September 11th 2009

DAA Response to Representations on the Draft Determination

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1. Introduction

DAA submits this document in response to the Commission’s invitation for comments on other interested parties’ responses to the Draft Determination (CP6/2009). In this response, DAA provides its comments on a number of the more salient points addressed by the various submissions (sections 2-9 below). However, by way of preliminary remark, DAA wishes to emphasise some important points of process.

First, DAA notes that the scope of the invitation to comment is limited to "comments on the representations made by other parties." In line with this, DAA has limited its response to specific points arising directly from other parties' responses to the draft determination. DAA's response does not in any way replace its detailed response to the Commission's draft determination. In the interests of procedural fairness, DAA submits that the Commission must ensure that interested parties do not attempt to abuse the current process in order to artificially gain additional time to provide comments on the draft determination[1]. Accordingly, comments received from interested parties in the current process which do not directly relate to "comments on the representations made by other parties" should be disregarded by the Commission on the basis that they have been received out of time. As also noted below, DAA considers it imperative to procedural fairness that the current process should not result in undue weight being given to the views of airlines to the detriment of other representative organisations (who often have fewer resources).

Second, in the interests of genuine cooperation, DAA has endeavoured to consolidate in this document its comments on the most salient points addressed by the various submissions. However, DAA believes that the efforts of all parties would be better devoted to more direct and detailed interaction with the Commission on specific issues of concern.

In particular DAA is concerned that the Commission might allow the current written process to become a substitute for genuinely effective interaction with stakeholders to gain a greater understanding of key issues. Many responses to CP6/2009 highlighted the difficulty in responding to an ambiguous draft determination. DAA believes that, rather than gathering responses to responses, the Commission should instead focus on addressing the ambiguous areas of the draft determination via active consultation with interested parties. A lack of clarity and direction from the Commission ensures that many of the responses to CP6/2009, and any subsequent comments on these responses will be statements of general principle or broad observations surrounding the regulatory approach. At this late stage in the determination process such material, while of interest, cannot credibly be claimed to be of the same value to the Commission’s decision making process as effective interaction with stakeholders. The Commission’s time would be better spent engaging directly with stakeholders to rectify any lack of clarity or confusion surrounding decisions which the Commission is finalising.

In addition, DAA would expect that in the latest round of indirect consultation the number of other respondents may be lower, and will in all likelihood be limited to the airlines, with possibly one or two additional parties. When the Commission took a similar approach to CP2/2005, of the original nine respondents to the paper, only four carried on to respond to the further round of consultation. All four respondents were parties directly involved in the aviation industry rather than representative of end users.

[1] We note, for example, Ryanair’s statement in its response to CP6/2009 regarding reserving the right to make further submissions to CAR on the Draft Determination after the deadline.

This approach risks inadvertently giving undue weight to the views of airlines, to the detriment of other representative organisations with less resources. As well as raising issues of fairness, this potentially damages the regulatory outcome. One key message to emerge from the responses to CP6/2009 concerned the credibility of airline claims to represent users. This was reflected in both the material contained within the broad range of non-airline responses, as well as the transparently self-serving position of airlines on a multitude of issues, outlined below. Over-reliance on the submissions of airlines damages the regulatory process and does not further the interest of Dublin Airport users, current or prospective.

Given the short timeframe afforded to respondents, as well as the questionable relevance of some of the commentary, DAA has not attempted to address each and every issue raised. Rather DAA has focused upon some of the key themes and messages to emerge from this round of consultation, as well as individual points within the building blocks framework which could not be left unaddressed. Nothing contained in the other submissions leads DAA to change its views as set out in its own very detailed submission to the Draft Determination. Failure to comment on any aspect of the other submissions should not be interpreted as agreement with other positions.

2. General Comments

DAA welcomes the submission of a wide range of responses from a range of representative bodies. DAA considers that this will only strengthen the regulatory process.

DAA welcomes the submission of responses to CP6/2009 from a wide range of interested parties. The number of respondents ensures that the regulatory process has the benefit of a wide range of input, and highlights the many concerns that parties wish to have addressed as part of the current determination process. Such considerations might otherwise be lost in a consultation process reliant exclusively upon airline submissions. DAA hopes that such a welcome trend continues, with all its associated benefits for the regulation of Dublin Airport.

Of the non-airline responses, DAA would like to draw to the Commission's attention some of the key messages and themes to emerge from responses of representative bodies for tourism, local business and national enterprise. In particular DAA notes that of the twenty two responses to CP6/2009, the majority could be described as being generally supportive of DAA's position. Of the remainder very few if any, apart from their own submissions, could reasonably be described as being supportive of the airlines' position. This reality undermines the existing practice of considering airlines' views as representative of passenger opinion.

DAA believes that the following excerpts from submissions made by a range of representative organisations provide some key points that the Commission's draft determination should reflect:

Submission	Organisation
"According to your (the Commission's) data and that of the Airport's Council International, Dublin Airport's current charges are amongst the lowest in comparison to other European capital city airports."	Chambers Ireland
"Dublin Airport must develop the new runway to attract more airlines and be capable of handling the largest aircraft to make Dublin and Ireland a potential destination for more business travellers and tourists from around the globe. The new runway will increase capacity at the airport and provide more airlines with the opportunity to compete for business into Dublin Airport. Not all airlines would welcome such competition but it is in the country's best interest"	Fingal Dublin Chamber
"*Dublin Airport is viewed poorly by global business leaders and the facility is significantly congested. In the latest World Economic Forum Competitiveness Index, the quality of Ireland's airports is ranked 30th globally…with Dublin Airport charges amongst the lowest in Europe, the focus of the Commission must be on enabling the DAA to deliver the high quality facilities a competitive economy requires"*	IBEC
"A world class airport facility in Dublin is a critical element of Ireland's ability to win investment… a balance needs to be struck between incentivising investment in much needed additional capacity at the airport and maintaining the competitiveness of Dublin airport charges"	IDA
"*Airlines may claim that they pay for aviation infrastructure and as a consequence they should have an effective veto on investment decisions at airports. But as airport charges are passed on to passengers, along with a range of other charges imposed by the airlines, it is the travelling public who actually pay for investment at Dublin Airport"*	ITIC
"Airlines are generally loath to support the capital investment required to increase airport capacity, as to do so will frequently enable extra competition. Allowing the short-term objectives of vested interests to dictate the future development of an airport may restrict the introduction of new routes and services, and ultimately reduce competition"	ITOA
"Presumably the Commission is satisfied that the price cap has been set at a level sufficient to cover operating costs and the continuing cost of servicing the capital investment in the new terminal"	Failte Ireland
"The Commission for Aviation Regulation should design the pricing structure to provide incentives to DAA to encourage flights to a greater range of destinations"	Forfas

