Draft Decision

on an

Interim Review of the 2019 Determination

in relation to

2020 and 2021

Commission Paper 9/2020

23 October 2020

Commission for Aviation Regulation

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1. Executive Summary

1.1 This paper sets out our Draft Decision on an Interim Review of the 2019 Determination in relation to the regulatory settlements for 2020 and 2021. It follows our consultation on the appropriate price regulation response to the COVID-19 pandemic (CP3/2020). In that paper, we indicated our expectation that a narrow interim review would be required in 2020 to address immediate unintended consequences for the 2019 Determination that the pandemic has created.

1.2 In line with our proposal from CP3/2020, this review will seek to address those consequences, making changes to the regulatory settlements to remove adjustments which are based on out-dated targets, provide perverse incentives, or would have an impact which was not anticipated in 2019. In our view, the impact of COVID-19 clearly constitutes substantial grounds for carrying out such a review at this time.

1.3 For the reasons set out in this paper, we propose to remove all triggers and adjustments relating to the price caps for 2020 and 2021. We also propose to remove adjustments relating to 2020 and 2021 which would not impact the base price cap in those years, but rather price caps from 2022 and beyond.

1.4 We consider that it would be disproportionate to now require Dublin Airport to rebate airport users in respect of a likely overcollection of aeronautical revenues per passenger in 2020. This overcollection has resulted from an unexpected change in the profile of the aeronautical revenue stream, due to the pandemic. Dublin Airport set out its airport charges for 2020 at the end of 2019, in the absence of any knowledge of the events which would transpire in 2020. For that reason, we propose to replace the 2020 per-passenger cap with a series of individual caps which reflect Dublin Airport's published menu of airport charges for 2020.

1.5 Thus, in summary, for 2020 there would be a series of caps intended to reflect the individual airport charges applicable during the year. In 2021, the price cap would be exactly €7.50 per passenger. No adjustments would be made in future years in relation to 2020 or 2021, meaning that there would be no clawback of unspent Capex or adjustments made relating to the Opex passthrough mechanism.

1.6 We propose to introduce a meaningful consultation process for substantial Capex projects (projects over €4m) which Dublin Airport might want to progress in 2020 or 2021. This consultation would take place in the context of the changed circumstances arising from the pandemic. The process is intended to protect the interests of future users from the current potential for capacity overprovision, and associated diminished value in airport charges.

1.7 We expect that a further review or reviews of the 2019 Determination will likely be required as the situation develops over the coming years. We will provide further updates regarding our current thinking on the timeline and scope, in advance of commencing any future review.

1.8 This is a consultation document. We invite evidence-based submissions on all aspects of our proposals by **5pm, 27 November 2020.**

2. Notice of Making a Determination

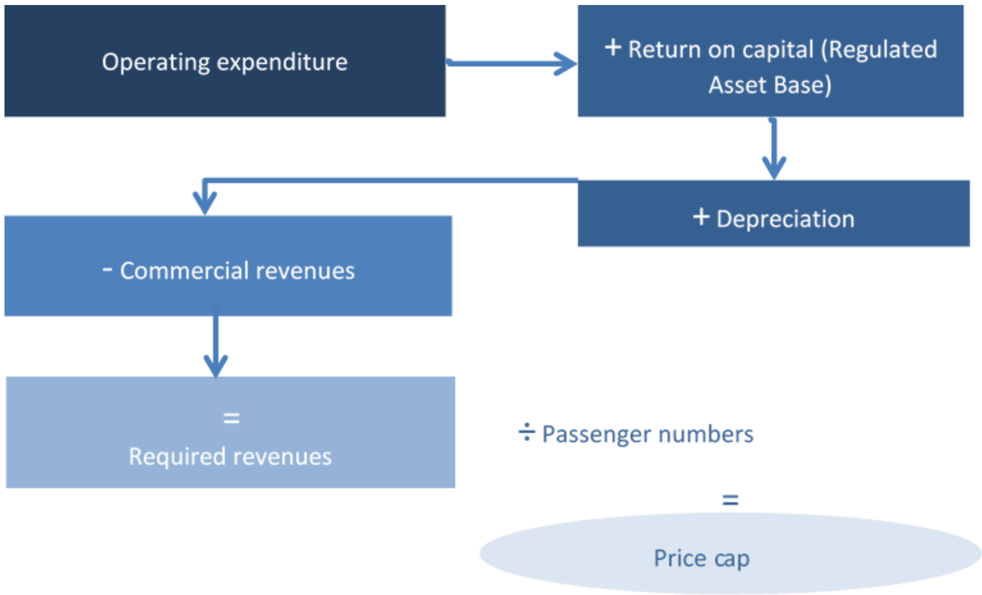
2.1 In accordance with Section 32 (7) of the 2001 Aviation Regulation Act, we hereby give notice of our intention to make amendments to the "Varied 2019 Determination pursuant to Appeals Panel referrals" (CP5/2020).

2.2 Pursuant to the 2001 Act, we must allow a statutory consultation period of no less than one month from the date of publication of this notice. As in previous periods, we give notice by way of publishing this Draft Decision. The deadline for receipt of representations is **5pm, 27 November 2020**. Interested parties should note the contents of Section 9 concerning the deadline. The conditions contained therein will be strictly applied without exception. Interested parties should also note the guidelines regarding issues such as delivery of documents and confidentiality.

3. Introduction and Background

3.1 The 2019 Determination, published in October 2019, set the maximum level of airport charges (price caps) at Dublin Airport for 2020-2024. We used a building blocks approach to calculate these price caps. This approach involves calculating targets for future operating expenditures, commercial revenues, passenger numbers, and capital costs (which in turn requires an assessment of proposed capital projects). We use a single till, which means we include commercial revenues generated from activities such as retail, car parking and Food & Beverage at the airport, and also costs associated with providing these non-aeronautical services.

Chart 3.1: The building blocks approach



3.2 We set quality standards to ensure that cost efficiencies achieved by the airport are not made at the expense of the quality of service delivered, incentivising it to sustain and improve its performance in the areas that are important to airport users (passengers and airlines).

3.3 We enabled the financial viability of Dublin Airport by checking that, when all the building blocks are taken together, Dublin Airport was able to raise debt at an efficient cost. To achieve this for 2020-2024 we made a financial viability adjustment of €109m, bringing forward depreciation from future periods into the current period. This adjustment was required to enable the delivery of the allowed Capital Investment Programme (CIP) under a variety of reasonable scenarios. The CIP was larger in scale than any previous investment programme.

