Dr. Adrian Corcoran

Director of Markets and Consumer Policy

Commission for Aviation Regulation

By email: info@aviationreg.ie

12th July 2021

Dear Adrian,

Thank you for the opportunity to provide Aer Lingus' feedback on Consultation Question 5 in CP1/2021, "Consultation on a Second Interim Review due to Covid-19 of the 2019 Determination of Airport Charges". Consultation question 5 has two distinct sections: 1. What are the views of stakeholders on the proposals made by Dublin Airport? and 2. If there is interest in these proposals, could they work within the current regulatory framework, and if not, what changes would be necessary? As Aer Lingus does not support any of the proposals put forward by Dublin Airport, we do not address whether any of the proposals could be implemented within the current regulatory framework or suggest any changes to the regulatory framework that might be required in order to implement any of the proposals.

Market Power Assessment

As acknowledged by Dublin Airport, a Market Power Assessment was undertaken in 2015 by Indecon on behalf of the Department of Transport, Tourism and Sport. This market power assessment found that Dublin Airport did have significant market power such that price cap regulation remained the appropriate form of regulation to be applied. In the interim period there have been no new commercial airport openings within the State which could potentially alter the level of competition experienced by Dublin Airport. As we see no particular reason why the finding made by Indecon would no longer be valid, we do not think that undertaking a Market Power Assessment would be of particular value to the industry at this point in time. Nevertheless, should the CAR (or DTTaS) commence such a process we would be happy to participate as required, to the extent possible given current resourcing levels. However, our preference would very much be for any such Market Power Assessment be conducted where the current Covid restrictions have been lifted and the industry has returned to some extent to more usual levels of operation (and airlines have resourced back up appropriately).

Alternative forms of regulation

DUB airport argues that the implementation of a price cap is not required in order to provide for better outcomes for users and that such outcomes could be delivered through either a shadow price cap regime or price monitoring. All evidence points to this simply not being the case – for example, the business plan from Dublin Airport as part of the 2019 Determination process sought a price cap significantly higher that the €7.50 which was actually set following scrutiny by the regulator and users. We believe that had no price cap been imposed by the 2019 Determination, that Dublin Airport would have intended to apply the higher price included in their own business plan – this would not be a better outcome for users.

Individual airlines cannot devote the volume of resources to each airport they operate to as the regulator can devote to the single regulated entity it oversees (as is the case for the CAR). It is for this reason, that we consider the current regulatory regime – with the powers and resources available from the CAR – to be the best model of regulation for Dublin Airport to best protect the interests of its users. Any attempt to move away from the current framework to a light-handed regime such as a shadow price cap would reduce the level of scrutiny required from the regulator. The level of scrutiny provided by the regulator is a powerful protection from the naturally asymmetrical nature of the information available to the airport and its users. An asymmetry which could easily be exploited by an airport, such as Dublin Airport, which has been found to hold significant market power to the detriment of users. that is so much needed in an environment where there is asymmetry of information and power. As a price monitoring approach is the most light-handed regulatory approach, this would exacerbate the negative likely outcomes outlined above for shadow price cap models.

Modifications to the Building Blocks

1.Risk sharing mechanism

Currently, the WACC at Dublin Airport is set using the CAP-M model which compensates for the entire risk of operation of the business. This total risk includes risks that may incur relatively frequently or very, very infrequently. As we see now with Covid-19 one of these very, very infrequent risks has been realized, however, even this risk is compensated through the WACC. If any risk-sharing mechanism were to be introduced, there would have to be a compensatory reduction in the WACC as Dublin Airport would no longer hold the entirety of the risk priced in at the current WACC level.

2. Single/Dual/Hybrid Till

A Single till regulatory model, is that which most closely replicates the position within a truly competitive environment and is the model under which Dublin Airport has been regulated since it became a regulated entity. We see no justification to move away from this approach, either now or at some future point in time. The benefits of a single-till model, in terms of replication of a competitive environment, have been well articulated over the years and these benefits continue to exist.

Key reasons why Single till should continue to be applied:

- Single till is an acknowledgment of the symbiotic and essential business partner relationship between airports and airline users. The commercial activities within an airport only exist due to the passengers that airlines bring.
- Airlines transport passengers to the airport, invest significantly in airport infrastructure and as the primary users, should benefit from non-core activities.
- A dual till approach to charging is possible only because a company does not operate in a competitive environment. Economic regulation should strive for a single till approach that will enable lower charges, generating lower fares and

increased traffic volumes, while delivering appropriate returns across the whole airport business.

- Airports are built specifically for aviation purposes and priority must be given to airline activity and passenger facilitation.
- Single till eliminates the need for difficult, detailed cost and asset allocation between aeronautical and commercial tills.
- Single till, in combination with the appropriate economic regulation, incentivizes and allows airports to increase retail and commercial revenues, while decreasing charges to airline users.
- There is no evidence that dual till provides better incentives for airports to make timely investments than single till. Dual till can incentivize airports to invest in potentially higher-return commercial activity to the detriment of essential aeronautical infrastructure.
- We note also that a till exit mechanism exists for Dublin Airport and has been successfully utilized in the past. This allows Dublin Airport the freedom to conduct commercial activities which it wishes to pursue but have not been supported by its users – an excellent balancing position between providing flexibility to Dublin Airport in its commercial activities and protection of users from risks which they do not wish to underwrite.

3. RAB Adjustment

Aer Lingus does not accept that there were any "lost revenues" to Dublin Airport in 2020 as no such concept exists within price cap regulation. On this basis, we absolutely reject the possibility that any upward adjustment to the RAB would be appropriate at this or any future time to compensate for "lost revenues" when so such "lost revenues" can be recognized under price cap regulation.

With regard to the proposals concerning the inclusion of cargo within the price cap and the length of the regulatory control period, Aer Lingus supports the arguments raised by IATA in its submission on these proposals.

Yours sincerely,

Valerie Ní Fhaoláin

____

Valerie Ní Fhaoláin
Infrastructure & Planning Manager