Ryanair Dublin Office
Airside Business Park
Swords
County Dublin
Ireland
Telephone: +353 1 945 1212
Fax: +353 1 945 1213
Website: www.ryanair.com

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Ms Cathy Mannion
Commissioner
Commission for Aviation Regulation
3rd Floor Alexandra House
Earlsfort Terrace
Dublin 2
Email: info@aviationreg.ie

By email only

Re: Interim Review of the 2014 Determination – Northern Runway

Dear Ms Mannion,

I refer to CAR's paper 1/2017 containing the draft decision on the trigger for the northern runway capex allowance (the "Draft Decision").

CAR's statutory requirements, as set out in Section 33 of the Aviation Regulation Act 2001 (as amended by Section 22(4) of the State Airports Act 2004), include an objective to "*facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport*", and to "*protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport*". Although the Draft Decision claims to have due regard to the statutory objectives, this is contradicted by the fact that airport users require a shorter runway than that forced upon users by the DAA monopoly and permitted by CAR. This means that airport users will be required to pay the DAA monopoly for a piece of infrastructure that airport users have confirmed is unnecessary.

The length of the proposed northern runway was not consulted on in the 2014 Determination. By way of contrast, in the context of London Heathrow's third runway, the UK CAA explicitly specified that "*a new runway project cannot simply be treated as "business as usual" and it will require airport-airlines engagement to be taken to a deeper and much more productive level by both sides*" (see annex). This is in stark contrast to the DAA monopoly's non-engagement with airlines regarding the northern runway, the length of which was mentioned as a fait accompli (and not consulted upon) in the DAA monopoly's 196 page 'Capital Investment Programme (CIP) Proposals 2015-2019' and in its 140 page 'Dublin Airport – Regulatory Proposition 2015-2019'. This non-engagement, which is contrary to best practice, has resulted in an unnecessarily long, and excessively costly runway, yet has been approved by CAR.

While the Draft Decision's proposal to replace the 2014 trigger in its entirety is welcome, the proposal to keep an element of pre-funding is flawed. Pre-funding does not exist in competitive environments, and the proposal to include 24.7m in the RAB before the northern runway is fully

operational should therefore not be included in the final decision. Put simply, the northern runway capex should be included in the RAB only once the (unnecessarily long) runway is operational.

The Draft Decision further notes that "*Dublin Airport has indicated that the expected outturn expenditure for the North Runway may be higher than the €247m allowance set in the 2014 Determination*". This is quite an understatement given that the DAA monopoly has claimed (before it invited bids for the construction of the runway!) that it will require €320m to fund the development of the northern runway, i.e., over €70m higher than the 2014 Determination allowance, a 30% cost over-run even before the project has commenced!

Contrary to the Draft Decision's claim, the 50/50 "risk-sharing" mechanism does not provide the DAA monopoly with "*a strong incentive to maintain control of costs*." Under this 50/50 "risk-sharing" mechanism, CAR permits the DAA monopoly to recover from users 50% of its inefficient expenditure and charge monopoly profit on it in order to fund the other 50% that in theory is a DAA risk. In practice, there is no risk for the DAA in this arrangement: it either spends less than the regulatory allowance and recovers from users 50% of the money it did not spend, or it spends more than the regulatory allowance and charges a monopoly profit on 50% of this overspend. This principle of 50/50 "risk-sharing" does not exist in competitive markets, and is a prime example of regulatory gaming in which the DAA monopoly regularly engages in order to impose over-specified infrastructure and excessive prices on airport users and consumers.

While CAR is correct that "*constructive engagement between Dublin Airport and users on project cost would produce a better outcome than the 50/50 risk sharing*", airlines' experience in DAA monopoly consultations is highly unsatisfactory. Furthermore, there is no incentive for the DAA monopoly to undertake constructive engagement as outlined in paragraph 6.8 of the Draft Decision given that this may result in the removal of the 50/50 "risk-sharing" mechanism. It is therefore essential that CAR itself remove the 50/50 "risk-sharing" mechanism, thus replicating the effects of competition at DUB, and requires the DAA monopoly to deliver the northern runway with the original 2014 Determination capex allowance of €247m.

Should you wish to discuss the above, please do not hesitate to contact me.

Yours sincerely,

Juliusz Komorek
Chief Legal & Regulatory Officer

Annex: CAA to LHR, '*Economic Regulation of Airport Capacity Expansion*', 25 October 2016