3.4 We implemented incentive-based regulation. Where Dublin Airport outperforms our targets, it keeps the gain and vice versa. For the most part, Dublin Airport holds the risk within the period, and it is transferred to users at the time of the subsequent determination. This creates incentives for Dublin Airport to act as a company in a competitive market would, in responding to circumstances as they unfold.

3.5 Following publication in October 2019, the determination was appealed by daa and Ryanair on a range of grounds. The Commission made some relatively small reductions to the price caps for 2022 and 2023 in response to the findings of the appeals panel in relation to one of the grounds of appeal brought by Ryanair.

3.6 Table 3.1 sets out the base price caps per passenger originally determined in October 2019, as well as the final varied price caps set pursuant to the referrals from the appeals panel. These price caps are subject to change within the period due to a range of adjustments and triggers set out in the price cap formulae. Full details in relation to the analysis and calculations underpinning the 2019 Determination are available on the Commission's website.[1]

Table 3.1: Base Price Caps

	2020	2021	2022	2023	2024	Average
October 2019 Determination	€7.50	€7.50	€7.88	€8.12	€8.32	€7.87
Final Varied Determination	€7.50	€7.50	**€7.75**	**€8.05**	€8.32	**€7.82**

Source: 2019 Determination, Varied 2019 Determination

COVID-19

3.7 Subsequent to the publication of the determination in October 2019, in early 2020, it became clear that the COVID-19 pandemic would have a substantial impact on the assumptions and forecasts underpinning the determination. For the time being at least, these assumptions and forecasts would not be reflective of reality. In June 2020, we issued a high level, wide-ranging consultation paper (CP3/2020) seeking views on the appropriate response from the Commission and setting out our current thinking in relation to potential reviews of the 2019 Determination.[2]

3.8 We received six responses to that paper, from Aer Lingus, Airports Council International (ACI), Dublin Airport, IATA, the Commission for Regulation of Utilities (CRU), and Ryanair.[3] In line with the nature of the consultation paper, respondents provided views on many aspects of the 2019 Determination. This paper discusses points raised by respondents which relate to the specific scope of this review, rather than the various broader points raised which would be relevant in the context of a future interim review.

3.9 In CP3/2020, we indicated an expectation that we would carry out at least one interim review of the 2019 Determination due to the impact of the pandemic on the assumptions and expectations underpinning it. We expected that the first interim review would take place in 2020, addressing immediate unintended pricing consequences arising from the pandemic in 2020 and/or 2021 in a balanced way. We did not envisage that this review would make any changes to the core aspects of the 2019 Determination building block allowances or the risk allocation.

3.10 In line with the approach set out in CP3/2020, this paper sets out our Draft Decision on that first interim review. Section 4 provides an overview of the grounds for carrying out this review, the scope of the review, and the objective. Section 5 sets out our proposals for changes to the determined maximum pricing levels in 2020 and 2021. Section 6 provides an overview of the individual price cap adjustments for both of those years, which we are proposing to remove. Section 7 proposes some other adjustments to the regulatory model currently in place for 2020 and 2021, which will not impact the price caps in those years but may do so in future years. Section 8 provides an update on our thinking for a potential future review or reviews to apply from 2022 and beyond. Section 9 provides details on how to respond to this Draft Decision.

[1] https://www.aviationreg.ie/regulation-of-airport-charges-dublin-airport/2019-determination.841.html
[2] https://www.aviationreg.ie/_fileupload/COVIDConsultation%20(1).pdf
[3] Responses are on this page: https://www.aviationreg.ie/regulation-of-airport-charges-dublin-airport/2019-determination.841.html

4. Substantial Grounds, Scope and Objective

4.1 Pursuant to Section 32(14) of the Aviation Regulation Act 2001, as amended by the State Airports Act, 2004, the Commission may carry out an interim review of the prevailing determination if it considers that there are substantial grounds for doing so.[4] If it sees fit, it may amend the determination.

4.2 The Commission has previously used the following test to establish whether substantial grounds exist for conducting an interim review:[5]

- Are the circumstances exceptional?
- Are the circumstances generally outside the control of the regulated company?
- Are the effects of those circumstances liable to be significant enough to compromise the objectives of the original decision without a review (taking into account the incentive and any other detriments that would in general also arise from a review)?

4.3 Establishing substantial grounds should be done in a manner consistent with the statutory objectives of the Commission, as should any decision to amend the determination. Section 33 of the 2001 Act sets out our objectives. The core objectives, which must be read together and in light of each other when considering the merits of potential amendments, are:

- To facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport.
- To protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport.
- To enable daa to operate and develop Dublin Airport in a sustainable and financially viable manner.

4.4 The Commission considers that the profound impact of the COVID-19 pandemic on aviation in Ireland to date in 2020, and the likelihood of this impact substantially continuing into 2021 at least, clearly constitutes substantial grounds to review the 2019 Determination with respect to the regulatory settlements set out for 2020 and 2021. The circumstances arising from the COVID-19 pandemic are exceptional by any reasonable metric, and outside the control of Dublin Airport. Certain aspects of these regulatory settlements are no longer fit-for-purpose and, if not adjusted, are now likely to run contrary to our statutory objectives, thereby compromising the objectives of the original decision.

4.5 Thus, the objective of this review is to consider how the 2019 Determination should best be adjusted at this time, to fit the changed circumstances prevailing in 2020 and 2021.

4.6 The scope of this review does not encompass changes to the regulatory building blocks used to derive the base price cap of €7.50, or the allocation of risk, for 2020 and 2021. There was no suggestion among the responses we received that such a wide-ranging review should be carried out at this time. Nor does it encompass the regulatory settlements for 2022 and beyond, except where adjustments to the price cap formulae are required to give effect to the changes we are proposing for 2020 and 2021. These topics may be considered in a future

[4] This section was amended by the State Airports Act 2004, removing the 2-year time limit and now an interim review can be conducted at any time.
[5] https://www.aviationreg.ie/_fileupload/Image/PR_AC2_PUB8_CP6_2006.pdf

review or reviews.