DAA was disappointed, however, that airline responses, and in particular DACC member airline responses, were marked by an apparent disregard for end users, and a short-term approach towards the regulation of Dublin Airport. DAA urges the Commission to carefully consider respondents' concerns regarding airlines motives in arriving at its final Determination.

Investment in Infrastructure

The facilities at Dublin Airport will be central to Ireland's return to economic growth, and vested interests must not be allowed to impede this.

Many submissions point out that stakeholders consider Dublin Airport to be a key facilitator of national economic recovery in the years ahead. As a developed economy, Ireland can no longer compete solely on price. Instead Ireland must market itself as a quality place to do business and to visit. Central to this is the availability of quality aviation infrastructure. While all respondents on the subject acknowledged that reasonable pricing levels are a key component of competitiveness, respondents were equally concerned that an appropriate balance be struck between low charges and the provision of appropriate infrastructure and service quality.

Individual airline business models must not be allowed to dictate the development of Dublin Airport to the detriment of national interests. This is particularly the case for airlines which have a proven disregard for the regulatory process or the interests of end users. In this regard, the consultation process surrounding capital investment programmes must not be allowed to be subverted by parties who are unwilling or not incentivised to engage constructively in consultation.

As an example, DAA would draw the Commission's attention to the broad support from a range of respondents for the development of a longer parallel runway. Incumbent airlines at Dublin Airport have avoided expressing support for a facility which would open Dublin Airport to more competition (as well as more destinations and increased connectivity) yet have also acknowledged that runway capacity remains a bottleneck to long term growth[2]. It is clear from the range of submissions that end users would benefit significantly from its introduction. Thus suggestions by the Commission in CP6/2009 that DAA *"seek to recover the associated incremental costs from the parties that stand to benefit from a runway length greater than 3,110m"* need not entail any new regulatory innovations or precedents. A longer runway, while perhaps not being beneficial to incumbent's market power, would indeed prove extremely beneficial to the welfare of end users, with the generation of significant positive externalities. In this context DAA would refer the Commission to the material in 'Supporting Document V' as part of DAA's response to CP6/2009.

DAA notes the IHF's opposition to any increase in capital expenditure allowance in the forthcoming determination period, as well as an arbitrary €6m decrease (to be achieved possibly by unspecified "*adjustments in the formula used"*). IHF's submission, despite acknowledging that *"airport passenger charges are not the determinant of inward tourism",* is focused entirely on a proposal to freeze prices at Dublin Airport, regardless of any inconsistencies with the Commission's building blocks approach or any implications for the long-term development of Dublin Airport. DAA observes that the views of IHF are out of step with those of other industry bodies such as ITIC and ITOA, which both believe that the needs of Irish tourism are best served by a balance between a reasonable level of airport charges and the provision of appropriate services and facilities to tourists and other passengers.

The Importance of the Passenger View

Airlines primarily represent their own commercial interests. It is not appropriate for their views to be taken as a proxy for those of all airport users.

While airlines may claim their views can act as proxies for the interests of passengers, this is demonstrably not the case. In this submission DAA draws the Commission's attention to various instances where the views of airlines in some cases quite clearly diverge from what could reasonably be expected to be the views of end users. Examples of this include the disregard shown for the voice of passengers in airline's dismissal of ACI metrics as measures in any service quality scheme, or the unfounded statements that T1 could handle passenger numbers far in excess of any reasonable estimates. Airlines are also clearly incentivised to oppose any capacity-enhancing projects as this creates barriers to entry to

[2] DACC response to CP6/2009, Para 95

the market. This point has been reflected in a number of submissions, including ITIC and ITOA.

DACC has also expressed concern that "*CAR does not recognise the primacy of user views set out by the airlines which have been subordinated in past Determinations to subjective views of passengers".* [3] While airlines have previously argued that their views can offer a proxy for the views of end users, it is a new and particularly pointed assertion that airline's views should in fact take precedence over those of passengers. Airlines and passenger interests are regularly not aligned, and reliance on airline views must always be tempered by consideration of passenger's perspectives.

The views of airlines are dominant in the current regulatory regime as users have organisations such as DACC where resources can be pooled, whereas consumer and passenger groups are far more fragmented. The Commission must make strong efforts to ensure that the voices of end users are given sufficient weight when making its final decision.

DAA shares the Commission's uncertainty as to the exact role of DACC as a representative body. The correspondence between DACC and the Commission (Appendix A of DACC's response to CP6/2009) does not provide explicit confirmation of its membership. Indeed, it appears that, in seeking to understand who the DACC actually represented, the Commission was forced to offer a list of possible members to DACC for confirmation, and also to request that DACC address its concerns in this respect and identify all DACC members. No further correspondence is contained within the Appendix, and therefore DAA is unsure whether the Commission is satisfied as to the parties DACC actually represents.

In its response to CP6/2009 DACC has declared that *"DACC represents both current and prospective users of Dublin Airport and DACC would expect the CAR to attribute substantial weight to this response".* Yet simultaneously it is also stated that *"Views communicated by the DACC represent a general perspective and do not necessarily reflect the precise positions of individual members"*. In this context there is a distinct lack of clarity regarding the extent to which the DACC submission can be viewed as being truly representative. Furthermore, DACC's submission contains some very specific points on particular issues which undermines its claim to present a 'general perspective'.

