate	13.20%	Given		
40 Nominal Pre-Tax interest Rate	7.85%	Lines(38 & 35)	1.04(.037) + .04	
41 Nominal After Tax Interest Rate	6.81%	Lines(40 & 39)	7.85 x (1-0.132)	
42 Nominal After Tax Cost of Equity	12.5072%	Lines(35 & 37)	1.04(.0818) +.04	

RYANAIR
SUBMISSION TO THE COMMISSION FOR AVIATION REGULATION ON AIRPORT CHARGES DRAFT DECISION PAPER

PART B
Chapter by Chapter Submissions

7 August 2009

Contents

Chapter 1	Executive Summary
Chapter 2	Introduction
Chapter 3	Draft Determination
Chapter 4 &12	Approach to Regulation and Compliance with Statutory Requirements
Chapter 5	Quality of Service
Chapter 6	Passenger Forecast
Chapter 7	OPEX.
Chapter 8	Commercial Revenues
Chapter 9	Capital Costs
Chapter 10	Financial Viability
Chapter 11	Other Issues
Annex 1	Principles for RAB Roll Fowrard

Appendix A:	Capacity Assessment T1 (30mppa)
Appendix B:	Project by Project CAPEX Reconciliation 2006-09
Appendix C:	CIP 2010 - 2014.
Appendix D	Indecon/Jacobs Opex Analysis
Appendix E	DAA Cost Saving Claims (*IRN 1/7/09*)

Note: Comments are numbered by reference to the draft determination

CP3/2009 - EXECUTIVE SUMMARY

2.0 The CAR's confirmation that there will be an adjustment for "any" change in operating costs that might accompany the opening of T2 is contrary to the whole philosophy of economic regulation which is that "users pay" and the CAR has failed to explain its regulatory approach in this regard.

Ryanair submits that there is no justification for users of T1 subsidising users of T2 particularly in light of the CAR's previous determination whereby the CAR has said in CP6/20007 that "the CAR supported the principle of users being charged different prices for different levels of service.

4.0 The CAR estimates that the annual price cap may be 18% higher to compensate for errors in the 2007 passenger forecast.

Through this admission the CAR confirms that DAA risk is effectively eliminated at Dublin Airport and contradicts CAR's assessment of DAA risk in Chapter 9, since in any downturn volume is compensated with increased fees. This is anti-competitive and biased in favour of the DAA against users to the detriment of the efficient economic development at Dublin Airport.

The CAR has failed to define what it means by the term the "development" of Dublin Airport. Is "development" the growth in aeronautical facilities (passenger and cargo traffic) required by users or does the CAR intend to remunerate the DAA for the construction of any and all facilities regardless of reasonable user requirements and which are demonstrably opposed by users as submitted by the DACC on 22nd May and 5th June 2009.

6.0 The CAR's confirmation that it will exactly allow DAA to recover the cost of a winning bidder to operate T2 fails to meet the reasonable requirements of users since the DAA has distorted the tender specifications by the massive over specification and over spend on T2 in the first instance and since the DAA is an applicant to become the operator.

The CAR's intention to allow as yet unknown T2 costs into the price cap calculation is contrary to the efficient and economic development of the airport and fails to meet the reasonable requirements of users and is an abrogation of the CAR's duties. The CAR confirms that there has been no consultation on this element of the price and again is in breach of its statutory duties and fails to protect the reasonable interests of users. The CAR's presumption that users of T1 will fund increased operating costs arising from T2, even though T1 has excess capacity for the next 5 to 10 years traffic growth, is in breach of the user pays principle and inconsistent with the CAR's position as expressed in the previous determinations.

CP3/2009 - EXECUTIVE SUMMARY

Ryanair calls on the CAR to mothball T2 since it fails to meet the reasonable requirements of users, particularly as T1 has more than sufficient capacity to meet the most optimistic levels of traffic growth over the next five to ten years.

7.0 The CAR ignores the fact that the 10% opex saving identified by Indecon Jacobs is based on a DAA 2008 opex performance which was the result of DAA increasing opex costs per passenger by circa 3% instead of reducing opex costs

by the 6% targeted in the previous determination, failing to protect the reasonable requirements of users.

8.0 The CAR's assumption that commercial revenue per passenger will remain static at €6.20 is inconsistent with the CAR's allowance of non-aeronautical capex. While later in the determination the CAR outlines the split between commercial revenue sources, it fails to provide users with any analysis as to a) how an unchanged commercial revenue per passenger figure is derived in changing circumstances or b) why the split of revenue sources should remain unchanged or c) why additional expenditure on retail or rental facilities is necessary. The treatment of ARI supplied product to DAA is hidden from users and may well be significant given that ARI profits are excluded from the single till and ARI have historically provided product to DAA.

The CAR should confirm the extent to which ARI supplies products for resale to DAA or retail services to DAA and the margins which ARI enjoy on these services. The CAR has failed to confirm whether or not such services or products, if supplied and paid for by DAA, are considered to be close to the "nexus" of Dublin Airport operations.

11.0 The CAR's service level scheme is inconsistent with the provisions of European regulation EU261 in terms both of targeted areas and sanction. EU261 sanctions penalties over ten time's (or 1000%) ticket prices, whereas DAA at worst may suffer a sanction of just 4%. The users have repeatedly made clear to the CAR at the CIP meetings that the primary service issues are those of cost and efficiency. The CAR has again failed to meet user requirements in this area. A service level scheme should be targeted at these important service areas.

14.0 The CAR appears to indicate that no further consultation will be considered following receipt of comments on the draft determination. The legislation provides for additional consultation and the CAR will be in breach of its statutory duties if it fails to consult fully and openly with users on the draft determination or to develop alternative proposals.

CP3/2009 Chapter 2 INTRODUCTION

2.6 The CAR's claim that it is "not aware of any plans to separate the three State airports" is absurd. The CAR is familiar with the State Airports Act 2004.

The CAR should acquaint itself with steps taken by DAA and the DOT in terms of the tender for certain elements of the operation of T2, most specifically the involvement of DAA in inflating the capex and opex of T2, in drafting the tender requirements and DAA's stated intention to apply to secure this tender.

2.9 There is no evidence in the Booz & Co report that any account was taken of the users requirements at CIP meetings held on 8 April, 18 March, 22 April, 6 May and 29 May 2009 for which transcripts are available. The draft determination confirms that the consultancy work was undertaken "in parallel with the consultation meetings"; by definition this means the consultants were deprived of the benefits of users contributions or any understanding of the DAA inconsistencies, untruths and false claims at these meetings.

The CAR has failed to provide Booz & Co with transcripts of the CIP meetings in advance of the preparation and completion of their report.

CP3/2009 Chapter 3 DRAFT DETERMINATION

3.1 The CAR fails to set an upper limit on possible increases in the price over the five year period. The CAR has set a price floor of €8.37 contrary to the reasonable requirements of users and contrary to the efficient and economic development of the airport. This uncertainty makes it impossible for users to plan ahead with any degree of certainty.

The CAR's commentary ignores user contributions to the CIP meetings chaired by the CAR. The CAR's commentary is inconsistent and at variance with transcripts of those users consultation meetings, contrary to the reasonable requirements of users

The CAR has failed to explain the calculation of the "X factor" which is a subjective number invented by the CAR.

The CAR has wrongly included adjustments for capex which are not required by users. This is a breach of the duty to meet the reasonable requirements of users and shows how the CAR has become the victim of regulatory capture, the same as the discredited CAA regulation of the BAA airport monopoly in the UK.

The CAR has included adjustments for capex which are not required by users. The CAR, without any comment or explanation, ignores the users unanimous preference for the renovation of runway 11/29 which DAA have confirmed would cost a mere €5 million and require no planning permission, while at the same time delivering another 30 movements per day without restriction as opposed to an entirely unnecessary circa €300 million development with limited capacity. This unexplained disregard of users needs by the CAR is completely irrational and contrary to the reasonable requirements of users.

Regarding the Yield Table, we note that the CAR have adopted a new format obscuring the split between indexed depreciation and the return on capital. In previous determination this distinction was made clear. The CAR has failed to explain to users why it has not followed the previous Yield table format which is more transparent.

3.2 The CAR confirms it can set sub caps but fails to explain why it proposes not to set sub caps.

CP3/2009 - Chapter 4 APPROACH TO REGULATION and Chapter 12 COMPLIANCE WITH STATUTORY REQUIREMENTS

4.1 The CAR has failed to ensure DAA bears a reasonable or any share of risk. The fact that traffic downturn is rewarded in this determination by an 18% higher rate of passenger charges demonstrates conclusively that the DAA bears little if any risk. So long as even one passenger theoretically passes through the airport, the DAA bears no risk until such time as all potential customers no longer have an ability to pay. Up to that point, users bear all risk through reduced yields and/or reduced load factors which will, in turn, be punished by a higher price cap.