4.7 Specific details are set out in subsequent sections of this paper.

5. Proposed Price cap for 2020 and 2021

5.1 We are proposing to make some changes to the 2020 and 2021 price cap formulae guided by the following principles:

- Stability in the price cap.
- Incentives which are fit for purpose.
- A fair approach, avoiding changes which would disproportionately benefit one stakeholder or group of stakeholders at the expense of others.

5.2 We are proposing to achieve this by removing triggers or adjustments which are based on out-dated targets and could now result in significant variations in the price cap, provide perverse incentives, or would have an impact which was not anticipated in 2019. We are also proposing to change some of the regulatory rules in relation to capital expenditure, to protect the interests of future users.

5.3 For the reasons set out in this and subsequent sections, we propose to remove all adjustments from the price cap formulae for 2020 and 2021, leaving Airport Charges to be set with reference to the base price caps of €7.50. In addition, we do not intend to require Dublin Airport to refund airport users for a likely over-collection in 2020, provided that it does not increase the individual charges from the levels set out in Appendix 1. These adjustments would be reflected in the price cap formulae as part of a final decision.

5.4 We also intend to apply this ‘no adjustments’ principle to features of the regulatory model in 2020 and 2021 which do not impact the price cap in 2020 or 2021, but may impact it in future years. This would lead to the removal of the unspent Capex clawback mechanism and Commercial Revenues rolling schemes mechanism.

5.5 Thus, in summary, Dublin Airport would collect aeronautical revenues in accordance with the limitations we set out in this Draft Decision. It may use these revenues to fund either Opex or Capex, as it sees fit, without any clawback mechanism incentivising a Capex approach. Subject to the limitations set out in Section 6, where Dublin Airport incurs Capex, this level of Capex would be remunerated via the RAB for future determination(s).

5.6 Based on the submissions we received, there is an element of consensus around this approach to the level of pricing in the current circumstances, at least in the short term. Ryanair opposes any review which would lead to an increase in airport charges, further stating that if a narrow interim review is to be conducted, it would be advantageous for this to be undertaken speedily in time to reset charges downwards for 2021. ACI calls on us to speedily offer clarity in relation to the price cap. Dublin Airport calls for the price caps for 2020 and 2021 to be retained at €7.50, stating that any reduction would exacerbate the current losses it is suffering, while also acknowledging that would be inappropriate to increase charges at a time when demand is so depressed. Dublin Airport also states that we should consider the level of aeronautical revenues collected under the current charges to be compliant for 2020. However, Dublin Airport has subsequently requested that we instead move away from a per-passenger cap for 2021, in a letter which is published alongside this document. This is discussed below.

Proposed Price Caps for 2020

5.7 In CP3/2020, we noted that despite aeronautical revenue being far lower than was expected for 2020, there was a likelihood that Dublin Airport would over-collect at a per-passenger level based on current pricing levels. The current menu of airport charges and incentive schemes were set in 2019 to achieve compliance with the price cap of €7.50.[6] However, the substantially reduced load factors and an increased proportion of cargo means that the aeronautical revenues actually collected are more heavily weighted towards runway charges than was expected when charges were set. Furthermore, revenue from aircraft parking charges is likely to be proportionately higher than expected.

5.8 Dublin Airport offered discounted parking charges, in the form of contact stands at remote stand prices, during 2020, in the context of grounded aircraft. It also reduced runway charges for cargo flights until August. Nonetheless, we still expect that Dublin Airport will have collected more than €7.50 per passenger in 2020 as a result of the impact of the pandemic changing the profile of its aeronautical revenue stream, while reducing it substantially overall.

5.9 We consider that it would be disproportionate to require Dublin Airport to refund airport users for overcollection on the per-passenger price cap, given that it set charges in 2019 which were intended to be compliant with the 2020 price cap. As stated by Dublin Airport, overcollection against the 2020 price cap is an outcome which Dublin Airport could not have foreseen when setting these airport charges for 2020, in the absence of any awareness of the events which would take place in 2020.

5.10 To date, the Commission has always set a global per-passenger price cap. However, under Section 32(6)(a)ii of the Aviation Regulation Act, 2001 (as amended), a determination may instead set limits on particular categories of airport charges. We propose to replace the global per-passenger cap with individual time-specific caps on each individual aviation charge for 2020. Each limit would be set equal to the charge specified in Dublin Airport's menu of charges applicable during 2020. This menu is included in Appendix 1 below. We would also remove the K-Factor from the 2022 price cap formula, meaning that no undercollection from 2020 would or could be carried forward.

5.11 The implication of this approach is that whatever level of aeronautical charges is recovered by Dublin Airport in 2020 will be compliant with the 2019 Determination, provided that Dublin Airport does not recover aeronautical revenues in excess of the menu of charges. There would be no refunds payable to airport users arising from any overcollection of accrued aeronautical revenues in 2020, nor would there be any undercollection carried forward to 2022 through the K-Factor. Dublin Airport may still offer discounted parking or other charges if it so chooses.

Proposed Price Cap for 2021

5.12 We then consider the appropriate approach for 2021. As set out above, we do not consider that a broader re-set of the building blocks to adjust the base price cap of €7.50 would be desirable or achievable at this time, in particular because of the level of uncertainty that exists around the determining robust input assumptions underlying the calculation of the various building blocks. We see four potential approaches:

1. Make no change to the price cap formula, meaning that the price cap would continue to be adjustable on the basis of the Opex passthrough mechanism, the reprofiling triggers, the other Capex triggers (T2 Box 2 and the second and third North Runway triggers), and service quality adjustments.
2. Remove some of these adjustments, specifically ones which we consider to not be appropriate or desirable for 2021, on a case-by-case basis.

[6] Costs and prices are in February 2019 prices, as in the 2019 Final Determination.

3. Remove all adjustment mechanisms, leaving the price cap for 2021 at exactly €7.50.
4. Apply a similar approach for 2021 as we are proposing for 2020, but on a prospective basis, namely setting a series of limits such that Dublin Airport's 2020 charging strategy would continue to be precisely allowed as the determined maximum levels of charges in 2021.[7]

5.13 The Commission proposes to implement the third option, retaining a per-passenger price cap at €7.50, while removing all adjustment mechanisms (including the inflation adjustment).