Given that all airlines separately responding to CP6/2009 are claimed by DACC as members, it would appear that airline users expect the Commission to give equal consideration to submissions where individual airlines share the same position as DACC, and to instances where airline's individually expressed views diverge from those of DACC. Such a stance would allow airlines to receive 'double consideration' where their views coincided with DACC's official line, but would allow airlines to, in effect, argue two contradictory points safe in the knowledge that both would receive equal consideration by the Commission in its decision making process. This situation, were it allowed to arise, would not only be biased and distorting, but would be particularly damaging to any regulatory outcome in light of the very clear message to emerge from responses to CP6/2009 that airlines cannot truly represent the real interests of end users.

DAA rejects the implication that DACC's views should take precedence in the regulatory process, and would argue that while the Commission must take due note of DACC's views and positions, the Commission should not be obliged to 'prove' some of DACC's more spurious suggestions as being incorrect. This is particularly the case where DACC's stated position contrasts with the position of individual members, or indeed, with other respondents.

[3] DACC response to CP6/2009, Para 8

Airline Approach to the Regulatory Process

The DACC's approach to the regulatory process has been marked by disregard for passengers, regulatory gaming and a short-term preoccupation with keeping airport charges artificially low, to the detriment of all else.

In contrast to some of the more positive and constructive submissions from stakeholders other than airlines, DAA notes that claims from Dublin Airport airlines to represent the views of passengers (or even, in DACC's case, to take precedence over the views of passengers) ae undermined, not only by the submissions of other stakeholders contradicting this, but also by negative airline attitudes towards passenger requirements. For example, on the issue of service quality, airlines sought to downplay or eradicate any possible input from passengers via ACI survey metrics. Symmetric rebates were opposed, despite these clearly offering the incentives to optimise passenger's service quality. Immediate and direct rebates to airlines were proposed for specific instances in which it would be the passenger and not the carrier who would experience a diminished service level. No airline proposed that these immediate rebates might be passed onto the passenger in question.

Airline's approach towards capital investment was marked with a similar disregard. Particularly inappropriate were suggestions that 30 million passengers per annum could be processed through T1, based on a top level consideration of the possible impact of web check in (and without equivalent consideration to the impact of web check in on the security screening processing rates).

Equally damaging was the airlines refusal to even countenance a longer runway, or indeed any additional runway capacity within the forthcoming determination period, despite statements that runway capacity was the ultimate limiter of capacity at Dublin Airport at present. The benefits of additional runway capacity include more routes and increased connectivity, and, crucially, the removal of barriers to entry for new entrants to the market. Airlines cannot credibly claim to represent the views of passengers in this regard, as is evidence by the stark divide between the submissions of airlines and enterprise and tourism bodies.

Airline opposition to investment in revenue generating projects was particularly short sighted. Airlines cannot demand that the Commission set extremely challenging commercial revenue targets in the current climate while simultaneously denying DAA the tools to achieve those targets. It is of no small relevance that, while airlines questioned whether DAA's proposed plans would be true revenue generators, no airline saw fit to consider the Commission's suggestion that any of DAA's existing commercial operations be withdrawn from the single-till.

On the various 'scenarios' outlined by the Commission regarding the roll forward of the RAB, airline comment for the most part also lacked any consideration beyond the immediate impact on the price cap. DACC and Ryanair in particular focused almost exclusively on the potential for claw backs and non-remuneration that arose from the various scenarios, irrespective of the medium to long run impact upon the incentives facing DAA.

This preoccupation with short term approach was epitomised by DACC, which used a number of dubious and unprecedented assumptions to produce a proposed airport charge as low as €3.05 per passenger for 2014. Proposals such as these clearly have no regard for the sustainable operation of Dublin Airport. It is not credible that DAA could be in a position to provide the necessary investment, nor even to remain financially viable based upon such figures, which would imply, by definition, gross subsidisation of airlines by DAA.

Indeed, DAA notes that at various points in their submissions, DACC-member airlines have castigated the Commission for raising airport charges at a time where demand for aviation services is in cyclical decline. It is DAA's view that this unfortunate situation was allowed to develop as a consequence of airline's consistent demands for the deferral of airport charges increases to the point where a step increase was inevitable. Had airlines taken a longer-term approach, DAA could have been remunerated for the actual operating and capital costs inherent in operating an international airport in a timely manner. It is disheartening to observe that such airlines, rather than recognising the consequence of their opportunistic attitude towards regulation, have instead opted to continue with this approach regardless. In particular DACC's refusal to countenance allowing necessary and reasonable capital expenditure into the RAB when incurred, is simply storing up the problem for a subsequent determination period.

Airlines have benefitted from this approach over the last number of years via unsustainably low airport charges. Since the Commission was established the prevailing price cap (in real terms) has never reached the level of 2000 (the year before regulation began). As highlighted in our submission in response to CP6/2009, the result of this has been that the implementation of the draft decision would be to generate a return on the RAB as low as circa 3% and [redacted] Airlines must ultimately meet the costs associated with providing the services they consume (albeit costs subsidised by DAA commercial revenues). Attempts to forestall or avoid such costs will invariably lead to step-increases in airport charges.

Airlines have an important role to play in the regulation of Dublin Airport as their knowledge of the industry has the potential to inform the regulatory process. However overreliance upon such views, and the narrow self interests of airlines, risks seriously damaging not only the regulatory outcome, but also the interests of the broader users of Dublin Airport. The Commission must ensure that, while proper consideration is given to the submission of airlines, their views are not accorded undue influence. The broad range of submissions received by the Commission to date, as well as the short-term view adopted by airlines in the current determination process offers ample evidence that the Commission needs to take into consideration broader concerns than simply the demands of airlines.

3. Approach to Regulation

In their responses to the Commission's Draft Determination, some respondents took the opportunity to comment on a range of issues of varying relevance and validity. DAA has addressed some of these points under the general heading 'Approach to Regulation'

Risk

Both Ryanair and DACC have claimed, incorrectly, that airlines face all the risk associated with changes in passenger volumes. This is not the case.

