

Commission for Aviation Regulation  
3<sup>rd</sup> Floor  
Alexandra House  
Earlsfort Terrace  
Dublin 2

20 November 2015

**daa Response to CP1/2015 – Consultation on Conducting an Interim Review of the 2014 Determination of the Maximum Level of Airport Charges at Dublin Airport.**

With reference to our application of 6 November 2015 for an Interim Review of the 2014 Determination limited in scope to the k-term in the price cap formula, and CP1/2015 of 13 November 2015<sup>1</sup>, daa herewith makes the following submission regarding the existence of substantial grounds for allowing such a limited scope review of the 2014 Determination.

**Reason for k-term inclusion in the price cap formula**

As referenced in paragraph 2.2 of CP1/2015 the k-term (the under-recovery mechanism) was first introduced into the price cap formula for the setting of airport charges at Dublin Airport to fulfil two main objectives<sup>2</sup>:

- To protect prospective users from an unduly large increase in the price cap ***from that which was intended*** and
- [At the same time] to allow for sufficiently large deviation under the price cap that daa ***should not normally have to raise charges within the season if it wants ultimately to collect all the revenues allowed by the determination.***

**Impact of the k-term in 2015-2016**

It is important to note that at the time the 2014 Determination was made it was expected (both by CAR and daa) that if the Northern Parallel Runway were to trigger within the 2015-2019 regulatory period it would do so towards the end of the period, not the beginning. As a result, it was expected that daa would have a number of years within which to amend the level of airport charges to take account of the up-coming potential increase arising from the runway trigger attainment.

In 2015, where Dublin Airport kept the general level of airport charges consistent with the 2014 level, it is expected that the out-turn against the price cap will be an under-recovery of 4.9%. However, if daa were to recover all of the allowed revenues in 2016 then the general level of airport charges would have to increase by 11.7% over the 2015 level, if the runway trigger of 25 million passengers in a 12 month period is reached in 2015, or 5.6% if it is not. Even if daa were to make maximum use of the under-recovery mechanism within the price cap formula (i.e. under-recovery by

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<sup>1</sup> CP1/2015 “Consultation on Conducting an Interim Review of the 2014 Determination of the Maximum Level of Airport Charges at Dublin Airport.”

<sup>2</sup> CP1/2009 “Maximum Levels of Airport Charges at Dublin Airport - Draft Determination”, paragraph 11.17

5% against the price cap in 2016) an increase of 6.1% in the general price level would still be required if the runway trigger is achieved in 2015. An increase in the general price level, so as to recover all allowed revenues in 2016 would also be required in the case that the runway trigger was not attained in 2015, with this general price level increase being less than 1%.

It is clear, therefore, that in the current exceptional circumstances which are outside the control of daa, the k-term is failing to fulfil the two objectives for which it was included in the price cap formula and it is for this reason that we have made application for an interim review limited in scope to the k-term.

In CP6/2006 CAR state that “the scope of an interim review should be no wider than necessary to address the grounds for that review. It should, in particular, not revisit assumptions made at the time of the determination that are not materially compromised by the circumstances relevant to the review.” We believe that a review of the 2014 Determination in relation to the k-term only is appropriate to amend the unintended obstacle it presents to the achievement of the objectives of the 2014 Determination.

The removal of the 5% cap on the carry forward of under-recovery would not affect any of the other building blocks of the price cap calculation and would not lead to daa exceeding the total allowed revenues for the regulatory period. In fact, by enabling daa to retain the general level of pricing in 2016 consistent with that of 2015, the proposed amendment would facilitate the interests of users and the objectives of both the principles of allowance under-recovery and of the 2014 Determination.

### **Substantial grounds for Interim Review relating to the k-term**

Pursuant to Section 32 (14)(a) of the Aviation Regulation Act, 2001, CAR can review and amend a determination as it sees fit if it considers that there are ‘substantial grounds’ for doing so. The CAR provided guidance on its interpretation of ‘substantial grounds’ in CP6/2006, and in paragraph 2.8 of CP1/2015 sets out three questions which should be considered in forming a view as to whether substantial grounds exist for an interim review of the 2014 Determination.

#### **1. Are the circumstances exceptional?**

The runway trigger will add 59c (July 2014 prices) to the price cap in the year following the attainment of 25 million passengers; this is the largest triggered increase to the price cap which has been allowed under price cap regulation of Dublin Airport since the inception of the current regime of economic regulation.

When the 2014 Determination was made the expectation (by both CAR and daa) was that the runway trigger could potentially be reached in the final year of the period, but this was not the expected outcome (daa 2019 forecast as per response to Draft Determination 2014, CAR 2019 forecast as per 2014 Determination). However, it is now possible that the runway trigger will be reached in 2015, the first year of the regulatory period. The earlier than expected attainment of the runway trigger has reduced the time available for progressive price changes, and limits the potential

for accommodating this once-off increase in the price cap into a smooth price path given the capping of under-recovery.

**2. Are the circumstances generally outside the control of the regulated company?**

The potential price cap increase from the runway trigger was set out in the 2014 Determination as occurring in the year following the attainment of 25 million passengers at Dublin Airport; the price cap addition from the runway trigger is therefore outside the control of the daa.

At the end of 2014, when airport charges for 2015 were being consulted on with airport users, there was no expectation that the high level of growth experienced from Q2 2014 would be sustained throughout 2015. This is evident from the (incomplete) forecast information for 2015 provided by airlines during that consultation process. The expected out-turn for 2015 is 15% traffic growth over 2014. The level of traffic growth is outside of the direct control of daa.

**3. Are the effects of those circumstances liable to be significant enough to compromise the objectives of the original decision with a review (taking into account the incentive and any other detriments what would in general also arise from a review)?**

The objective of this Determination and others has been to provide for a smooth price path; we believe that this amendment is necessary to maintain smoothness of the pricing path over the period. Further, we believe that, as the k-term has no impact on the building blocks themselves, there are no detriments arising from the proposed amendment. Reviewing the k-term only will ensure that the scope of the interim review is no wider than necessary to address the grounds for the review, as is recommended in CP6/2006.

**Conclusion**

We therefore submit that substantial grounds exist for an Interim Review of the 2014 Determination to be conducted, with the scope of such review being limited to the k-term in the price cap formula. Removal of the cap in the k-term will allow for better alignment of the 2016 out-turn with the objectives of the 2014 Determination (price path, return, incentive-based regulation) without any detriments arising from such an amendment.

For the above reasons daa requests that the Commission open an Interim Review of the 2014 Determination insofar as it relates to the k-term.



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Valerie Ní Fhaoláin  
Head of Economic Regulation