5.14 In general terms, the various adjustments in the 2021 price cap formula were derived in 2019 and do not reflect the changed circumstances. They were intended to operate in a scenario where outturn numbers were within reasonable bounds of deviation from our 2019 forecasts, with a degree of year-on-year consistency and predictability in developments both at Dublin Airport and in the broader economy. In some cases, the incentives these adjustments provide are now undesirable. In other cases, we consider that they would unfairly penalise Dublin Airport for scenarios which have arisen due to the pandemic. Depending on how they were constructed, with lower passenger numbers they might either have a much smaller impact on total aeronautical revenues than was intended (the reprofiling triggers) or a much larger price cap impact than was intended (the Opex passthrough mechanism).

5.15 Removing all adjustments provides specific certainty over the final permitted level of aeronautical revenues per passenger. We see merit in a symmetrical approach which removes all adjustments associated with 2020 or 2021 regardless of whether they might increase or reduce the price cap. Equally, we consider that the removal of each individual adjustment is justifiable on its own merits as set out in Section 5. For these reasons we prefer option 3 to either options 1 or 2. Each specific adjustment is discussed further in Section 5 below.

5.16 That leaves the broader question of whether to also move away from a per-passenger cap and look to 'freeze' Dublin Airport's charging strategy (option 4). Dublin Airport has requested that, like 2020, we implement individual caps on the menu of charges in 2021. This would mean that it could not increase any one of the individual charges above the current level, but there would be no other compliance requirement for 2021.

5.17 As load factors are likely to remain below the assumptions underpinning Dublin Airport's current charging strategy, Dublin Airport may need to adjust some of its current charges downwards for 2021 in order to achieve compliance with a per-passenger cap of €7.50. Unlike 2020, however, individual charges for 2021 are yet to be set by Dublin Airport and consequently it will set these charges in the context of awareness of the pandemic.

5.18 Option 4 would therefore be a prospective decision in relation to aeronautical activity which is yet to occur. However, the application of option 4 would likely be equivalent to increasing the per-passenger price cap for 2021. The likely scale of the effective increase is unknown at this time. Unlike 2020, the level of charges still has the potential to impact the level of traffic in 2021, while Dublin Airport still has the opportunity to address this issue in December as part of the normal charges setting process.

5.19 Furthermore, we note that Dublin Airport's current menu of charges alone was not designed to achieve compliance with a price cap of €7.50 in 2020. Instead it was the overall charging strategy, including incentive schemes, which was intended to be price cap compliant. Incentive

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[7] In line with the Thessaloniki Forum, we define the charging strategy as '*the combination of all elements relating to Airport Charges, including the menu of charges, any rebates or discounts, incentive schemes or bilateral contracts (including Service Level Agreements)*'
https://www.aviationreg.ie/_fileupload/Incentives%20and%20Discounts.pdf

schemes reduce the level of aeronautical revenues accruing from a given menu of charges. Consequently, even if it were to be accepted that we should freeze charges at the levels at which they were last set before the onset of the pandemic, it would be inconsistent with this logic to not freeze the incentive schemes along with the menu of charges which together formed the charging strategy. Given the potential year-on-year growth in traffic in 2021, the incentive schemes currently in effect could in turn generate relatively high levels of rebates payable by Dublin Airport. Like the adjustments in the 2019 Determination, Dublin Airport did not design these schemes in the context of the level of uncertainty which has arisen due to the pandemic.

5.20 For these reasons, we consider option 3 to also be preferable to option 4. Having regard to the submissions we received, we also believe that this is the closest to a consensus outcome, which addresses unintended consequences of the pandemic in a proportionate way which does not disproportionately benefit one stakeholder or group of stakeholders over another.

5.21 We understand that seeking to set a charging strategy to accrue a particular level of aeronautical revenue per passenger in 2021 will be more challenging than usual for Dublin Airport, given the level of uncertainty over 2021. However, there is a range of ex-ante approaches which could be considered to reduce or compensate for exposure of aeronautical revenue per passenger to variation in aircraft load factors, and there is also the potential to adjust charges within the year. If the price cap is set on a global per-passenger basis, however, stakeholders should be aware of a higher than normal probability that Dublin Airport would need to adjust charges within the year to adjust its recovery per passenger, subject to the consultation process required under the Airport Charges Directive.

5.22 Given the level of uncertainty over 2021, we consider that it may be appropriate to provide some further flexibility for imperfect collection by Dublin Airport. Under the 2019 Determination, if Dublin Airport overcollects it has 90 days from the end of the year to repay the overcollection. If it undercollects, it can subsequently recover the undercollection up to a limit of 5% through the K-Factor term. We are open to views on whether to allow for a degree of further flexibility in these limits, and if so, what that degree of flexibility should be and why.

6. Triggers and Adjustments

6.1 As set out in Section 5, we are proposing to remove all of the adjustments which would impact the base price caps for 2020 and 2021. In this section, we provide further details in relation to each individual adjustment.

T2 Box 2 Trigger

6.2 CP6/2007 set out a Box 1/Box 2 approach to the remuneration of Terminal 2 (T2).[8] The remuneration of the majority of T2 Capex (termed Box 1) commenced when T2 opened in 2010. The remuneration of the final €193.5m (Box 2) was delayed until annual passenger numbers reached 33 million.[9] The two-box approach was implemented on the basis that the scale of the planned T2 was not, at that time, sufficiently justified by Dublin Airport. For that reason, it was decided that if Dublin Airport proceeded to build a facility of the proposed size, it should continue to bear some of the risk that demand for a facility of this size would not materialise, rather than requiring airport users to pay capital costs in full from the outset.

6.3 At the time of the Final Determination in October 2019, the Commission forecast that passenger numbers for 2019 would be 32.85m, and that the 33m threshold would be comfortably exceeded in 2020. On that basis, the remuneration of Box 2 was included in the base price cap from 2020 (the base price cap being €7.50 in 2020). It also included a reverse trigger to remove Box 2 if the 33m threshold was not reached.

6.4 Dublin Airport processed 32.91m passengers in 2019, in excess of the forecast we produced in October 2019 and thus closer again to the 33m threshold (within 88k passengers). Specifically, it equates to 99.7% of the threshold. Thus, in advance of the onset of the pandemic, passenger numbers at the airport were trending ahead of what we forecast in the 2019 Determination. The subsequent onset of the pandemic has meant that this threshold will not be met in 2020 and is unlikely to be met for a number of years.

