

7 December 2022

Commission for Aviation Regulation
3rd Floor
6 Earlsfort Terrace
Dublin 2
Email: info@aviationreg.ie

By email

Re: Consultation Options for Timeline and Period in Force of the Third Interim Review of the 2019 Determination

Dear Sir / Madam,

We refer to the above consultation (CP6/2022).

Ryanair maintains the view (as expressed in our responses to CAR's Issues Paper CP1/2022 and Draft Decision CP3/2022) that this interim review is not necessary and the current determination period should be allowed to run its course up to the end of 2024. The fact that the interim review is premature has been evidenced by DAA's delayed (and undetailed) CIP submissions as well as the legislative uncertainty which has arisen by conducting a review before the Air Navigation and Transport Bill (ANTB) has been enacted and commenced.

However, on the assumption that CAR is going to make a new decision amending the current determination pursuant to the interim review, please find below our comments on CP6/2022.

The potential outcomes of the interim review in CP6/2022 are mischaracterised by CAR as "options". We understand that Option 1 will be pursued by CAR as long as the ANTB is enacted and relevant sections commenced by the Minister by 23 December 2022. CAR's guiding principle should be to make a decision to amend the current determination for 2023 and 2024 ahead of the end of 2022, so that it will apply from the start of the period of time subject to the amendment (i.e., 1 January 2023). Our view is that it is potentially unlawful (and is poor regulatory practice at best) to make retrospective regulatory decisions applying a price cap to a period already passed. This guiding principle would rule out Options 2 and 3(b).

CAR should set a "hard-stop" date whereby it is ready to immediately on that day either: a) take a decision that covers 2023 – 2026, should the ANTB be enacted and relevant sections commenced by that date (Option 1), or b) take a decision covering 2023 and 2024 only, should the ANTB and/or relevant sections not be enacted/commenced (Option 3(a)). We assume CAR is working towards 23 December being this "hard-stop" date.

Our view is therefore that CAR needs to eliminate Options 2 and 3(b) and prepare for the activation of Option 1 or Option 3(a) on 23 December, depending on the progress of the ANTB.

Cost certainty for S23 is critical for airlines, and as per Article 6 (2) of Directive 2009/12/EC, DAA are obliged to submit their charge proposals to airlines no later than four months before they come into force. This means that should DAA intend to make any amendment to airport charges for S23, Ryanair would expect the consultation process for this amendment to commence at least four months in advance. Ryanair does not consider the delay to the ANTB as an exceptional circumstance to justify a shortening of the consultation procedure, as all stakeholders had full knowledge that the legislation had not been passed when CAR initially took the decision to conduct an interim review.

Should you have any questions in relation to the above, do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eoin Kealy', with a horizontal line underneath.

Eoin Kealy
Head of Competition & Regulatory

cc. Regan Tilson, Airport Economics Manager, Ryanair.