If passenger numbers vary from the forecast used in the Commission's final Determination over the next five years, it is DAA who will bear the risk. If volumes fail to reach the forecast used in the Determination (as DAA believes they will should the forecast used in the draft be retained) then DAA will not be in a position to recoup enough revenues to cover the costs of running Dublin Airport.

In fact, the Commission's use of median/centreline traffic projections to establish a limit on DAA's aeronautical revenue potential implies at least a 50% chance that revenues will be insufficient to meet DAA's financeability requirements, leaving aside all of the other concerns regarding financeability that have been previously highlighted by DAA. On the other hand, any over achievement versus the cap is intended to be immediately clawed back. The balance of risk would in fact be weighed against DAA to a far greater extent if the Commission proceeds to base its decision on a traffic forecast that is higher than the main market participants believe is credible or achievable. Indeed, the DACC suggestion of a denominator for the period, at level which it acknowledges will not be achieved, appears designed to create an absolute certainty that revenues are inadequate to meet genuine operating needs.

DAA also notes that in its response to CP6/2008, DACC refused to comment meaningfully on the Commission's proposal that volume risk be redistributed more equitably.[4] Had DACC members been genuinely concerned with the allocation of risk, the Commission's proposals offered a means to address, or at the very least, raise these concerns.

DAA is nearing completion of the first phase of a capital programme which will facilitate growth at Dublin Airport and in the wider economy in the years to come. Unlike airlines DAA cannot avoid vital infrastructural developments during economic downturns. The risks associated with this obligation must be mitigated by the authorisation of a price cap which is sufficient to cover the costs of sustainably running an international airport to an adequate standard.

Transparency and Approach to Confidential Information

DAA agrees with DACC and Ryanair that the Commission should provide more clarity and transparency with regard to its decision making process. This would be consistent with the findings of the latest Appeals Panel.

However DAA rejects the suggestion that the Commission is somehow the victim of 'regulatory capture'. This position seems predicated on the fact that commercially sensitive information relating to DAA is redacted in the draft decision. As a commercial semi state company with a publicly quoted financial instrument, DAA is required to maintain confidentiality over aspects of its business data and is legally restricted in the manner in which certain information can be made public. This is common to many commercial organisations (including airlines). In correspondence with the Commission DAA has outlined in detail and at length, the rationale for confidentiality regarding certain information.

In particular, DAA has an obligation to respect the integrity of the on-going T2 tender process. The submission of the Consortium managing the competition to source the T2 operator on behalf of the Minister for Transport has also highlighted that the release of sensitive information into the public domain would potentially distort and undermine the competitive process. DAA and the Commission must also respect all obligations under Regulation (10)7 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 ('MAD Regulations')

DAA notes the demands by DACC that DAA's Regulated Accounts for 2008 be published. In this regard DAA would draw DACC's attention to the publication on the Commission's website of the appropriate extracts from those accounts.

[4] *DACC's response to CP6/2008*, Appendix A paragraph 2

Finally, DAA would like to highlight that notwithstanding the comments regarding the disclosure of DAA or Commission information frequently made by Ryanair, perhaps the only element of relevant data that is contained in the entire Ryanair submission that was not referenced to either DAA or CAR sources, a schedule of relative airport charge indices for 6 airports for 2006-08, has in fact been redacted by Ryanair, citing commercial sensitivity.

Comments on Airport Policy

Ryanair has argued for the introduction of directly competing terminals and the break up of the DAA. While neither the Commission nor the DAA has the mandate to implement such proposals, it should be noted that:

- There will be an independent competitive tender for facilities management in T2. This will ensure that the costs of operating T2 will be determined by competitive forces.

- Unlike BAA's London airports, to which DAA is compared by Ryanair, the two airports operated by DAA apart from Dublin Airport serve geographically separate markets. Any break up of DAA would not alter this fact.

'Debt inflation shield' and 'X factor'

DAA rejects Ryanair's comments surrounding the so called 'Debt Inflation Shield'. This term seems to stem from the fact that while regulated companies pay back interest and the original loan amount on a constant basis, returns to cover those payments through the price cap are indexed, and so increase in line with price levels. Ryanair suggest that this in some way allows DAA to earn returns on the cost of capital in excess of the actual costs of that capital. Ryanair neglects to mention that when securing loans with nominal interest rates, the interest rate negotiated includes an allowance for the impact of rising price levels on the real value of the loan. Therefore when paying back a loan on a nominal basis, the regulated entity is in effect paying a higher (but consistent) interest rate than would be the case if the loan were to be paid back on an indexed basis. This ensures that, all things being equal, the regulated entity receives a return on the cost of capital directly equivalent to the actual costs of obtaining that capital.

In fact this outcome, far from allowing excess return to a regulated entity, can in fact cause the regulated entity's financeability to suffer. It is possible that the entity's allowed return on capital, being indexed, may in fact be less than what is required to service the loan in the initial years. While across the span of the loan it may be remunerated in full, the gap between real nominal interest charges and indexed returns to the company can cause remuneration to be 'backlogged', causing the regulated company to struggle to service loans in the initial years.

Ryanair have said of their 'Debt Inflation Shield' that *"academically this equivalence is widely accepted and has been formally proven"*. No reference is provided to substantiate this assertion.

Finally, DAA notes Ryanair's confusion re the application of the regulatory formula in particular the X factor, however, its request for retrospective adjustments to the price cap are without foundation.

Dual till proposals

Ryanair has proposed a departure from the single till and envisages a dual-till alternative that divides total airport costs between aeronautical and commercial activities. The price cap determined by the Commission would then be set at a level sufficient to cover the costs of providing the aeronautical costs alone, in combination with an appropriate 'contribution' from the commercial sector.