6.5 We consider that whether the level of passenger traffic was 32.91m or 33m in 2019 is negligible in the context of whether the size of T2 was justified by the level of demand which had materialised by 2019. The reason that the exact threshold has not been reached is the onset of the pandemic. Having regard to the original purpose of the two box approach, we consider that it would be disproportionate to now withdraw the remuneration of Box 2 on the basis of 0.3% of the passenger traffic in 2019, and consequently continue to postpone the remuneration of the full allowed T2 Capex for at least several more years.

6.6 As part of this interim review, we propose to remove these reverse triggers from the price cap formulae in the 2019 Determination, meaning that Box 2 will continue to be remunerated from 2020 onwards and no downward adjustments will be made to the base price caps on the basis of T2.

Reprofiling Triggers

6.7 The 2019 Determination included reprofiling triggers for 8 large scale, new Capex projects. For each year of the regulatory period, if the project is not on site by the end of the year, the associated reprofiling trigger amount is removed from the price cap for that year. These triggers were calculated as the portion of the price cap which is made up of the total capital

[8] https://www.aviationreg.ie/_fileupload/Image/PR_AC2_PUB1_CP6_2007.pdf

[9] Box 2 was calculated as 27% of the cost allowance for the core T2 facility, as this was the estimate of the extent to which the terminal size had not been justified. It was adjusted in 2014 to include 27% of the allowed overspend on the project and has also accumulated the cost of capital from 2010 to 2018.

costs for that project in that year. The first three reprofiling triggers apply in 2021 as set out in Table 6.1. If none of these projects were on-site by the end of next year, the 2021 price cap would reduce by a total of 15c.

Table 6.1: Reprofiling Triggers in the Interim Phase

Project	2020	2021
Pier 5	-	-
US Preclearance Expansion	-	-
T1 Security Relocation	-	-
T1 IDL Expansion	-	0.03c
T1 Check-In	-	0.03c
West Apron Underpass	-	0.09c
Apron 5M	-	-
Pier 1	-	-

Source: 2019 Determination

6.8 The purpose of these triggers was to ensure that the timing of remuneration would not become significantly misaligned with the timing of the project, in the context of an ambitious 5-year capital programme.

6.9 The triggers also create an incentive for Dublin Airport to progress these projects quickly. As discussed in Section 7, this was a desirable incentive in 2019. These three reprofiling triggers incentivise Dublin Airport to have these projects on-site by the end of 2021, particularly the West Apron Underpass. In the circumstances which have since arisen, we consider that this is not a desirable incentive. The postponement of this allowed Capex would be a valid response and certainly not a response which we would want to penalise or disincentivise.

6.10 We propose to remove these three reprofiling triggers from the 2021 price cap formula.

Opex Passthrough Mechanism

6.11 The 2019 Determination included a mechanism for the remuneration of certain categories costs which were of uncertain quantum at the time the Determination was made and/or largely outside the control of Dublin Airport. Specifically, provided that certain conditions were met, it would adjust the price cap for the following:

- Local Authority Rates applicable to the regulated entity and not rechargeable to tenants.
- Direct charges set out in new or amended primary or secondary legislation, which are outside the control of Dublin Airport, which exceed €0.5m and relate to activity undertaken by the regulated entity. An example would be a charge levied to cover the costs of the new noise regulator, the Commission, or potential Irish Aviation Authority Safety Regulation Division charges relating to security.

6.12 The mathematical application of this mechanism was subsequently adjusted pursuant to a referral from the Aviation Appeals Panel.[10]

6.13 The mechanism is scheduled to first take effect in 2021. This would adjust for qualifying Opex forecast to accrue in 2020. Applying this mechanism would require up-to-date forecasts for

[10] https://www.aviationreg.ie/_fileupload/NoteVaried2019Determination%20(1).pdf

the following in time for Dublin Airport to set charges later this year:

- Applicable rates and direct charges in 2020.
- Passenger numbers in 2021.

6.14 There remains substantial uncertainty over the final applicability of rates at Dublin Airport rates for 2020 and passenger numbers for 2021. While the low level of passenger numbers does not make the adjustments inaccurate mathematically, the mechanism was intended to make relatively minor adjustments to the price caps from year to year within the bounds of reasonably foreseeable variation in qualifying Opex and passenger numbers compared to the forecasts set out in 2019.

6.15 The low level of passenger traffic generates the potential for a high degree of volatility in the price cap arising from this mechanism. The level of uncertainty even in the very short term means that the W-Factor could add as much inaccuracy as it would accuracy in terms of what would ultimately transpire to be an appropriate level of remuneration. In line with our 'no adjustments' approach we again conclude that it would be appropriate to remove this mechanism for 2021.

6.16 Consistent with this approach and the 'no adjustments' approach generally, we would also remove the W-Factor from the price cap formula for 2022 (which refers back to 2021) and the Y-Factor from the price cap formulae for 2022 (which refers back to 2020) and 2023 (which refers back to 2021).

Quality of Service adjustments

6.17 The 2019 Final Determination set a comprehensive range of 22 metrics to support passengers in their enjoyment of a high quality of service standard throughout the airport. The purpose of these quality standards is to:

- ensure that cost efficiencies achieved by the airport are not made at the expense of the quality of service delivered, and
- incentivise the airport to sustain and improve its performance in the areas that are important to airport users (passengers and airlines).

6.18 The imposition of physical distancing and other COVID-19 related measures in mid-March implied a reorganisation of airport services that had an immediate impact on the passenger experience and on the feasibility of the usual methods for data collection.

6.19 We have addressed the immediate impact to the quality of service regime that arose in mid-March by suspending all financial penalties associated with any quality of service breaches for the foreseeable future.

6.20 In CP3/2020 we proposed that if further reassessment of the quality of service regime is required it should be part of a potential wider Interim Review of the 2019 Determination. We noted that as traffic recovers, the changes caused by the Covid-19 Pandemic may continue to impact on passenger processors, making it impractical for Dublin Airport to meet some of our targets. In addition, different metrics may become important to passengers.

6.21 In response to CP3/2020, Dublin Airport supports the suspension of quality of service penalties in 2020 and 2021 to address the impact of the Covid-19 outbreak. Dublin Airport notes that it is currently impractical to gather a representative sample across all types of passengers relevant to the quality of service regime: departing, arriving, transfer and passengers with reduced mobility.

6.22 IATA supports the improvements to the quality of service regime achieved in the 2019 Determination but understands that the current suspension of some aspects of the quality of service regime is required. Ryanair accepts the suspension of service quality penalties while social distancing measures remain in force at airports.