4.2 The CAR repeatedly fails to satisfy its statutory obligations (see 12.1 below).

4.3 The CAR's claim that Ryanair "did not provide specific details on an alternative approach to regulation that the CAR might adopt" is false. Ryanair has repeatedly proposed to fund, build and operate a competing low cost terminal at Dublin Airport. The provision of a competing terminal at Dublin Airport, as evidenced by the recent emergence of competing car parks serves the best interests of users and would at no risk to the State or to other users, provide for efficient and economic development of Dublin Airport. The CAR fails to acknowledge or consider this proposed development.

The CAR claims that Ryanair did not provide specific details on an alternative approach, the CAR has failed to invite Ryanair or discuss what additional specific details the CAR requires in order to analyse Ryanair's approach.

4.4 The CAR denies it placed too much weight on the financial viability of the DAA. but fails to specify whether its FFO calculations are based on the regulatory or statutory accounts of the DAA and furthermore fails to address or include the €800 million in proceeds which the DAA received from the sale of GSH, Birmingham, Dusseldorf and Hamburg airports.

4.5 While the CAR confirms that the DAA argued for a five year regulatory period, this has not been the practice. The CAR opened an interim review in December 2006 at the DAA's request, resulting in excessive allowances for T2 capex, despite the fact that this facility is not required by the majority of users and is not required at all for Dublin Airport traffic volumes for the foreseeable future.

Having attached too much weight to the significant financial interests of DAA and Aer Lingus in T2, the CAR unlawfully requires Ryanair and other users to cross subsidise Aer Lingus use of T2.

CP3/2009 - Chapter 4 APPROACH TO REGULATION and Chapter 12 COMPLIANCE WITH STATUTORY REQUIREMENTS

	A	B	C	
12.1 **COMPLIANCE WITH STATUTORY REQUIREMENTS** *	User*	Economic *	Financial Viability * Airport	DAA
Draft Determination				□
• Fails to set any upper price limit	No	No	No	Yes
Approach to Regulation				□
• Requires T1 users to subsidise T2.				
• Accepts DAA data without corroboration	No	No	No	Yes
• Rejects user requirements as inappropriate/ No opex consultation	No	No	No	Yes
• Allows Dublin Airport income siphoned away from Airport.	No	No	No	Yes
• Removes all risk from DAA	No	No	No	Yes
• Confuses "regulatory" accounts with statutory accounts	No	No	No	Yes
• Hides info from users for unjustified and unexplained "confidentiality reasons"	No	No	No	Yes
• Fails to survey of actual competitive airport charges	No	No	No	Yes
Quality of Service				□
• Proposed sanction 40% less than UK equivalent	No	No	No	Yes
• Proposes the DAA (ACI) measures its own performance	No	No	No	Yes
• Excludes meaningful criteria - outbound baggage	No	No	No	Yes
• Includes meaningless criteria - "feelings"	No	No	No	Yes
Passenger Forecasts				□
• Traffic not re-set following introduction of €10 Air Passenger Tax	No	No	No	Yes
• Claims to be GDP based but isn't	No	No	No	Yes
• Incorrect use of out of date optimistic ESRI data	No	No	No	Yes
Operating Expenditure				□
• Ignores DAA's €40m Cost Control Programme	No	No	No	Yes
• Ignores DAA's confirmation of 400 excess staff	No	No	No	Yes
• CAR consultants' failed to consult users	No	No	No	Yes
• Fails to distinguish between aeronautical and non-aeronautical costs	No	No	No	Yes
• Fails to identify best practice comparator airports	No	No	No	Yes
• Allows inefficiency on the basis of union veto	No	No	No	Yes
• Fails to provide even an estimate of T2 opex costs.	No	No	No	Yes
Commercial Revenues				□
• Justifies excess opex on the basis of DAA claimed direct selling superiority but then justifies lower revenues on the basis of DAA's direct selling inferiority	No	No	No	Yes
• Accepts static revenue per passenger despite allowing three complete T2 floors and T1X into the RAB all of which is dedicated commercial space.	No	No	No	Yes
Capital Costs				□
• No consultation on opening RAB	No	No	No	Yes
• No explanation of variations in 2006 starting RAB	No	No	No	Yes
• Allows €855 to be added to/remain in RAB although opposed by users	No	No	No	Yes
• Permits replacement capex and repairs & maintenance to existing assets despite use of indexed depreciation	No	No	No	Yes
• Accepts €300m runway instead of confirmed €5m user preference	No	No	No	Yes
• Allows T2 costs despite T1 having capacity for traffic beyond 2014	No	No	No	Yes
Financial Viability				□
• No account of economic downturn - DAA's costs are falling	No	No		Yes
• Uses meaningless FFO-Debt from Group instead of EBITDA for Dublin Airport	No	No		Yes

A To facilitate the efficient and economic development and operation of Dublin Airport which meets the requirements of current and prospective users of Dublin Airport.

B To protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport.

C To enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner.

CP3-2009 – Chapter 5 QUALITY OF SERVICE

5.1 The CAR fails to explain why the proposed maximum sanction of 4% is substantially lower than the 7% penalty agreed between users and BAA at Stansted Airport. The CAR has failed to take up Ryanair's offer to explain the quality of the rebates system agreed at Stansted Airport and has developed a mainly subjective and ineffective set of service standards at Dublin which fail to meet the reasonable requirements of users.

The spread of penalties across all headings so that no particular service area attracts greater than a 0.6% revenue penalty renders the CAR's proposed system ineffective for users.

5.4 The CAR falsely claims that three measures are derived from "service level agreement (SLA)" that the DAA has with airlines. Ryanair can confirm that there are no service level agreements agreed between the DAA and the airlines.

5.5 Having acknowledged airline concerns the passenger survey responses are an ineffective measurement tool. It is wrong of the CAR to apply penalties based on these defective subjective surveys.

5.6 The CAR's reliance on data provided by ACI (of which DAA is a leading member and a significant influence) is unsupportable and inappropriate.

Ryanair has provided the CAR with specific evidence of the failure of DAA to staff security units, leading to excessive queuing. None of these disruptions to the passenger flow are identifiable in the ACI survey. The decision to include a spurious measurement such as "feeling safe and secure" is wrong given that the CAR has taken this step at the suggestion of the DAA. This fails to meet the reasonable requirements of users.

5.10 The CAR falsely claims that the DACC has declined an opportunity to meet with the CAR on this subject. Ryanair, the largest airline in Dublin, is aware of no such proposal or invitation. The CAR seeks to restrict airline users to suggestions on "airline facing measures" is an artificial contrivance. The CAR has no role in imposing "a one size fits all" regulatory regime on Dublin Airport when passengers needs are best served by airline competition where different service offerings are made available in differentiated facilities at differential prices. The CAR has failed to meet the reasonable requirements of users.

Ryanair recommends that the service level rebate system agreed at Stansted Airport should be applied in its entirety at Dublin Airport by the CAR and can be made available on request should the CAR require same.

5.11 The failure of the CAR to include outbound baggage amongst the targeted services is irrational as Ryanair and the DACC (representing the majority of users at Dublin Airport) have confirmed that the focus of service quality should be on outbound baggage. Despite this user requirement the CAR has accepted the DAA's argument based on an increase in self-service baggage check in (which

CP3-2009 – Chapter 5 QUALITY OF SERVICE

does not currently exist at Dublin Airport and has not been included in the capex plan). This is further evidence of the CAR's regulatory capture.

5.12 Contact stand availability is a meaningless measurement, particularly given CAR's trigger for additional stand capacity. This measurement provides an incentive for DAA to justify additional unnecessary capex by deliberately

delivering suboptimum stand availability while putting only 0.67% of their income at risk. This measurement fails to meet the reasonable requirements of users.

5.21 The CAR has failed to identify what it means by "a good quality of service". In all cases and under all headings the ACI survey results over a period of seven years do not stray from a score of 3 or 4 out of 5 and so have no demonstrable value for users. These surveys are a defective and an inadequate tool even in the irrelevant areas they seek to measure.

5.24 The CAR claims that the service quality currently provided by DAA is acceptable. Ryanair submits that there is therefore no basis for users to be required to pay additional amounts for unnecessary "enhanced" service levels.

5.25 The CAR should but has failed to, provide direct and immediate rebates as is the case with Stansted Airport. The CAR proposal to impose sanctions by way of revised price caps fails to meet the reasonable requirements of users.