Ryanair's embrace of the dual –till seems predicated on the assertion that, at Dublin Airport *"aeronautical revenues are subsidising commercial activities".* Were it the case that commercial revenues were genuinely unprofitable then DAA, as a commercially orientated company with no statutory obligations to engage in such activities, would simply cease those commercial activities and focus on aeronautical revenue generation. In reality, the substantial commercial revenues generated by DAA are a key factor in Dublin Airport having extremely competitive airport charges internationally.

Nevertheless if Ryanair wishes to move away from the current model in which DAA effectively subsidises airline operations via commercial revenues, DAA would be pleased to engage in consultation with users and the Commission as to what alternatives might be considered.

Consultation

Both Ryanair and Aer Lingus have intimated that the DACC position can be considered to mirror their own views on DAA's proposed Capital Investment Programme over the forthcoming five years.

DACC in its submission has made much of the importance of consultation, and in particular the significance of DAA's supposed failure in this regard. It is important to note that obligations surrounding consultation apply to *all* parties, including airlines. DAA has made great efforts to engage with users-particularly on the area of planned capital investments. This culminated in the publication of DAA's latest Capital Investment Programme (CIP 2010-2014), a series of meetings to discuss individual projects, as well as the provision of additional informational material and information requested by airlines. DAA also note that DACC have ignored that fact that CAR's consultants Booz found that, of the €697m of proposed investment examined, its estimated cost of providing the same output was €688m, or within 1.3% of DAA's figures.

While it is understandable that airlines might be reluctant to pay for enhancements which will allow new entrants to challenge them in the market, such as stance is clearly not in the interests of end users of Dublin Airport, nor indeed in the interests of the wider Irish economy, a fact that has been made in a range of other responses. CAR must ensure that short-term vested interests should not stand in the way of the reasonable development of Ireland's gateway to the world economy.

DACC has also argued that the consultation process should address the areas of operating expenditure and commercial revenues. It is interesting to note that, while DACC has been very vocal on the need to reduce operating expenditures, there has been no suggestion as to the services to airlines and passengers they envisage being curtailed as a result of their proposed cuts. In addition DACC has also been vocal on the need for higher commercial revenues, but has refused to allow DAA progress with the projects which would allow these higher targets to be met. Such behaviour suggests that the Commission must approach demands for further opex and commercial revenue consultation with caution.

DAA will continue to engage with users on the provision of necessary capital investments into Dublin Airport, but would urge the Commission to take all steps necessary to incentivise all users to participate in the consultation process actively and constructively.

Airline 'willingness to pay'

While DACC has not proposed any alternatives to the current price-cap method of regulation, it does propose that CAR take into consideration a number of different factors, such as "user's willingness to pay" and "what the market can bear". DACC refers to text from the UK Department of Transport[5] in support of its view that the price cap should be determined by user's willingness to pay. In fact the text indicates that user's views of the *correct combination of price and quality* should be considered by a regulator. DACC's preference with regard to any such combination has not been forthcoming as of this time despite many requests from DAA to clarify its views on this important issue.

DACC also declares (without elaborating) that the price cap should be determined by "what the market can bear". Any properly functioning market will have players both entering and exiting the market, as well as mergers, acquisitions and consolidations. Such activities are natural occurrences and ultimately serve the consumer. Implicit in DACC's suggestion is that the price cap should be kept artificially low so that DAA will be in effect subsidising financially unviable operations. Such a situation distorts the market and DAA should have no obligation to subsidise such operations. In addition artificially low airport charges will inevitably impact the provision of necessary infrastructure. This would ensure that those untenable and unjustifiable operations which DAA would be subsidising would simultaneously remain protected from competition via limited opportunities for new entrants to the market.

DACC has declared that the purpose of regulation is to mimic the effects of an open and free market. In the absence of market power and regulation, the price of a good or service is a reflection of the costs that were incurred in providing it. The 'building block' model attempts to emulate this, and any concerns mooted as to 'what the market can bear' are transparent attempts to subvert this.

4. Opex

The DACC and certain member airlines' approach towards the treatment of operating expenditure in the formulation of the Commission's draft determination is marked by an asymmetric approach which gives appears to ignore the underlying facts and regulatory principles.

Comparator airports

Aer Lingus and Ryanair have referred to Dublin Airport as being expensive and inefficient relative to other airports. Neither airline has made efforts to substantiate these claims. As the Commission will be aware from the benchmarking exercise based on annual report data it conducted, Dublin Airport is one of the lowest cost airports in Europe and in any appropriate comparator group. Increasing airport charges to allow for much needed investment in facilities for users will still leave Dublin Airport positioned extremely competitively. This position is a reflection both of the operational efficiencies of DAA as well as the subsidisation of airport charges by DAA's successful commercial revenue ventures.

[5] '*Reforming the framework for the economic regulation of UK airports'*, March 2009, para. 6.21

DACC and Ryanair have expressed concern regarding Indecon Jacob's (IJ's) choice of comparator airports. It has been suggested that there are more exacting standards emerging from analysis based upon other airports which could be used as comparators. Benchmarking, by its nature, considers airports which are genuinely comparable rather than a set of airports determined by the agenda of the person or company performing the exercise. Dublin Airport would not be expected to have the same absolute level of costs as a small regional airport; nor would it have the cost per passenger levels of a large international hub. The Commission should ensure that any benchmarking comparisons deliver genuine value and insight as opposed to furthering vested interests.

Furthermore, DAA believes that IJ's targets, as a result of being based upon high-level top down superficial analysis, are inappropriate and unjust, especially in the context of a highly regulated business and the opening of new facilities.

Previous determination targets

DACC and Ryanair have claimed, without providing any evidence, that Indecon Jacob's efficiency targets should be built upon the opex efficiency targets used to determine the price cap during the current price cap determination, as these were not achieved. In fact CAR itself has conceded that operating expenditure outturns were "*not unsurprising given that passenger numbers, which affect opex levels, have exceeded the 2005 forecast*".[6] Indeed, on a per passenger basis, DAA beat CAR's opex targets across the Regulatory period.

