

Commission for Aviation Regulation publishes Consultation on the Decisions of the Aviation Appeals Panel 2020 on Dublin airport charges

- Panel rejects most points of appeal concluding CAR did not err and gave proper consideration to material
- The likelihood is that an Interim Review process will be required as a result of the COVID-19 pandemic

Today (Tuesday 2 June 2020) the Commission for Aviation Regulation (CAR) publishes a consultation paper on the Decisions of the Aviation Appeals Panel 2020 which considered appeals on the fifth Determination on the maximum level of charges at Dublin Airport.

Two parties appealed the Determination, Dublin Airport (daa) and Ryanair. The appeals were wide ranging, touching on almost all aspects of the Determination, including passenger forecasts, operating costs, the cost of capital, financeability, allowances for new capital projects, reconciliation of past capital expenditure and the quality of service regime.

The Panel can refer points of appeal back to the CAR where it considers the appellant has established sufficient grounds for it to do so. After considering the referrals, the CAR can decide to either vary the Determination or affirm it.

The Panel rejected most points of appeal, concluding that the CAR did not err, that it gave proper consideration to material it was presented with, and that CAR had full regard to its statutory requirements. Two items were referred back to CAR for consideration.

Welcoming the Decisions of the Panel, Cathy Mannion, Commissioner said:

“The Decisions of the Appeals Panel largely validate our approach to the 2019 Determination. Dublin Airport and Ryanair appealed a wide range of topics. All of the grounds of appeal brought by Dublin Airport bar one technical matter were rejected by the Panel. Most of Ryanair’s grounds of appeal were also rejected by the Panel. However, we accept the view of the Panel in relation to one of Ryanair’s points of appeal – that we should have conducted a more detailed analysis of Dublin Airport’s ability to achieve the target operating cost efficiencies in a shorter period of time than the one we allowed for.”

The Panel has referred two points back to the CAR:

- A technical point which was part of one of Dublin Airport’s appeal grounds, in relation to the cost pass-through mechanism for some categories of operating costs. During the appeals process, the CAR also requested the Panel to refer this point to allow the CAR to consider the issue identified.
- A point raised by Ryanair, namely the length of time given to Dublin Airport to achieve operating efficiencies. The Panel was not convinced that four years were required to achieve this target, nor was it convinced that the CAR had subjected the possibility that it could be achievable over a shorter time frame to rigorous analysis.

The CAR is proposing to vary the 2019 Determination pursuant to the two referrals. The consultation paper proposes adjustments to certain terms within the price cap formulae to address Dublin Airport’s technical point. It also provides draft findings arising from a more detailed analysis of the achievability of operating cost targets by 2022, as suggested by the Appeals Panel. As a result of this analysis, the CAR is proposing to remove the glidepath adjustment from the price caps for

2022 and 2023, reducing the price cap in those years by 13c and 7c respectively. To put this in context, the reduction in operating costs is 0.5% of the total. There is no impact on the price cap in 2020, 2021 and 2024 or on any other aspect of the Determination.

The CAR reiterated that Opex targets are not prescriptive, complying with the overall price cap is the only restriction on Dublin Airport. While the targets are derived based on granular assumptions, it is open to Dublin Airport to achieve these targets in different ways.

Responses to the consultation paper are due by 15 June. The CAR will publish a decision by 4 July.

COVID-19

The COVID-19 pandemic is having a devastating impact on the global aviation industry and on economic activity generally. Passenger numbers at Dublin Airport are currently down 99%. The timing and pace of recovery is very uncertain.

The Appeals Panel, in consultation with the participants, considered the degree to which it should take account of events which occurred since October 2019. It concluded “that it would be appropriate for it to have regard only to material which was before the CAR when it made the Determination, and not to subsequently procured materials or subsequent events”. All parties engaged with the appeal process in this way, and therefore did not consider the impact of COVID-19.

In relation to COVID-19, Cathy Mannion, Commissioner, said:

“The wide-ranging impact of COVID-19 means that many of the assumptions and expectations which underpin the 2019 Determination on airport charges are no longer valid. The regulatory model used in the 2019 Determination is intended to allow for a reasonable degree of deviation (whether up or down) from ex-ante forecasts over the five-year period, without a requirement for an Interim Review. The current situation is not a reasonable degree of deviation from those forecasts. We will revisit these assumptions in the coming months and years. We intend to work with all stakeholders to review the 2019 Determination in light of COVID-19. We will continue to make evidence based decisions which seek to balance our statutory objectives in the interests of passengers, airlines, Dublin Airport, other stakeholders, and the broader Irish economy.”

The CAR’s current thinking is that at least one interim review is likely to be required and that the price caps set in October 2019 for the later years of the current regulatory period are unlikely to apply in their current form.

During 2020 the CAR intends to consult on the appropriate price regulation response to COVID-19, and will commence this dialogue with industry and stakeholders in a consultation paper in June.

Notes

The Minister for Transport, Tourism and Sport received requests from two parties aggrieved by the Determination, one being Ryanair and the other being daa (Dublin Airport). On the 4 February 2020 the Minister established a Panel to consider those appeals. The members of the Panel were Mr. Eoin McCullough S.C. (Chairman), Ms. Hannah Nixon and Mr. Andrew Charlton. The Panel’s decisions were provided to CAR on 4 May 2020, from which point the CAR has two months to publish a decision which either affirms or varies the 2019 Determination.

Section 32 (14)(a) of the Aviation Regulation Act 2001, as amended, allows the CAR to amend a determination after conducting an interim review.

Ends

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