5.27 The CAR's division of "airline facing" and "passenger facing" in service quality measures is an artificial and meaningless contrivance. The CAR has failed to prioritise expediting passengers through the airport as the key or primary quality of service and instead is promoting unnecessary dwell time measures recommended by the DAA.

5.29 Ryanair submits that the CAR's position is inconsistent with the requirement of EU Regulation 261, which provides for compensation to passengers by airlines many multiples of the passenger fare. The CAR should specifically but has failed to require the DAA to provide prompt reimbursement to airlines for costs incurred under EU261 where these costs arise from airport failures, fails to meet the reasonable requirement of users.

CP3/2009 -CHAPTER 6 - PASSENGER FORECAST

6.1 Following higher charges at Dublin in 2009 and the introduction of the Government's €10 air passenger tax, the traffic decline at Dublin Airport has accelerated to -15% in May and -14% in June. The majority of airlines in Dublin have announced further and deeper capacity reductions in Winter 09/10.

The CAR has failed to reset its passenger forecasts to take account of continuing evidence that traffic at Dublin Airport will be significantly lower than previously forecast.

Ryanair submits that the following revised passenger forecasts now more accurate:

	2008 (Act)	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
(MPPA)	23.5	19.5	18.5	19.0	20.0	21.0	22.0
Change	-	-15%	-5%	+2.5%	+5%	+5%	+5%

6.3 The CAR has failed users by relying on the DAA's traffic projections for 2009, when these are clearly wrong.

There is no evidence to support the CAR's claimed "one-for-one" link between real GDP growth and DAA's traffic growth. This claim is false. The actual evidence over the past 6 years (2003 – 2009) shows no such correlation, as the gap between Irish GDP and Dublin traffic growth has varied widely from +5.8% to -5.9% as follows:

	03	04	05	06	07	08	09
Irish GDP Growth	+7.3%	+6.7%	+8.7%	+9.0%	+7.4%	-4.2%	-9.2%
Dublin Traffic Growth	+5.8%	+8.1%	+7.7%	+14.9%	+9.9%	-0.8%	-15.0%
Diff	+1.5%	-1.4%	+1%	**-5.9%**	-2.5%	-3.4%	**+5.8%**

6.5 The CAR has failed to adequately explain their "assumed elasticity of one" as "derived" from the results of analysis summarised in Annex 2. Ryanair submits that these claimed results are totally unclear in Annex 2 and deny users transparency over how the CAR arrived at its "derived" assumed elasticity.

6.6 The CAR cannot and should not use the ESRI's most optimistic GDP growth forecasts "the upper end of its forecast range" (+3.5% to +5.6% p.a. between 2011 and 2014) and instead - in current deep recession - should use its most conservative forecasts.

CP3/2009 -CHAPTER 6 - PASSENGER FORECAST

6.7 Since the ESRI's 2009 GDP forecasts were further reduced on 29 April 2009 to minus 9.2%, this renders the CAR's GDP growth forecasts as hopelessly overly optimistic. The CAR should but has failed to reduce its GDP forecasts to reflect the ESRI's latest and more conservative forecasts.

6.8 Ryanair growth and success demonstrably proves that passenger demand at Dublin Airport is very price sensitive. Dublin Airport passengers enjoy the lowest average air fares in Europe, which is prima facie evidence that passenger demand at Dublin is extremely price sensitive. The Commission's speculation that price sensitivity at Dublin Airport subjects the airport to competitive constraints is absurd when the Commission rewards falling traffic at the airport with a price cap 18% higher than it would otherwise have been.

Ryanair believes that the CAR's price-cap regulation of Dublin, like the CAA's discredited regulatory regime in the UK, has failed in recent years to meet its statutory obligation to meet the reasonable requirement of users.
(Ref: Competiton Commission report on BAA).

6.9 The CAR's claim that "there are economies of scale to running an airport" is false. If this were the case then the annual price cap should have fallen during the years 2006-2009 when Dublin Airport traffic was growing strongly. Rigas Doganis confirmed in his book "The Airport Business" that as traffic grows beyond a passenger number of 3million, airports cease to show economies of scale.

The CAR has failed to explain the obvious inconsistency between the CAR's position in previous periods which allowed the DAA to: (a) increase its annual price cap following any year when actual traffic exceeded forecast (which allowed the DAA to claim that it had under-recovered against the cap on a per passenger basis), with (b) the CAR's current draft determination which allows the DAA to recover an annual price cap which is "18% higher" simply because traffic has fallen below original forecasts.

The CAR has failed to explain to users why the annual traffic price cap increases if traffic forecasts are exceeded, but also why the annual price cap increases if traffic falls short of forecasts.

The CAR has failed to explain what circumstances relative to traffic forecasts would give rise to a reduction in annual price cap, since no such reductions have taken place under this CAR.

CP3/2009 - Chapter 7 OPEX

The CAR has failed to publish key opex data thereby preventing transparency and denying users any opportunity to make properly informed comment on the draft determination. The CAR provides no justification for denying users this transparency of information.

DAA has recently confirmed its intention to seek 400 redundancies and a €40 million (i.e. 20%) reduction in operating costs through an expensive voluntary redundancy programme. Ryanair submits that it is wrong for the CAR to propose just 10% possible efficiency gains when DAA themselves have identified in excess of 20%.

No opex consultation has taken place despite repeated user requests for such consultation. CIP meeting transcripts (e.g. Ref. Transcripts 8 April, 18 March, 22 April, 6 May and 29 May 2009). demonstrate that where users attempted to query opex areas, the CAR failed to permit reasonable discussion or require DAA to provide specific answers on opex.

Ryanair submits that information disclosed by DAA at their CIP user consultation meetings (which were chaired by the CAR) contradicts the economic conclusions of Indecon/Jacobs who failed to attend these user meetings and who make no reference to the transcripts of these user meetings in their report.

For example at the meeting of 29th May the DAA's Head of IT confirmed that an IT project would deliver savings in Airport Police overtime in the "high six figures". Yet there there is no evidence in the draft determination that this confirmed cost reduction, representing a significant percentage of Airport Police overtime costs, has been included in the price calculation.

The CAR fails to explain why it allows DAA a higher opex in 2010 than even its inflated 2008 reference when DAA had increased opex by c. 5% instead of the targeted 6% reduction in the previous determination.

Indecon/Jacobs failed to review or refer to the CIP user consultation meeting transcripts in the preparation of their report. It therefore fails to reflect or meet the reasonable requirements of users.

The CAR has failed to provide transparent cost information split between aeronautical and non-aeronautical opex. This fails to meet the reasonable requirements of users.

Where particular airport functions may have aeronautical and commercial objectives the CAR has failed to assign appropriate or relevant costs to each of these areas fails to meet the reasonable requirements of users.

Several DAA opex projects (e.g. IT) were promoted to users by the DAA on the basis of opex savings yet the CAR has failed to provide any evidence that DAA has been held accountable by the CAR to meet these reductions/savings.

CP3/2009 - Chapter 7 OPEX

The CAR has failed to provide users with any estimate for T2 opex or its likely effect on airport costs or to consider the effect this opex increase will have on Dublin Airport traffic. The CAR's proposal that these additional operating costs should be levied on all airport users including passengers using T1 is in conflict with the principle of "user pays" and the Commissions previous support for differential pricing for differentiated facilities.

7.5 The DAA should not be allowed by the CAR to retain the benefits of rolling incentives and then siphon that income away from the "nexus" of the airport and into other investments. In so doing the CAR fails to meet the reasonable requirements of users or promote the efficient and economic development of the airport.

7.6 Ryanair submits that there is no justification for the redaction of DAA figures in Table 7.2. By denying users transparency and sight of these costs the CAR has denied users the opportunity to participate in an informaed consultation process

Ryanair submits that the table provides no information as to the split between aeronautical and non-aeronautical activities. For example, Indecon claims €25 million pa for "commercial, airport management and Head Office" costs. There is no basis whatsoever for users to pay "Head Office" costs as Head Office delivers no value to users of Dublin Airport. It is noteworthy that the Chief Executive of the DAA failed to attend any DACC meetings, despite the DACC protesting his absence on several occasions. It is a blatant example of regulatory gaming for the CAR to allow the DAA to siphon surplus income leading to overpayment by airline users under the pretext of a corporate head office cost which Dublin Airport users are required to fund.

7.8 The CAR's conclusion that airport fire, police and security levels "appear reasonable" is contradicted by DAA's own confirmation that just one IT initiative will save a "high six figure sum" on police overtime.

7.9 The CAR has failed to meet the reasonable requirement of users when it adopted a mid point between two inefficient points as the target level of efficiency for the DAA to reach. The CAR should have chosen the most efficient level for the DAA since this level would be achieved or indeed exceeded if there were competing terminals at Dublin.