Had DAA not beaten the Commission's efficiency targets in the current period, DAA would have been penalised within that period via an opex level input into the price cap which would not have met the operating costs of operating Dublin Airport. To suggest that DAA should be, in effect, doubly-penalised in this regard is to ignore the principles concerning effective incentives which underlie the price cap model of regulation.

Approach to outsourcing

According to DACC, the Commission has an obligation to test whether the outsourcing of services offers a more efficient option, and if it proves the case that this is so, to incorporate these efficiencies into its opex targets. Regardless of DACC interpretations of the Commission's obligations, it is of interest to note that DACC has failed to provide any evidence that out sourcing may in fact be more efficient.

It is worth noting that one finding of crucial importance within Indecon Jacob's report (which was unfortunately overlooked by the reports' authors) was that, of the various comparator airports, the airports with the lowest ratio of passenger per employee (indicating a higher level of direct employment) were also those with the lowest total operating costs per passenger, indicating that in-sourcing can offer the most efficient method of operations.

DAA also notes that within the membership of DACC various insourcing and outsourcing models are employed for similar services (eg. ground handling activities).

DAA Head Office & PRM costs

Ryanair has asserted, again without any supporting evidence, that DAA Head Office 'delivers no value to users at Dublin Airport'. Like any commercial company, DAA requires certain functions such as Procurement, HR, Finance and Legal services to operate Dublin Airport effectively and efficiently.

[6] Cp6/2008 P. 18, paragraph 5.5

Ryanair has also demanded that the costs of PRM services should be determined by Ryanair rather than a free and open competition, as is the case at present. DAA would be extremely concerned were Ryanair to be the determinant of an appropriate level of service and costs that should be accorded to PRMs, given that the relevant EU legislation was first mooted following complaints about unacceptable treatment of such passengers against a range of airlines, including Ryanair.

Incorrect Assertions re Opex and Capex Reductions

DAA notes that the Aer Lingus statement that *"the Commission's draft determination contains no opex and capex reduction in the coming quinquennium as a consequence of the fall in demand"* is incorrect. The opposite is in fact the case:

1. The Commission has stated that opex forecasts for each year of the forthcoming determination would be based upon passenger forecasts and associated cost elasticities[7]. DAA would also remind Aer Lingus of the challenging targets imposed upon DAA based upon a high level top-down approach to assessment of costs.

2. The proposed CIP was revised downwards in light of declining passenger numbers, and included the provision of triggers to ensure that projects did not progress until demand for those projects reached a certain threshold.

5. T2 Opex

DAA shares airline concerns regarding the need for certainty as to the impact on the price cap of the opening of T2, however it does not agree with the airlines' suggested approach towards the treatment of T2 operating expenditure. DAA also considers Aer Lingus' position on the sizing of T2 to be inconsistent with its previous submissions to the Commission on that project.

Clarity

DAA agrees with users that CAR is obliged to offer clarity as to the exact price cap which DAA and users will face with the opening of T2. DAA reiterates its desire to work closely with CAR with regard to correctly reflecting the operating expenditure levels associated with T2 operations.

Differential Pricing

DAA rejects Ryanair's assertion that the costs of T2 should be assigned exclusively to passengers travelling through T2. This argument ignores the clear and significant benefits which will accrue to T1 passengers from the relieving of congestion in T1. Additionally both terminals will have a similar level of service and so choice of terminals will not have an impact upon the level of service experienced by passengers.

DAA notes that this issue has been dealt with comprehensively in a number of previous determinations and questions the merit of raising it again at this point in the consultation process.

[7] CP6/2009, para 7.10

Manchester Airport Example

When deciding the optimal level of non-tender T2 costs to be allowed, CAR must take a detailed bottom-up approach rather than a 'headline' comparison with individual airports. With regard to the individual example offered by airlines of Manchester Airport, the same report quoted also states that *"all improvements in cost per passenger were the result of economies of scale...and that there were no additional productivity gains (that is, if it is assumed that there was to be no growth in passenger numbers, there would have been no reduction in costs per passenger)"*[8] Passenger numbers at Manchester airport grew by 25% between 1992/93 and 1995/96; the period during which the terminal was opened.[9]

Use of high level comparisons such as that advanced by DACC, risks obscuring the realities of providing additional terminal capacity. DAA notes that Ryanair, DACC and Aer Lingus in their submissions selectively refer to only one individual airport in their comparison, referring to a facility which was opened approximately 16 years ago.

Aer Lingus Comments on T2 sizing

DAA notes Aer Lingus's references to the sizing of T2. DAA considers Aer Lingus's comments to be inconsistent with its previously stated position.

Aer Lingus fully supported the T2 project, including its sizing and the associated consultation process from the outset. The Commission has stated its awareness of this position in the recent Appeal Panel proceedings.[10] However, for the purposes of clarity, DAA has reproduced some of the more salient Aer Lingus statements below. On the strength of this user feedback DAA proceeded to develop the level of terminal capacity which was appropriate. The plans for T2 were subsequently independently verified by Government-appointed experts.

Aer Lingus Response to CP5/2007:	*"(Aer Lingus) wishes to it reiterate its support for ARUPs design schedule for T2 as reflected in DAA's CIP".* *"This specification has been the result of a detailed consultation with airport users, which was fair and balanced. We believe that this process is exactly what airports should go through in determining the level of future facilities that should be provided".* *"(It) would be wrong to alter the specifications of T2 as part of its determination, as this would fail to provide airport users with the facilities they need".* *"The adjustment to T2 proposed by [CAR's consultants] Aviation Economics have the effect of reducing the proposed peak capacity, have not been part of any user consultation and specifically have not been agreed with Aer Lingus. We do not consider these amendments to be reasonable".*
Aer Lingus Response to CP1/2007:	*" Aer Lingus supports the development of T2 and Pier D with a peak capacity of 4,200 [passengers] per hour and achieving IATA level of service C. The combination of the peak hour and the service level generated the 75,000 sq metre size for the new terminal."* *"Since the determination in September 2005 the DAA has engaged in a wide ranging consultation process regarding the design and specification of*