6.23 Having considered the submissions from stakeholders we propose to remove the financial penalties in the price cap formula for 2020 and 2021 (in line with CN6/2020). This removes the link between the price cap and the performance of Dublin Airport on the quality of service targets.

6.24 We continue to require Dublin Airport to report its quality of service performance whenever data collection is feasible. The definition of the metrics and targets of quality of service will remain as per the 2019 Determination. We will continue to publish the performance reported to us by Dublin Airport. We do not require Dublin Airport to report on passenger satisfaction measures if it is not practical or safe to conduct face-to-face surveys.

Inflation adjustment

6.25 Generally, the price cap for a particular year is adjusted for inflation on the basis of the CPI from October of the preceding year. October has been a good proxy for inflation in the subsequent year.[11] Given broader economic uncertainty, it is not clear whether this will be the case with the October 2020 CPI and thus whether making this adjustment for 2021 would ultimately add to or detract from the regulatory model. The October 2020 CPI is not yet published.

6.26 Consistent with the ‘no adjustments’ approach, we propose to make no inflation adjustment to the 2021 price cap of €7.50.

[11] See page 149 of the 2019 Final Determination

7. Regulatory Mechanisms

7.1 This section sets out further details on proposed changes to the regulatory model for 2020 and 2021 which do not impact the price cap in those years, but may have impacts in future years.

Capex

7.2 The 2019 Determination allowed for new Capex of around €2bn over the period 2020-2024. This level of Capex was intended to facilitate continued traffic growth over the period to 38 million passengers per annum by 2024, while also providing for an element of further capacity headroom. The programme was generally supported by most airport users.

7.3 The impact of the pandemic has dramatically changed the outlook for passenger traffic over the current regulatory period. Dublin Airport has postponed much of the Capex allowed for in 2020. Regardless of developments from this point, the timeline for delivering the CIP which the 2019 Determination allowed for, with all projects being delivered by 2024, can no longer be achieved.

7.4 As set out in Section 8, our current thinking is that the investment programme will likely warrant reconsideration together with airport users as part of a broader review. This view is broadly reflected in the consultation responses we received. However, the issue of Capex in 2020 and 2021 is of immediate concern and we consider that it needs to be addressed in advance. In its consultation response, Ryanair likewise states that we need to avoid the perverse incentive for Dublin Airport to proceed with unnecessary capital projects simply to avoid clawback in the next quinquennium, which is related to the discussion in Section 6 in relation to reprofiling triggers.

7.5 One of the implications of the 2019 Determination is a strong incentive to deliver the Capex programme in line with the intended timeline. This was a desirable incentive in the prevailing circumstances in 2019. In the current circumstances, however, given uncertainty over the trajectory of recovery, there is a risk that proceeding with certain projects at this time will lead to a high degree of misalignment with the level of demand. This has potential negative implications for both Dublin Airport's financial position, and for future airport users in the context of value for money in airport charges in a more fragile market, with fewer passengers to pay the associated costs.

7.6 Furthermore, while the 2019 Determination provides a substantial allowance for new Capex in 2020, Dublin Airport is now likely to actually collect considerably less of this remuneration than was expected. Older Capex in the RAB continues to depreciate and Dublin Airport is also recovering lower than expected capital costs for these assets. For 2021, it is likely that Dublin Airport will again collect substantially lower capital costs than was intended. This is a feature of the risk allocation in the 2019 Determination; the inverse occurred over 2014-2019, when outperformance on passenger numbers allowed Dublin Airport to collect more capital costs than was expected. Nonetheless, compounding this issue for 2020 or 2021 by clawing back unspent allowances which were largely uncollected in reality by Dublin Airport is not an outcome that was anticipated in 2019. This has occurred due to the pandemic, rather than allowances being subject to the reasonable level of variation in passenger volumes which was anticipated for any one year.

7.7 For these reasons, we are proposing a dual adjustment to the future treatment of the Capex allowances for 2020 and 2021. These adjustments would be applied for 2020 and 2021 only, pursuant to this Interim Review:

- Unspent Capex in 2020 and 2021 would not be clawed back. This is consistent with the ‘no adjustments’ approach we are proposing for these years.

- If Dublin Airport plans to progress, or commit to progressing, substantial Capex projects in the years 2020 or 2021, it must reach agreement with airport users that in the context of the changed circumstances the project is still required, or alternatively demonstrate that it is safety critical maintenance and/or required for regulatory compliance, in order for remuneration to continue to be allowed for in future determinations.

7.8 We propose to define substantial Capex for the purposes of this adjustment as projects with an allowed value of €4m or higher (including part of such a project, even if the part in question is estimated to cost less than €4m). The mechanism would encompass all such CIP2020 projects with the exception of Appendix G (‘Other Projects’), but not PACE projects with the exception of South Apron stands phase 2. This project is aligned with the broader South Apron developments allowed for as part of CIP2020. A full list of the relevant projects is in Appendix 2. Of the original assessed €1.7bn for CIP2020, this threshold encompasses over €1.6bn, with approximately €90m associated with small projects which are excluded from the mechanism.[12]

7.9 Unless continued progression of the project (as described in 7.8 above) is either substantially supported by airport users or alternatively safety critical maintenance and/or required for regulatory compliance, Dublin Airport should not continue to spend Capex on these projects in 2020 and 2021 with the expectation of ongoing remuneration in future determinations. We propose to set a threshold for substantial user support at airlines representing 50% of passenger traffic at Dublin Airport in 2019.

7.10 Our proposed dual adjustment is an interim measure which protects airport users from the risk of exacerbating capacity oversupply and associated inefficient levels of airport charges. The adjustment also allows Dublin Airport to freely use the much-reduced level of revenue in 2020 and 2021 as it sees fit during this interim phase, without any perverse incentives to spend Capex impacting on these decisions.

7.11 For StageGate projects, Dublin Airport would ensure that the above elements have been included in consultation materials no later than the StageGate 1 phase (it may be preferable for this to occur before a project, or part of a project, is brought to StageGate 1). Airport users would be explicitly asked to provide views on proceeding with the project. There are no implications for the projects which have already been approved at StageGate 1 and are currently in the StageGate 2 phase, namely Terminal 2 Hold Baggage Screening Standard 3 (HBS3) and the rehabilitation of Taxiway W2. Similarly, it has no implications for Terminal 1 HBS3 which is currently going through StageGate 1.