7.15 The CAR has failed to specify the costs DAA might incur fulfilling its obligations to persons of reduced mobility as the DAA charges for PRM services more than double. The CAR should only permit a PRM allowance in line with Ryanair's own evidence of efficient PRM costs.

T2 OPERATIONS

7.22 Ryanair submits that there is no lawful basis for the CAR to require users to pay the DAA redundancy costs over and above the levels of statutory redundancy. If

CP3/2009 - Chapter 7 OPEX

DAA requires redundancies, it is because the DAA are inefficient and users should not be expected to pay on the double to subsidise the DAA's inefficiency.

Ryanair submits that there is no basis whatsoever for the CAR to accept redundancy payment levels above statutory redundancy. The CAR's proposals reward existing inefficiencies and are a breach of its statutory duties to meet the

reasonable requirements of users and promote the efficient and economic development of the airport.

7.26 Users do not require Dublin Airport City to be contained in a separate cost centre. They require that no expenditure occurs on Dublin Airport City without the prior agreement of users. The CAR's draft determination would allow DAA to siphon off aeronautical revenues (through excess return on projects which are delayed or never started and predetermined opex savings through over generous allowances) away from the efficient and economic development of the airport and into non-aeronautical activities.

The CAR has again failed to meet the reasonable requirements of users by excluding proceeds from the sale of investments in GSH, Birmingham, Dusseldorf and Hamburg from its regulated balance sheet or viability ratios while at the same time the CAR allows the DAA to receive costs for non-aeronautical developments such as Dublin Airport City from airport users under the price cap.

The failure of the CAR to recognise/include DAA's targeted €40million payroll savings undermine such genuine efforts as DAA might make to achieve these payroll changes. The CAR will recall that the IAA failed in its pleading of "inability to pay" under Clause 1.11 Toward 2016 Review and Transitional agreement at the LRC because its cost recovery was guaranteed by the CAR. This circularity at the expense of consumers must not be allowed by the CAR in the case of DAA.

CP3/2009 - Chapter 8 - COMMERCIAL REVENUES

8.1 As the CAR has hidden all relevant information, it is impossible for users to verify its claims about increases in commercial revenues as a consequence of T1X or additional retail refurbishment spending and accommodation. The CAR has projected commercial revenues as some multiplier of GDP growth which fails to meet the reasonable requirements of users.

8.3 DAA has claimed that additional project specific expenditure would deliver net reductions in airport charges directly from individual facilities however the CAR has relieved DAA of their obligation to demonstrate the values of each retail capex proposal through their chosen "top down" analysis while at the same time allowing unjustified capex into the RAB.

The CAR confirms in Para 8.3 that one retail space may generate revenue at the expense of existing revenues but has failed to identify how these cannibalised retail facilities will be treated in the RAB.

The CAR projects minimal retail growth over the period of the determination on a per passenger basis while allowing T1X and three floors of T2 into the RAB at an cost of over €400 million. The purpose of these facilities was claimed by the DAA to generate additional commercial revenues and the CAR now confirms that no additional revenues will arise. The CAR considers revenues per passenger in comparisons with other airports but it fails to identify revenues per square meter, a normal retail metric and this omission fails to meet the reasonable requirements of users.

By definition, the CAR's approach takes no account of claimed increase in revenue per passenger as a consequence of T1X, (the justification originally argued by DAA). The CAR's model shows €3.8 million pa of incremental retail revenue as a consequence of T1X which is the amount it allow DAA to earn by way of the cost of T1X (i.e. the CAR nets this off). Even if all of the projected increases in retail income per passenger is prescribed to T1X, the average annual figure would be €2.4 million. This leaves no incremental income to justify the €8.8 million the CAR proposes to allow on retail refurbishment.

8.7 The redacted figures in this paragraph make it impossible for users to assess DAA's performance from in-sourced retailing. This is particularly significant as industry leading performance is cited as a justification for in-sourcing this activity.

The CAR claims to favour a single till approach but has allowed T1X as an exception, despite the opposition of users to this project. The CAR then proceeds to invite suggestions from the DAA (only) to segregate other projects from the single till. Users object to this manifest bias which is another example of regulatory capture.

8.9 The CAR appears to accept the fact that DAA direct retailing has tracked retail sales in the economy as a whole; but fails to enquire or explain why retail revenues from non-DAA concessions have significantly outstripped this growth rate in the wider economy. Users believe that the comparatively poor performance

CP3/2009 - Chapter 8 - COMMERCIAL REVENUES

by direct DAA retailing suggests that either the DAA in house expertise is relatively incompetent compared to these other concessionaries or that margins are lower than the concessionaires, in turn suggesting that DAA Corporate may be benefiting elsewhere from suppliers at the expense of Dublin Airport users.

The CAR should (but has failed to) identify the reasons behind the comparatively poor performance of DAA's direct retail versus those of its concessionaires.

The CAR should (but has failed to) identify whether DAA margins are superior or inferior to those enjoyed at other airports on retail sales and the extent to which DAA Corporate and Aer Rianta International are engaged in regulator gaming by deriving benefit from these sales through non "arms length" transactions such as reduced margins or rebates for non Dublin Airport businesses.

8.18 Without explanation or justification, the CAR has chosen not to include DAA's own forecast of a10% sales uplift in 2011. The CAR's failure to incorporate the DAA's own forecast of a 10% uplift in 2011 fails to meet it statutory obligations.

The CAR should (but has failed to) explain its conclusion that such a change would represent a once off adjustment, given the out performance of concession retailers over direct retailing. The CAR should (but has failed to) impose the same target levels of performance on DAA for its direct sales as those achieved by concession retailers in order to meet its statutory obligations.

The CAR should (but has failed to) explain what reduction in opex the CAR included as a result of DAA's decision to move away from direct retailing.

In order to develop an alternative regulatory model and develop on the CAR's intention to introduce variations from the single till model, Ryanair submits that the CAR should (but has failed to) provide, as a matter of urgency, the redacted data to users and should ensure that the DAA provide a detailed table and associated plans showing all floor space and operational costs associated with commercial revenues.

CP3/2009 - Chapter 9 CAPITAL COSTS

The CAR is silent on the matter of double charging through the allowance of replacement capex into the RAB while at the same time incorporating indexed depreciation in the price cap calculation.

Ryanair submits that Indexed depreciation provides for replacement of existing assets. Why is the CAR allowing for the replacement of existing assets and also Repairs and Maintenance Opex into the RAB?

All references in this chapter that are made by the CAR are to DAA meetings and sources. There is no reference to the five CIP meetings that were held and the transcripts of those meetings. Ryanair submits that the users views at these meetings, along with the submission from the DACC, representing 95% of users, have not influenced the Draft Determination.

9.2 The CAR has stated that it will allow another €109.5m into the RAB if the passenger number exceed 33 million. Ryanair submits that the CAR should allow for user consultation on this trigger.

9.3 Ryanair submits that the CAR has not followed its own suggested principles in Annex 1 – for example it has provided no information regarding whether consultation has taken place on changes between the allowed capex and outturn capex, nor has it provided any information regarding consultation with users.

9.6 Ryanair has serious concerns regarding the process that is to be followed in rolling forward the RAB. The CAR states that consultation will be part of the process and yet has failed to disclose figures in Annex 3 for confidentiality reasons.

Ryanair has re-produced the figures in Annex 3 (as far as possible) and has added columns to indicate Ryanair's submission on the treatment of each item. No consultation has taken place on any of the items.

Ryanair submits that the CAR should publish the figures in the tables in Annex 3.

Ryanair submits that the CAR should indicate what backup it has requested/received from the DAA to explain the over and under-spends

9.7 Ryanair submits that the CAR is in a position to reconcile the T1X. The CAR has stated that the project is at risk if it costs more than the incremental revenues. Ryanair submits that the CAR explain why T1X is remunerated in the yield table. If this project is NPV neutral then this should mean that the Commercial Revenues is equal to the Opex costs plus Indexed Depreciation plus the Return on the asset.

Ryanair submits that the CAR confirms that T1X is not part of the price cap calculation.

CP3/2009 - Chapter 9 CAPITAL COSTS

9.8 Ryanair is against the "netting" suggested by the CAR. It is contrary to the reasonable requirements of users to suggest a range of scenarios and then to completely ignore them and add the assets of a group together and deal only with the total. Ryanair has shown in its Annex 3 its submission regarding each item of the Capex 2006-2009.

9.9 CAR has only sought to understand discrepancies between headings. Ryanair submits that this is inconsistent with its suggested treatments under the scenarios.