[8] MMC5, 1997, p.112, para. 7.21
[9] MMC5, 1997, p. 132, para 7.96
[10] For example, see para 6.3.3 of '*The Decision of the Aviation Appeals Panel –Appeal of Aer Lingus Against Determination of the Commission for Aviation Regulation CP6/2007'* September 2008

	its investment plans at Dublin Airport, in particular the planning of T2. Aer Lingus has fully participated in this process and believes that the specifications for T2 as set out in the DAA's October 2006 CIP accurately reflects the discussions which took place in period between advance of drawing up the specifications for T2 and the airlines said the final design accurately reflects the discussions which took place during this process." *"Aer Lingus supports the development of T2 in accordance with the October 2006 CIP, which is consistent with the capacity needs and the likely future growth of all carriers operating at Dublin Airport."*
Aer Lingus Chief Executive Officer Dermot Mannion, November 4th 2006- Reported on RTE Radio 1 – Marian Finucane	"*It's (Dublin Airport) very very constrained on traffic, its capacity restricted, it's very very busy, we all know about the queuing times and all the rest of it. Aer Lingus supports T2, we have a fundamental difference with Ryanair on that, Ryanair do not. On matters to do with cost I'm not an expert on airport costs, that's a matter for the Regulator, he will do his work on that, but I will speculate on this, right now the per passenger charge for Dublin is let's say €6.50, let's say to pay of the new facilities it goes to €8.50, question is will the Irish travelling public be willing to pay another €2 to get a much better facility at Dublin, I'll willing to suggest that they will. That's my view, we support T2 and I think that any airline that opposes it is acting frankly in the end very much against their own interest, even if Ryanair stays in T1, which they probably will, T1 itself will be such a much better facility when T2 is open. I think it's a disaster for Irish aviation for anyone to continue to oppose T2."*

DAA considers it unjustified that Aer Lingus, while suggesting that DAA faces little risk, simultaneously suggests that remuneration now be withheld for a significant capital project for which it provided wholehearted support. Were the Commission to take Aer Lingus's arguments at face value DAA would be in effect bearing the risks based on the whims of users. Such an outcome would encourage other airlines to take an equally cavalier attitude towards the provision of capital infrastructure at Dublin Airport, and would call into question the value of any capital consultation process.

T2 tender treatment

All airlines (except bmi) have recommended that the tendered costs of T2 not be directly passed through to users via the price cap, on the grounds that DAA will have involvement in the specifications of the tender documentation. It should be noted that the ultimate cost of operating T2 will be determined by a competition organised by an independent expert panel.

DACC suggestions that the Commission might be better placed to determine optimal resource allocation than through such a competition are unfounded and clearly disingenuous.

In particular DAA rejects Aer Lingus's argument that a pass through of contract costs would in some way "*remove the pressure to be as efficient as possible from the competitive process".* How DAA is remunerated after the tender competition has been completed is completely inconsequential to parties competing for the tender. DAA opposes airline suggestions that the Commission has any obligation or right to 'second guess' the market.

Unitisation

Aer Lingus as part of its 'long term pricing structure' has argued that the Commission should apply unitisation not only to T2-related depreciation, but also to the associated cost of capital. DAA reiterates its opposition to the unitised approach, on the grounds that it does not reflect economic consumption or the physical deterioration of assets. In addition, given the manner it is proposed to be implemented by the Commission there is no evidence that it smoothes prices, nor that it promotes allocative efficiency. DAA considers unitised depreciation a significant and unnecessary increase in regulatory risk.

To further apply such an approach to DAA's cost of capital would seriously impair DAA's ability to service the debt associated with T2 projects, without any justification or discernable benefits. It would also have significant negative impact upon DAA's financeability, contrary to the Commission's statutory objectives. DAA would also remind the Commission of its prior commitment to *"introduce same (unitisation) gradually and with consultation"*[11], with an emphasis on ensuring that no cash flow problems are created for DAA.

DAA notes that Ryanair suggests that unitised depreciation should also be applied to T1. No economic rationale is provided in support of this suggestion. DAA would refer Ryanair to the findings of the Aviation Appeals Panel that *"the unitised approach should be confined to projects which are clearly T2 associated projects"*[12]

Unrealistic and Unjustified Assessments of T1 Capacity

As part of the argument advanced by DACC to avoid paying the additional costs required to expand terminal capacity, DACC has proposed that T1 can now accommodate 'at least' 25 million passengers per annum. Apart from the fact that this contrasts with the even higher capacity figure proposed by one of it's principal members, DACC's suggestion is entirely unsubstantiated, with no evidence, or argument put forward to justify its figure.

Ryanair asserts that T1 should be capable of handling 30 million passengers per annum, on the basis of a report by York Aviation. It is notable that this assumption has been substantially increased in the short time since Ryanair made its submission to the Appeal Panel in February 2009 when a T1 capacity figure of 26 million was promulgated. DAA notes that this report has not offered any evidence that T1 can process such levels, other than the observation that increased levels of web check-in will allow additional (unspecified) circulation in the departure hall. The adverse impact of web check-in on the security screening process experienced by DAA over the last year are not addressed. DAA considers Ryanair's proposals to be unrealistic, and has countered some of the elements of the York Aviation report in an appendix to this document.

Claims that T1 can process 25 or 30 million passengers per annum, as well as being unfounded, also demonstrate the disjoint between DACC members and passengers interests. The suggestion that even 25 million passengers should be processed through an already-congested facility, simply to keep airline costs down is a clear indication that airline's position on service quality is far from that of end users. The suggestion that 30 million passengers should be processed though T1, as well as showing complete disregard for service quality, also raises serious questions regarding attitudes to the health and safety of users.