7.12 For non-StageGate projects, a consultation would be required where Dublin Airport would set out either why a project is safety critical maintenance and/or required for regulatory compliance, or alternatively set out why continuing to progress the project in 2020/2021 is desirable. Airport users would be explicitly asked to provide views on proceeding with the project (or part of a project).

7.13 When reconciling Capex from 2020 or 2021 which is supported or obligatory, the allowance will be driven by the StageGate process in the case of projects included in StageGate. As noted above, the RAB will continue to depreciate in 2020 and 2021.

7.14 Where Dublin Airport does continue to spend Capex in 2020 or 2021 on projects which are not safety critical maintenance or required for regulatory compliance without obtaining requisite

[12] The €1.7bn figure does not include the Hold Baggage Screening standard 3 projects, or PACE projects.

user support, no clawbacks will be applied to Capex allowances in 2020 or 2021 in line with the 'no adjustments' approach, but we would not expect to include remuneration of this expenditure for future years.

7.15 Given our proposal to require Dublin Airport to consult on the timing of certain projects, we will change our Capex reporting to ensure it reflects this change. We will work with Dublin Airport on this in Q1 2021.

Commercial Revenues

7.16 The 2019 Determination set out rolling schemes to apply in the current period, which would be adjusted for in the next determination. These apply to any outperformance in a number of specified categories during 2021-2023, on a per passenger basis. As noted in CP3/2020, the current circumstances are likely to lead to an unexpectedly high level of volatility in performance relative to the targets set in the 2019 Determination.

7.17 The fall in passenger traffic may have unintended consequences for a per-passenger target set in 2019, where a very high level of outperformance in some categories would be driven by lower passenger numbers rather than improved commercial revenue performance. Consequently, we consider that the rolling scheme mechanism is not fit for purpose in 2021 and we propose to remove it for that year.

7.18 Rolling schemes for subsequent years may be reconsidered for continued inclusion as part of a broader review of the determination discussed in Section 8.

8. Future Review(s)

8.1 In this section, we outline our current thinking on a future review or reviews of the 2019 Determination.

8.2 As we set out in CP3/2020, we expect that a wide-ranging review of the 2019 Determination will be required in the exceptional circumstances that have arisen as a result of the pandemic. We laid out a potential timeline for carrying out such a review, commencing before the end of this year. At this time, however, there remains insufficient visibility on the recovery trajectory of the industry to decide on:

- The full scope of such a review
- The timing of the review

8.3 We expect to carry out a further interim review in 2021. Whether this will be a wide-ranging review or a narrow focused review in relation to 2022 only, should in our view depend on how the situation develops over the rest of this year and early next year. We will provide further updates regarding our current thinking on the timeline in advance of commencing any wide-ranging review.

Scope of a wide-ranging review

8.4 In CP3/2020, we set out ways that the 2019 Determination could be adjusted to take account of the changes resulting from the pandemic, both on a building block level but also holistically. We note the various responses from stakeholders on these topics and will consider these points as part of any wide-ranging review.

8.5 As per CP3/2020, we currently expect that the wide-ranging review would consider issues such as:

- Whether we should adjust the length of the regulatory period.
- Whether we should make any broad adjustments to the regulatory model.
- Setting revised passenger number targets, which guide the other building blocks.
- Setting revised commercial revenue targets.
- Developing revised Opex forecasts, including considering the efficiency of Dublin Airport's response to the pandemic such as the VSS scheme it has implemented.
- Considering adjustments to the allowed cost of capital.
- Reconsidering the timing and/or the scale of the allowed new Capex under the 2019 Determination, and the appropriate associated regulatory mechanisms.
- Considering an appropriate approach to financial viability
- Considering adjustments to the Quality of Service regime to ensure it remains fit-for-purpose in focusing on issues which are important to passengers while setting realistic targets.

9. How to Respond to this Consultation

9.1 The deadline for responses to this Consultation Paper is **5 PM, 27 November 2020**.

9.2 Responses should be titled "Submission on Draft Decision on an Interim Review of the 2019 Determination (CP9/2020)" and sent:

- By email to: Info@aviationreg.ie (preferable); or
- By post to: 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin 2, D02 W773

9.3 We may correspond with interested parties who make submissions, seeking clarification or explanation of their submissions.

9.4 Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. Ordinarily we place all submissions received on our website.[13] We may include the information contained in submissions in reports and elsewhere as required. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided.

9.5 We do not ordinarily edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.

[13] While we endeavour to ensure that information on our website is up to date and accurate, we accept no responsibility in relation to the accuracy or completeness of our website and expressly exclude any warranty or representations as to its accuracy or completeness.

Appendix 1: Menu of charges applicable in 2020

	Dublin Charge Basis	Charges as and from January 2019	Changes coming into effect as and from 29 March 2020	
		(€)		
Runway Movement Charge	Period	Winter	Summer	Winter
Per tonne	Band 1 - 0 to 175 tonnes	4.10	5.50	2.15
	Band 2 - >175 tonnes[i]	3.30	1.50	0.00
Aircraft Parking (Per 15 minutes or part thereof, except "Long Term Remote" which is per day or part thereof)	Wide/Contact	34.90	34.90	34.90
	Narrow/Contact	27.90	27.90	27.90
	Wide/Remote	9.60	9.60	9.60
	Narrow/Remote	7.70	7.70	7.70
	Wide/ Satellite	33.10	33.10	33.10
	Narrow/ Satellite	26.50	26.50	26.50
	Light Aircraft Parking Areas	2.65	2.65	2.65
	Long Term Remote	180.00	180.00	180.00
Airbridge Use	Per 15 minutes or part thereof	7.35	7.35	7.35
Passenger Charge per Departing Passenger	Departure on a Contact Stand	10.69	9.80	7.25
	Departure on a Remote Stand	7.69	5.20	2.65
	Departure on a Satellite Stand (Terminal 1 or 2)	10.19	8.80	6.25
	Transfer Passengers	2.00	2.00	2.00
PRM Charge	Per Passenger	0.56	0.58	0.58
Fast-Track Charge	Per Fast-Track Passenger	0.80	0.80	0.80