9.10-9.11 Ryanair submits that the CAR should analyse the differences in the Airfield Projects. The DAA have an inbuilt contingency of 18% for capital projects. Ryanair submits that there is little or no risk in relation to these types of projects and that the contingency should be lower. The DAA have been building stands and constructing aprons for many years and therefore should be able to budget adequately for these projects.

Ryanair submits that Booz should analyse the outturn costs of the stands and airfield projects in comparison to what the DAA have currently in their CIP.

Ryanair submits that the reasons for the over and under spends of the projects should be explained in detail – for example explaining whether they were due to the cost/timing/scale of the projects.

9.15 The CAR refers to Appendix D of the DAA response to the October 2008 Issues paper – it is Appendix 3. Ryanair submits that the CAR should follow it's own suggestion in the Draft Determination and not allow any cost overrun as there has been no consultation with users.

Disappearance of Pier C

a) Ryanair submits that airport users should be fully appraised of the details and of the cost implications to users of obsolete or abandoned assets.

b) Full transparency is critical regarding assets that become obsolete or abandoned before the end of their assumed life.

c) Regarding Pier C for example, users are aware that investment that was deemed by the commission to have been imprudent in the first instance and was removed from the RAB was subsequently readmitted to the RAB following appeal.

d) The entirety of Pier C has now disappeared in order to make way for T2.

e) On the basis set out in Scenario 6 of Annex 1 of the Draft Determination, the commission indicates that it will not normally reverse and earlier decision to remunerate investments just because of changed circumstances.

f) Ryanair requires knowledge of how the commission is remunerating or has remunerated DAA for the investment that is has made in the now abandoned Pier C.

CP3/2009 - Chapter 9 CAPITAL COSTS

g) Ryanair is concerned that any Pier C remuneration that the Commission determines to be payable to DAA arising from its investment in Pier C should fall under the system for remuneration set out for T2 Capital Expenditure since the abandonment of Pier C was necessitated solely by the construction of T2.

h) Accordingly Ryanair submits that any Pier C remuneration – including any acceleration of depreciation arising from the decision to demolish Pier C to make way for T2 – should be subject to the T2 boxing and trigger mechanisms.

i) To the extent that since the date of that decision to demolish Pier C to make way for T2 users have been subjected to charging in relation to Pier C, Ryanair submits that such charges should be reversed and incorporated into the T2 cost base.

9.16 In the DAA's own table, none of the listed reasons relate to user requirements.

Ryanair submits that the "estimated" overspend be explained.

9.18 The CAR believes that "even with the additional costs, users are materially better off with the current Pier D than without a new pier." Ryanair submits that users preferred the €30-€40million Pier D. The CAR is assuming conclusions of users without any evidence. The CAR fails to follow its own scenarios relating to Pier D. There has been no consultation with users. The CAR prefers its own opinion to the expressed wishes of users.

9.20 Ryanair submits that the CAR has carried out no analysis on how these under spends have occurred, with a view to informing itself regarding allowing future capex.

9.22 Some of the projects shown in table 9.4 relate to consultancy fees where projects are not happening. These costs should be at the DAA's own risk. The DAA should bear the risk of their speculative projects where they incur costs and there is no output for users. Ryanair submits that the users should not pay for the consultancy fees for the Fuel Hydrant or for the refurbishments of tenants' accommodation. There has been no consultation on any of these projects and therefore none should be added into the RAB. Users should not have the uncertainty that the DAA can go and spend money on capital projects that are not in the CIP that the CAR will subsequently allow into the RAB. This would be irrational and biased towards the DAA. It is not in the reasonable interest of users for there to be such lack of control on the capital costs of the DAA.

9.24 The CAR has made no mention of the comments by users relating to the Metro North Railway. The users have previously brought to the CAR's attention that monies were paid to the Dublin Port by the Port Tunnel company in order that they could use port land. Ryanair submits that the Metro should be a revenue generating project and not a cost for the DAA.

9.26 Ryanair submits that there is no requirement for a second terminal at Dublin Airport until passenger numbers are greater than 30 million p.a., except to provide

CP3/2009 - Chapter 9 CAPITAL COSTS

an option to provide competition of 2 competing terminals. Ryanair has attached in the appendices to this submission a Terminal 1 Capacity Assessment report prepared by York Aviation which states that the terminal capacity of Terminal 1 is 30 million.

9.27 Ryanair submits that the CAR's definition for the date T2 is ready for operations has no regard for the requirements of users, and instead, has regard for the requirements of the contractor who will be operating from T2.

Post 2009 capex

In the weeks leading up to the Draft Determination the DACC submitted its comments to the CAR on the DAA's CIP for the period 2010 to 2014. The DACC represent users supplying 95% of the traffic at Dublin Airport. The CAR has largely ignored the reasonable views expressed on this submission. Ryanair is re-submitting the DACC's comments as part of it's own submission to the CAR in response to the Draft Determination. Ryanair is submitting these figures as a reasonable CIP as laid out in this report. The CAR is statutorily required to either accept or reject each of these items and to explain the reasons for each decision.

Ryanair submits that because Booz and Co did not attend any of the meetings relating to the CIP on 18 March, 8 April, 22 April, 6 May and 29 May 2009 they were not fully informed in relation to the task of costing the capex that should be added to the RAB. Had they attended or had they read the transcripts, or at the very least had they been copied in on the DACC's submission then they would be aware of alternative valid options that have been put forward by the users of Dublin Airport. They would then have been in a position to cost these alternatives.

9.37 Ryanair is strongly against the CAR grouping projects. Ryanair submits that in all cases in Annex 1 the CAR refers to "the Investment" it does not refer to the "sum of the total investments for the heading". Also, the CAR is inconsistent as it states that it will of course look for evidence that the DAA has undertaken efficient capital expenditure. The CAR has not mentioned that there will be consultation with users. The CAR does not mention that while it will look for evidence from the DAA, it does not say that it is essential that it <u>receives</u> evidence from the DAA.

Ryanair submits that the CAR should clarify what constitutes efficient capital expenditure in this context.

Ryanair submits that the CAR should explicitly accept or reject each of the CIP 2010-2014 proposals provided by the DACC on 5th June, representing the near totality of users (and which forms part of our submission), and explain its your decision as required by statute.

9.38 Ryanair objects to the CAR's suggested treatment regarding adding one fifth of the un-triggered allowance of €198.1m each year. Ryanair submits that this encourages regulatory gaming by the DAA. The Capex should be allowed as and

CP3/2009 - Chapter 9 CAPITAL COSTS

from when the projects are required at the airport. It may be that most of the investment is required later in the price control period, but the CAR has decided to remunerate the DAA regardless of when they invest. The DAA will be incentivised to invest late in the price control period. The examples below show how this method is inconsistent with previous determinations and irrational and bias towards the DAA:

Example – If the DAA's CIP has a project in it to commence in year 5 of €20m, asset life 20 years. Using the current method that is applied the CAR would allow €1m in depreciation in year 5 plus return on €20m (say 7%) of €1,400,000 . This would be approx €2.8m of income for the DAA or €0.11 cent per passenger.

The CAR has now suggested that the €20m is added to the RAB in €4m portions each year. This gives the DAA a staggering €7.2million over the 5 years €4.4m more than in the current treatment or €0.33 per passenger, a €0.22 per passenger increase.

Ryanair submits that CAR is making a biased decision, as it strongly incentivises the DAA to start Capex late in the regulatory period. Ryanair submits that it is a much fairer system to continue to add capex as and when it is projected to be required. Ryanair submits that this would represent a significant change in the method of calculating the price cap that would have a detrimental effect to the incentives of the DAA.

The only advantage to proposing this method is that it removes some basic computational work for the CAR. Ryanair submits that the CAR's own needs are taking precedent over the correct incentives associated with price cap regulation.

Ryanair submits that the CAR explains the economic incentives relating to the reason that the CAR is suggesting changing the treatment of adding Capex to the RAB.

2010-2014 Capex

Ryanair includes the DACC submission on CIP 2010-2014 as Appendix C of this submission.

CP3/2009 - Chapter 10 FINANCIAL VIABILITY

10.1 The CAR has produced no evidence to support its claim that "the economic downturn" has had a material effect on the DAA's revenues.

The CAR has taken no account of the effects the economic downturn may have on the DAA's costs which should be falling significantly and at a minimum should include (a) record low interest rates, (b) lower construction costs, (c) lower labour costs and (d) lower sales/marketing costs.

When the CAR's determination (para 6.9) confirms that the proposed average annual price cap is "18% higher" than it would otherwise be if the 2007 traffic forecasts had materialised the CAR has failed to explain – by reference to each category of revenue – what DAA revenues are being "materially effected" by the economic downturn.

The CAR's draft determination confirms that airlines and passenger users are being forced (through 18% higher price charges) to subsidize declining revenues in other commercial activities of the DAA such as car parks, commercial rents, Dublin Airport City, Cork and Shannon airports.

The CAR has used an irrelevant and meaningless ratio such as FFO-debt, in which the CAR wrongly:

(a) Uses "Group EBITDA" instead of Dublin Airport EBITDA.
(b) Deducts interest paid from this EBITDA figure.
(c) Artificially inflates "net debt" by calculating it as gross debt minus 50% of cash, instead of properly calculating net debt as gross debt minus 100% of cash (this allows the DAA to "game" the €800m. proceeds from the sale of its GSH, and other airport investments because the proceeds which are held in cash are reduced by 50% whereas if these proceeds are used to pay down debt than 100% of their value is deducted).
(d) Uses "Group Debt" instead of Dublin Airport debt.

The CAR's proposed determination allows for above inflation price increases on users "to facilitate improvements in this ratio" instead of incentivising the DAA to improve this ratio by

(a) Lowering its costs of operations.
(b) Reducing its gross debts by asset sales.
(c) Reducing its gross debts by user or PPP co-funding.
(d) Reducing its net debt by simply deducting 100% of its cash balances.

By allowing the price cap in the proposed determination to increase/improve the DAA's (meaningless) FFO-debt ratio, the CAR is simply rewarding the DAA for their inefficient operating costs, their inefficient financing structure, and their regulatory gaming by using a fictitious ratio which overstates net debt by 100%. This fails to meet the reasonable requirements of users.

CP3/2009 - Chapter 10 FINANCIAL VIABILITY

10.2 When the CAR claims that "the profitability and overall debt at the DAA group level has been analysed" but has failed to confirm by whom or when. Nor has the CAR confirmed if this analysis was independent of the DAA. The CAR did not confirm whether it analysed the audited statutory accounts or the unaudited regulatory accounts. The CAR should (but has failed to) provide users with this

analysis when users are being asked to pay higher prices to improve the DAA's ratio and credit ratings.

The CAR fails to provide evidence to support its claim that a "threshold" FFO-debt ratio of above 15% is consistent with the DAA being able to operate Dublin Airport in a financially viable and sustainable manner. Users belive that the DAA can and should be able to operate at a lower FFO-debt ratio when its ability to borrow is based more on its status as a Government owned and guaranteed monopoly.

No allowance has been made by the CAR for the DAA's legal status as a Government owned airport monopoly in assessing its financial viability, its cost of capital, its cost of borrowing, its credit rating, or lender confidence in dealing with the DAA.

The absence of the text from Para 10.3 means that users cannot understand or respond on this issue.

The figures and ratios stated in Table 10.1 are derived from the DAA Groups unaudited regulatory accounts and audited statutory accounts.

10.4 The CAR's claim that the building of T2 and the economic downturn have had an adverse effect on the DAA's balance sheet is not substantiated and the CAR has provided no evidence to support this claim.

The CAR's claim that the building of T2 has had an "adverse effect" on the DAA's balance sheet is untrue and patently false, when this capex only has the effect of replacing one asset (cash) with another (fixed assets – terminal buildings).

The CAR's confirmation in 10.4 that the DAA's traffic forecast for two years (2009 and 2010) has fallen from 50m pax (25 MPPA) to 42m pax (21 MPPA) a drop of 16%, is compelling evidence that there is no need nor requirement for T2 until at least after 2014. The CAR should not require users to pay for a facility which is clearly not needed.

The T2 facility should be excluded by the CAR from the RAB and the pax cap at least until it is needed by users – which is when traffic in T1 exceeds its current capcity of 30 MPPA – sometime after 2015.

CP3/2009 - Chapter 10 FINANCIAL VIABILITY

The CAR's draft decision on Dublin Airport charges refers to the DAA's FFO-debt ratio on a group wide basis (which is distorted by "not insignificant" capex at other airports and other DAA subsidiaries) is incorrect. The CAR should (but has failed to) exclude these non-Dublin Airport expenditures. The CAR currently requires Dublin Airport users to pay higher charges to maintain the DAA's FFO-debt ratios which involves Dublin Airport users subsidising the DAA's spending at other airports and other subsidiaries.

10.5 The CAR should not assume that T2 opens in 2011. The DAA's own traffic forecasts (para 6.2) clearly shows that T2 is not needed until sometime after 2014. The DACC's capacity survey confirms that T1 has a 30 mppa capacity and this figure will not be reached until long after 2014.

The CAR has failed to examine the alternative of temporarily closing/not opening T2 until after 2014 or whenever Dublin Airport traffic exceeds 30 MPPA (whichever is earlier) with users being asked to reimburse the DAA's cost of capital only on this T2 expenditure to date.

The CAR should not ask users to pay additional costs for the T2 facility which they don't require and won't use. The CAR have previously confirmed T2 nat may be substantially oversized and the DAA's own traffic forecasts now confirm that T2 will not be needed until sometime after 2015 at the earliest.

10.6 The CAR has not made any effort to examine or incentivise the DAA to improve its FFO-debt ratio by (a) reducing costs to improve its FFO or (b) reducing its debts by generating cash from other surplus asset sales including the disposal of ARI, Dublin Airport City, Cork and/or Shannon airports. Dublin Airport users are being penalised (and the DAA rewarded by the CAR) for the DAA's regulatory gaming of the inappropriate FFO debt ratio.

10.7 It is incorrect and inappropriate for the CAR to use the DAA Group's debt-FFO ratio...("The DAA's debt-FFO ratio is still projected to be above 20% by 2014") as quoted by the CAR in para 10.7. Ryanair submits that the CAR should take account of the proceeds from the DAA asset sales in these projections. The DAA is being rewarded for its inefficient use of capital and its inefficient capital structure (regulatory gaming) by using this inappropriate FFO-debt ratio.

10.8 The CAR should have undertaken benchmarking of the DAA's regulatory submission in the area of "per passenger opex allowances" in order to verify the DAA's opex estimates against other competitive (i.e. non regulated) airports in the UK and Europe.

The CAR should (but fails to) verify that the DAA's opex is being reduced at least in line with deflation and/or other lower costs which are available to the DAA during the current economic downturn (for example the DAA's claimed €40m pa payroll swings). The CAR should ensure that the benefits of the downturn on costs are being realized by the DAA and are being passed on to users in lower opex and lower price caps.

CP3/2009 - Chapter 10 FINANCIAL VIABILITY

The Car should exclude all T2 opex from the DAA's opex estimates. The DAA's own traffic forecasts confirms that T2 will not be required until after 2014. The CAR should (but has failed to) examine the impact on forecast Opex of mothballing T2 and not using it until sometime after 2015, or when Dublin Airport (T1) traffic exceeds 30 MPPA.

10.9 The CAR should (but has failed to) take into account the impact of higher passenger charges upon passenger numbers at Dublin Airport. Since the DAA has rejected user offers of guaranteed traffic growth in return for lower passenger charges, the CAR should (but has failed to) explore traffic growth at lower charges scenarios in order to prevent regulatory gaming by the DAA.

10.10 The CAR should explain what "regulatory policies" the CAR has considered to be "the most appropriate in the current circumstances" as these are not clear from the draft determination.

Ryanair submits the CAR's conclusion is incomplete and contrary to its statutory obligations by referring only to the "obligation to enable the DAA to operate and develop Dublin Airport in a financially viable manner", and not having made any reference to the equally important "obligation to meet the reasonable requirements of users".

The CAR's over reliance on the "financial viability" of Dublin Airport mean that users are being forced to pay higher charges than would otherwise prevail if:

- Excessive capex was not wasted by the DAA on over-specified and/or over-costed facilities.
- The DAA maintained an efficient capital structure and FFO debt ratio.
- The proceeds from the DAA's asset sales (the GSH hotels and other airport investments) were used to pay down debt or to fund efficient facilities at Dublin Airport (thereby reducing debt).
- The DAA's opex was reduced to industry leading efficiency levels.
- Competing terminals were increasing efficiency and reducing charges in a similar way as the recent emergency of competing adjacent car parks have forced the DAA to reduce its car park charges during the past year.

The CAR should (but has failed to) take into account the impact of the recession on reducing the DAA's costs, and in particular the possibility of mothballing T2 until after 2015 or when Dublin Airports traffic increases to over 30 MPPA, whichever shall be earlier.

CP3/2009 - Chapter 11 OTHER ISSUES

CARGO

11.2 The CAR should (but has failed to) incentivise the DAA to charge a levy on cargo activities. Given the CAR's concerns about the DAA FFO-debt ratio, it is clear that any cargo specific charges (such as a levy on cargo/parcel/mail rates) would improve the DAA's FFO-debt ratio and thereby improve its financial viability.