Appendix 2: Projects subject to revised consultation requirement

CIP Code	Project	Allowance €m
CIP.20.01.002	Apron Rehabilitation Programme	40.2
CIP.20.01.003	Airfield Taxiway Rehabilitation Programme*	16.4
CIP.20.01.004	Apron Road Rehabilitation Programme	4.4
CIP.20.01.006	Airfield Southern Perimeter Road Upgrade Programme	4.3
CIP.20.01.008	Runway Approach Lighting Mast Improvement Programme	11.1
CIP.20.01.009	Aerodrome Ground Lighting (AGL) Improvement Programme	4.7
CIP.20.01.010	Airfield Lighting Control & Management System Improvement Programme	4.9
CIP.20.01.016	Airfield Maintenance Base Improvement Programme	4.4
CIP.20.01.020	Terminal 1 Façade, Roof & Spirals	25.2
CIP.20.01.034	Campus Roads Critical Maintenance	6.5
CIP.20.01.039	Airport Roads Critical Maintenance	5.0
CIP.20.01.065	Airport Heavy Fleet & Equipment Replacement	9.0
CIP.20.01.074	Advance Visual Docking Guidance System (5G, Pier 1 & Pier 2)	5.4
CIP.20.01.099	RWY 16/34 Lighting for Low Visibility Procedures (LVP)	5.5
CIP.20.07.032	Unit Load Device (ULD) Storage	5.0
CIP.20.02.001	Medium Voltage (MV) Electrical Network	6.3
CIP.20.02.004	Passenger Boarding Bridges (Maintenance & P3 Enhancement) & FEGP	17.2
CIP.20.02.005	Lift Upgrade Programme - Terminal and Multi-Storey	6.2
CIP.20.02.006	Airport Water & Foul Sewer Upgrade	4.9
CIP.20.02.007	Life Safety Systems (LSS) Upgrade Programme Terminal and MSCP Buildings	10.1
CIP.20.02.008	Terminal Buildings HVAC Upgrade	17.8
CIP.20.02.009	Campus Buildings: Mechanical, Electrical & LSS Upgrade	9.4
CIP.20.02.010	Pier 3 Life Extension Works - Mech, Elec and Foul Drainage	14.0
CIP.20.02.013	Small Energy Projects	5.4
CIP.20.07.030	Large Energy Project - Photovoltaic Farm	8.5
CIP.20.03.004	Gate Post 9 Expansion (West Lands)	8.5
CIP.20.03.006	Terminal 1 Kerbs	13.6
CIP.20.03.011 A	Terminal 1 Check-In (Partial shoreline)	26.0
CIP.20.03.012	Terminal 1 Central Search - Relocation to Mezz Level	31.5
CIP.20.03.013	Terminal 1 Departure Lounge (IDL) Reorientation and Rehabilitation	32.9
CIP.20.03.015	Terminal 1 Baggage Reclaim Upgrade & Alterations	19.0
CIP.20.03.020	Terminal 2 Check-in Area Optimisation	13.2
CIP.20.03.021	Terminal 2 Central Search Area Expansion	4.6
CIP.20.03.028	Terminal 2 Early bag store and transfer lines	27.9
CIP.20.03.029	New Pier 5 (T2 and CBP Enabled)	298.7
CIP.20.03.030	Expansion of US Pre-Clearance Facilities	55.1
CIP.20.03.031	South Apron Expansion (Remote Stands, Taxiway and Apron)	71.3
CIP.20.03.033 A	Enablement of Pier 3 for Precleared US bound passengers	7.6
CIP.20.03.034	Pier 3 Immigration (Upgrade & Expansion)	4.7

CIP Code	Project	Allowance €m
CIP.20.03.036	North Apron Development – Pier 1 Extension (Module 1) & Apron 5H PBZ	163.5
CIP.20.03.043 A	Terminal 1 Piers - New Airbridges (6NBE / 3WB)	23.3
CIP.20.03.049	De-icing pad at Runway 10R	5.0
CIP.20.03.051 B	West Apron Vehicle Underpass - Pier 3 Option	169.0
CIP.20.03.052	Surface Water Environmental Compliance	51.6
CIP.20.03.054	New Remote Apron 5M - 17 NBEs	82.5
CIP.20.03.057	Airside GSE Charging Facilities (Ground Handlers)	4.9
CIP.20.03.071	Hydrant Enablement - Pier 2 & 3	23.7
CIP.20.04.002	Car Hire Consolidation Centre	13.6
CIP.20.04.005	Long Term Car Parking - Eastland's (2000 spaces)	9.4
CIP.20.04.006	Terminal 1 Multi-Storey Car Park Block B (466 spaces)	17.4
CIP.20.04.007	Terminal 2 Multi-Storey Car Park (680 spaces)	14.9
CIP.20.04.009	Staff Car Park	5.8
CIP.20.04.017	Airline Lounges - Expansion, Upgrade & New	11.4
CIP.20.04.021	West Apron - Accommodation & Welfare Facilities	4.5
CIP.20.04.025	Commercial Property Refurbishment	6.0
CIP.20.07.010	Office Consolidation & Refurbishment (primarily Level 4 & 5, Terminal 1)	11.6
CIP.20.08.001	Retail Refurbishments, Upgrades and New Developments	8.0
CIP.20.05.001	Airfield Optimization	5.6
CIP.20.05.003	Integrations and Data	5.1
CIP.20.05.005	Business Efficiency	6.2
CIP.20.05.007	Reliability, Safety, Security & Compliance	8.2
CIP.20.05.009	Network Components - Lifecycle & Growth	6.8
CIP.20.05.010	Passenger Processing (excl. Security Screening)	11.0
CIP.20.05.011	Security Technology Innovation (Biometrics & FOD Detection)	5.0
CIP.20.05.012	Servers and Storage - Lifecycle & Growth	5.6
CIP.20.05.015	New Data Centre Hosting Location	4.0
CIP.20.05.016	Microsoft Enterprise	6.0
CIP.20.05.020	Innovation Fund	4.0
CIP.20.06.001	Cabin-Baggage X-Ray Replacement & EDS Upgrade	16.8
CIP.20.06.014	Screening and Logistics Centre	13.3
CIP.20.06.015	Intrusion Detection Systems for Dublin Airport Boundaries	4.0
CIP.20.06.041	Security Screening Equipment - End of Life	4.5
CIP.20.06.042	ATRS - Central Search Areas (T1 and T2)	11.0
PACE	South Apron Stands, Phase 2	37.3

*with the exception of Taxiway W2