The CAR should (but has failed to) explore ways to ensure that cargo operators pay a per parcel charge in a similar manner that airlines pay a per passenger charge.

11.4 The CAR has totally failed to analyse or address the issue of regulatory gaming which under the passenger cap means that passenger airlines are cross subsidizing cargo operations at Dublin Airport.

The CAR purports to reject this cross subsidisation for the claimed reason that the regulatory till "includes a host of operating and capital costs…relating to passenger services". This reasoning is illogical and absurd. The CAR ignored the host of capital and operating costs relating to cargo services which are clearly being recovered from passenger airlines since they cannot be recovered from the runway and parking charges which is all that cargo carriers pay at Dublin.

The CAR should (but has failed to) publish the percentage of overall movements at Dublin Airport which are accounted for by cargo movements and explain why cargo airlines are not obliged to pay for that percentage of capital and opex costs at Dublin Airport.

GENERAL AVIATION

11.7 The CAR confirms that general aviation accounted for 7% of overall movements at Dublin Airport. Any contribution from G.A. towards Dublin Airport capex and opex (which is considerably less than 7%) confirms that G.A. is not paying either a fair or appropriate contribution towards costs at Dublin Airport. The CAR should prevent regulatory gaming in this area when it is clear that G.A. is not paying its fair share of costs at Dublin Airport, and so passenger airlines are cross subsidising the very rich users of general aviation services at Dublin Airport.

DUBLIN AIRPORT CITY

11.9 The value of DAC lands (claimed to be 350 acres in total) which have been costed, financed and included in the DAA's balance sheet should be deducted from the RAB. The CAR should ensure that is a notional income charge received by Dublin Airport to cover the value of these lands in the draft determination so that users are not subsidising this speculative land development by the DAA.

The CAR should (but has failed to) ensure that the costs or revenues associated with DAC are not borne by passenger airlines through Dublin Airport's capex and opex.

CP3/2009 - Chapter 11 OTHER ISSUES

There is an extraordinary contradiction between the CAR's claim that DAC "has an insufficient nexus to the regulated business" with the DAA's promotion of this development, which is underpinned by "the construction of a high-speed automated people mover linking with the *Metro North Station at Dublin Airport. Executives based at Dublin Airport City will be able to make the journey from their office desk to the airport check-in in an average of 6 minutes.*". Clearly the nexus between DAC and the airport is absolutely central to the cost, development, and success of the speculative DAC project, property development. There is no basis for the CAR's claim about its "insufficient nexus"

11.11 The CAR should (but has failed to) explain why all costs incurred to date in the design, development, launch and promotion of DAC have not been separately analysed by the CAR and provided to users.

The CAR should (but has failed to) take into account (when measuring the DAA's financial viability) this valuable asset of 350 acres of land as though it is being sold by the DAA in order to improve its FFO-debt ratio by paying down debt. Without such an adjustment passenger airlines will clearly be cross subsidizing non aeronautical speculative property development schemes which do not assist the financial viability of DAA and do not meet the reasonable requirements of users. Ryanair submits that passenger fees should not be increased to maintain the DAA's FFO-debt ratio, while DAA is allowed to promote speculative property development schemes which sustain the DAA's inefficient capital structure in a blatant example of regulatory gaming.

11.12 The CAR fails to explain why airline passengers should subsidise the costs incurred by the DAA on DAC when the CAR does not propose to "claw back" any of these costs.

11.13 Dublin Airport users have sought that DAC current costs including land values be identified and ring fenced and the CAR have failed to meet this reasonable requirement in its draft determination.

PRICE CAP COMPLIANCE

11.14 The CAR should (but has failed to) explain under what circumstances can an over collection in airport charges can arise.

Dublin Airport users require that the DAA should not be rewarded for increased passenger volumes with a price increase, when economies of scale (referred to in para 6.9 by the CAR) should mean that prices should fall if volumes exceed forecast. The CAR allows - as it has in the past - the DAA to raise charges in subsequent years because the actual passenger numbers exceeded forecasts in a given year, (which artificially causes the DAA to recover less than the per passenger price cap).

In the converse when passenger numbers are significantly below forecasts, as in 2009 and 2010, the CAR allows the DAA to be further rewarded by a passenger

CP3/2009 - Chapter 11 OTHER ISSUES

cap which the CAR admits is "18% higher" than it would otherwise be if the traffic forecasts had been realised. This is an absurd and illogical contradiction.

The CAR should explain and justify why it allows the DAA to increase prices to users in subsequent years if passenger traffic exceeds forecasts, while also allowing the DAA to set an "18% higher" price cap to users in subsequent years because passenger traffic has fallen short of forecasts in 2009 and 2010.

This absurd contradiction proves conclusively that the DAA does not suffer any risk at all, when its price cap can be "18% higher than otherwise" simply because its high prices cause traffic to fall short of previous forecasts. The CAR is again rewarding the DAA (with higher prices) for its high costs and inefficiency with an "18% higher" price cap which clearly fails to meet the reasonable requirements of users.

Annex 1 PRINCIPLES FOR RAB ROLL FORWARD

1.9 Section 28 of The Aviation Regulation Act 2001 states that:

> *28.—(1) The CAR may seek that a person in respect of whom it has been given a function under this Act shall keep accounts in such manner as the CAR may determine, in respect of the activities regulated by the CAR, separate from its other activities, and shall produce audited annual accounts in respect of its regulated activities which shall be submitted to the CAR within 6 months of the end of the accounting year.*
> *(2) The CAR may arrange to have examined, on an annual basis, the aforesaid accounts to ensure that a separation of accounts has been carried out.*

The CAR should examine the regulated accounts under section 28(2) of the Aviation Regulation Act 2001 and carry out an ex-post analysis to confirm that the actual spends/results are in accordance with regulatory intentions and requirements.

1.13 The CAR has failed to mention an ex-post adjustment to the Return on the RAB.

1.16 The CAR is inconsistent in its approach to reviewing the outturn of capex compared to the allowance. The CAR says that it may set a general allowance for a particular class of asset, but has not set out in Chapter 9 which projects it intends to amalgamate or include it these classes. Ryanair submits that it will be impossible to distinguish what treatments will be applied if overspends/underspends/ abandoned projects etc are amalgamated.

The CAR should (but fails to) explain how its scenarios can be adopted with the amalgamation that is intended.

1.17 **Scenario 1** "*The investment delivers the expected outputs but at a lower cost than allowed*"

The CAR states there will be no claw back of historic cost savings realised by the regulated company. This is an incentive for the DAA to over specify and over price an asset and to delay its commissioning until later in the regulatory period than planned, thereby realising a return on and of an asset that does not exist and to retain the return on and of the over priced component of the asset.

Having taken revenue on an asset that did not exist for the earlier part of the regulatory period and retained further excess revenues relative to the overpricing of the asset, the DAA can then transfer these revenues out of the aeronautical sphere and away from the airport "nexus", This possibility runs counter to the efficient and economic development of the airport and does nothing to further the reasonable interests of users as users will be required to pay for an overpriced product which didn't exist for a period of up to five years and perhaps longer while these monies are siphoned away from the airport and not reinvested in the efficient or economic development of the airport providing DAA with an incentive to :

Annex 1 PRINCIPLES FOR RAB ROLL FORWARD

- Overprice items in the CIP, as they will get the benefit of both the depreciation charge on the higher item and the return on a higher RAB. The CAR has not specifically stated what it intends to do regarding adjusting the Return on the RAB from which the DAA has enjoyed the benefit The CAR is misrepresenting how it intends to treat the underspend by failing to explain how it will treat the Return monies.

- The CAR also states that there will be no claw back on the extra depreciation allowed. This means that the users have paid higher airport charges for the regulatory period than they should have.

- Build/spend late, the DAA will benefit from the depreciation and from the return on the investment until the next determination.

- Do nothing. The DAA will benefit from the depreciation and from the Return on the investment until the next determination.

The CAR's statement that it "may defer reconciling the actual versus allowed capex" will incentivise the DAA to start projects planned at the beginning of a quinquennium (i.e. 2 year project) at the end of the quinquennium in order that the project overlaps into the next period so that they can retain benefits for up to 9 years. This runs counter to the efficient and economic development of Dublin Airport. It transfers excessive benefits to the DAA at the expense of the users, and is not in the reasonable interests of the users.

Ryanair proposes a clawback of the Return value representing the difference between the allowance given by the CAR and the output of the DAA so that the DAA do not have the incentive to overspend. Ryanair proposes a clawback of the depreciation element in order to avoid the DAA putting items in its CIP which it does not intend building. The CAR has failed to properly investigate why projects have an outturn at a lower cost. For example, stand and airfield project in the CIP 2006-2009 came in under cost by €18.8m. The contingency of 18% allowed by the CAR for these projects is excessive and DAA' is most notably in an area where there is little or no risk in the case of stands and airfield. They benefit both when they overspend on a project using up the contingency, getting the depreciation and the return on the project, and when they underspend, getting the depreciation on the full amount . Ryanair has attached Annex 3 updated with suggested treatments for each asset.

Scenario 2 – "*The investment delivers the outputs but at a higher cost than allowed.*"

The CAR states that it would allow the overrun on the investment into the RAB from the beginning of the next price cap, including an adjustment to allow a return on the investment that the previous determination did not allow, if the overrun represented a change in user requirements' over time.

The CAR proposes to decide on the treatment of higher than expected capex based on user requirements and "that the generality of users supported the change

Annex 1 PRINCIPLES FOR RAB ROLL FORWARD

specification". Ryanair welcomes this requirement for user approval which is inconsistent with the CAR's overall capex draft determination which ignores the view of users as expressed through the DACC submission.

The original figures approved by the CAR in relation to Pier D for the 2001 Determination was IEP£34m/€43m. This was then increased to €89m by the DAA in May 2005. The CAR has stated that it would allow €93.4 into the RAB. This massively increased cost was allowed into the RAB by the CAR despite the opposition of users.

The outturn of Pier D is €124.9m, almost triple the original budget. If the CAR considers Pier D to be treated under scenario 2 then this would mean that the DAA get the cost overrun into the RAB plus an ex-post adjustment for the return that the DAA did not get during the previous price control period. The cost overrun of Pier D results from ignoring the requests by users and confirms that there was no consultation with them on this issue. This is contrary to the reasonable requirements of users and does not promote economic or efficient airport development.

Scenario 3 – "*The investment is not made and consequently anticipated outputs are not delivered.*"

- The CAR should claw-back all of the related capital costs through a one off adjustment to the opening RAB at the beginning of the following price period.
- The DAA should be penalised, for forcing higher than necessary prices on the users by paying an interest charge similar to the current cost of borrowing through price cap reduction.
- The CAR fails to clarify if it proposes including the clawback of the Return in this scenario. Ryanair strongly supports a clawback of the Return plus interest.

Scenario 4 – "*The investments does not deliver the outputs envisaged at the time of the original capex allowance, but instead yields a number of other outputs*".

- Ryanair welcomes the CAR's acknowledgment that there should be consultation with Users. The CAR should have (but failed to) apply this principle to DACC inputs to the CIP.
- Ryanair suggests that users should have a veto on these projects – this would incentivise the DAA to built only what has been agreed prior to the price control period unless users agree that there is a better alternative.
- Ryanair agrees that the CAR should claw back all the related capital costs (including the return on capital) if the investment does not meet the requirements of users.

Annex 1 PRINCIPLES FOR RAB ROLL FORWARD

equal to the current cost of borrowing. This would incentivise the DAA to meet the reasonable requirements of users and the efficient and effective development of Dublin Airport.

- The CAR has introduced, without explanation, a new term – outputs which have "sufficient nexus to the airport". This is not consistent with the statutory objectives of the CAR that the outputs should be in the reasonable interests of users, and for the effective and efficient development of Dublin Airport.

The CAR has failed to specify what "evidence" it requires regarding Consultation with users or how the degree to which outputs meet the interests of users will be determined.

The CAR has failed to specify when it intends introducing the mechanism referred to in Scenario 4. If it is for the forthcoming Price Determination then the CAR must ensure that DAA and users have the opportunity to comment on the revised outputs and whether they have met the users' requirements ".

The CAR failed to request evidence of consultation relating to outputs and therefore is not following its own process and accordingly investments treated under Scenario 4 cannot be allowed. Ryanair is not aware of any consultation on such matters – does this mean that these investments will not be allowed.

The CAR excludes a "veto" at "individual" user level but fails to specify the level of user opposition necessary to secure a veto.

Scenario 5 -"*The investment was abandoned prior to completing all the work, such that some outputs were not delivered.*"

- Ryanair agrees there should be a claw-back of the related capital costs through a one off adjustment to the opening RAB at the beginning of the following price period.
- The DAA should be penalised for forcing higher than necessary prices on the users by paying an interest charge similar to the current cost of borrowing through reduced prices.
- Ryanair supports a claw-back of the Return in this scenario plus interest.
- For Capex costs already incurred the CAR is removing all of the DAA's risk again. The DAA remuneration for an abandoned investment where there is no output for the users is contrary to reasonable requirements of users.

Annex 1 PRINCIPLES FOR RAB ROLL FORWARD

- The CAR should penalise DAA for forcing higher than necessary prices on the users by paying an interest charge
- If the CAR rewards the DAA by providing a return on inefficient investment it will be contrary to the statutory factor which requires the CAR to allow only for the efficient investment in Dublin Airport.

The CAR claims this approach "also allows the CAR set a lower cost of capital" but provides no evidence of this benefit in its consideration of WACC.

The CAR has failed to provide examples when it refers to efficient investment completed by the DAA as there have been no significant efficient investments by the DAA.

Scenario 6 - *"An existing asset in the RAB becomes obsolete before the end of its assumed asset life."*

The CAR has failed to address the demolition of Pier C as a specific topic, and fails to specify whether Scenario 6 is supposed to address any scrappage of this asset .

The CAR's suggested treatment regarding 'obsolete' assets is dependent on whether the asset was considered to represent efficient and economic development. The CAR, in its first determination, concluded that Pier C was not efficient or economic. Pier C was overpriced and over specified. Therefore, it should not be treated as per Scenario 6.

The CAR has stated that it assumes that the new investment was only allowed because it has provided a net benefit to users. How is this net benefit calculated? The capacity of T1 is 30million pax (see appendix York Aviation Terminal 1 Capacity Report). The passenger forecast for the next 5 years indicates that passenger numbers will remain below a 25million level. The CAR provides no evidence that there will be a net benefit when there is no requirement for T2. The CAR appears to consider one individual user is sufficient to measure this net benefit as Aer Lingus is the sole airline advocating the T2 investment according to the DAA presentation.

Scenario 7 - *"An existing asset in the RAB is sold by the regulated company to a third party at a value that is different to the current/remaining value in the RAB."*

The CAR proposes that when an asset is sold, it's indexed value less the sale proceeds remains in the RAB for the life of the asset.

The CAR's proposed treatments in regard to this scenario run counter to the reasonable requirements of users. Ryanair has set out examples to illustrate as follows:

Annex 1 PRINCIPLES FOR RAB ROLL FORWARD

Example 1
DAA purchase an asset Gross value €10million in year 1, (20 year life) In year 10 the Indexed Gross value = €14.8m (assume inflation 4% pa) Indexed Net Book Value = €7.4m **The asset is sold in year 10 – sales proceeds €5million Amount remaining in the RAB - €2.4m**

The CAR has suggested that the correct treatment for the loss on the sale of the asset of €2.4m is that it remains in the RAB – indexed and depreciated each year. Because the assets are indexed each year, it is extremely unlikely, when the asset is sold, that the sales process will be greater than the Indexed Net Book Value, thus creating a RAB that will have the remains of indexed assets, similar to the example above.

The CAR also states that it will treat an arms length transaction with a third party similarly to a transaction with another part of the DAA group. This incentivises the DAA to sell assets to its other airports at vastly reduced sale prices:

Example 2
DAA purchase an asset Gross value €10million in year 1, (20 year life) In year 10 the Indexed Gross value = €14.8m (assume inflation 4% pa) Indexed Net Book Value = €7.4m **The asset is sold in year 10 to SAA/CAA– sales proceeds €1million Amount remaining in the RAB - €6.4m**

It is clear by this example that there is extensive room for abuse by the DAA. Ryanair submits that this would incentivise the DAA to purchase as many assets as possible that can be sold on to their other airports and vastly reduced sales proceeds.

Example 3
DAA purchase an asset Gross value €10million in year 1, (20 year life) In year 10 the Indexed Gross value = €14.8m (assume inflation 4% pa) Indexed Net Book Value = €7.4m **The asset is sold in year 10 – sales proceeds €10million Profit on sale of Asset – €2.6m**

DAA keep the profit on the sale of the fixed asset and the benefit is not returned to users. Again the CAR is taking all risk away from the DAA. The DAA in turn will likely remove this profit and invest it in its non airport activities.

Ryanair suggests that when an asset is sold that the Indexed Regulatory Net Book Value is removed from the RAB entirely, regardless of the sale proceeds. Any proceeds received should be taken into account in the cashflow.