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[11] P.22, '*CP6, 2007'*, Commission for Aviation Regulation, 30 July 2007

[12] P. 85, section 8.7, ' *Decision of the Aviation Appeals Panel –Appeal of Dublin Airport Authority Against Determination of the Commission for Aviation Regulation Cp6/2007'* 29 September 2008

The issue of T1 sizing has been addressed at various points throughout different consultation processes, most recently in the 2009 Aviation Appeals Panel. In its submission subsequent to the Panel's findings, DAA provided detailed evidence to show that T1 has a capacity of between 18 any 20 million passengers per annum. The Commission concluded that "the capacity of T1 was not necessary for the Commission's purposes of setting a price cap"[13] In this context, Ryanair and DACC attempts to reopen the issue of T1 sizing serve no useful purpose.

Runway Capacity

Airlines have again repeated the argument that the pass through of T2 costs should be contingent upon the completion of the parallel runway (while simultaneously opposing the development of a new runway in an effort to limit competition) or until such time as passenger numbers at Dublin Airport reach a level of 25 mppa. This is in spite of the obvious benefits in terms of service quality which will be passed on to all Dublin Airport passengers, and ignores the fact that this line of argument was effectively dealt with as part of the 2009 Appeal. DAA welcomes the Commission's stated intention to reject this proposal.

6. Passenger Forecasts

The airlines agree with the DAA's position that traffic volumes will be considerably lower than the forecast used in the Commission's draft Determination. Their other arguments with respect to the forecast are internally inconsistent.

The validity of the Commission's passenger forecast

A number of submissions agree with DAA that the methodology employed by the Commission to forecast passenger volumes in the forthcoming Determination is unrealistic and simplistic. DAA should not be forced to bear the risk associated with reliance on a high level forecast when users in consultation have agreed with the basic assumptions and methodologies underlying DAA's forecast process.

DAA notes that Ryanair has included a traffic forecast illustrating substantially lower levels of demand than projected by the Commission. Similarly DACC has stated that *"demand in 2014 will only at best return to the levels expected for 2009"*. Despite Ryanair's expressed concerns regarding the Commission's forecasting methodology and its broader concerns regarding the issue of transparency, Ryanair has offered no information, or explanation, as to how it has prepared this traffic forecast for Dublin Airport and whether it has canvassed the views of other airlines in its preparation. Nonetheless, DAA shares the view that traffic volumes will be substantially lower than in the Commission's draft determination. Below contrasts the forecasts underlying the draft determination with the forecast proposed by Ryanair.

	2009	**2010**	**2011**	**2012**	**2013**	**2014**
CP6/2009 (m)	21.0	20.7	21.2	21.8	22.7	23.8
Ryanair (m)	19.5	18.5	19.0	20.0	21.0	22.0

There is a general consensus in the responses that the existing forecast from the Commission is overly optimistic. Latest economic data and recent market developments

[13] Para. 4.57, 'Decision of the Commission further to Referral by the 2008 Aviation Appeal Panel', 23 February 2009

obliges the Commission to revise its passenger numbers. However, the Commission cannot merely incorporate new GDP forecasts into its existing model. Instead, what is required is a full review of all the information available. DAA reiterates its willingness to engage with the Commission on this issue.

Price sensitivity

DACC claims that Ireland's economic recovery is being damaged by the high costs of Dublin Airport. This is in spite of the fact that Dublin Airport remains one of the most competitively priced airports internationally. In this context DAA would draw CAR's attention to the multiple submissions received in response to CP6/2009 which indicate the need for a quality aviation infrastructure with sufficient capacity as being central to Ireland's economic recovery. CAR must ensure that airline regulatory gaming in respect of capex consultation does not impede this recovery, and that a sustainable balance between charges levels and service provision is struck.

Much is made by DACC of the supposed high sensitivity of demand at Dublin Airport to airport charges. DAA is unsure how DACC reconciles this argument with DACC's position that airport charges have supposedly been increasing dramatically over the last number of years, a period of unprecedented growth in passenger numbers.

DAA would also question DACC's assertion that growth at Dublin Airport has been the result of decreasing fares, in light of the airlines' introduction of and continued increase in a range of auxiliary charges[14]. Furthermore, DACC's continued focus on Stansted ignores how Ryanair's actions there are a tactical response to BAA's control of the airport. Similarly, while it cut 9 out of it 10 routes from Manchester, the Dublin-Manchester route remained while routes to supposed low cost airports like Hahn, Marseilles and Girona were cancelled[15].

DAA also welcomes the Commission's logical observation that were demand as elastic as DACC claim, then DAA could not possibly be in a position of market power, and would not require regulation. Indeed, DACC has not provided any evidence of or precedent for the so called "self-fuelling spiral of decline".

Use of Passenger Forecasts

DAA notes the disingenuous proposal of DACC that passenger forecasts are only of relevance *"in terms of assessing whether any additional capacity related capital expenditure is required in the period to 2014"* and that the volume term component of the building blocks should be based, not upon reality, but instead upon a constant figure of 23.6mppa, a level of traffic which DACC estimates will not be achieved during the entire period. Suggesting that CAR should use the 2009 forecast output used in its previous determination is clearly self-serving. DAA is already negatively affected when traffic numbers fall below forecast traffic expectations during a regulatory period. Continuing this risk into the next regulatory period would harm users as well as the airport, as the DAA would have little incentive to risk any capacity investment.

This suggestion from DACC is of course entirely contradictory of its suggestion that DAA does not bear volume risk discussed earlier. DACC has not advanced any alternative approach to regulation apart from the price cap model but seem determined to distort the existing model with the sole purpose of artificially reducing prices rather than engaging in a

[14] In 2008, Ryanair made the most ancillary revenue across all European airlines (€625m), Ancillary Revenue Guide by IdeaWorks Sept 2009.
[15] http://www.ryanair.com/site/EN/news.php?yr=09&month=aug&story=gen-en-170809

proper discussion on the allocation of the costs associated with the provision of airport facilities and services.

7. Commercial Revenues

DAA shares the airline's concerns with the Commission's high level approach towards commercial revenues. However DAA believes that the airlines' proposals for the treatment of revenues are asymmetric, as they propose extremely challenging targets while denying DAA the capital projects required to reach those targets.

The Commission's Approach

DAA agrees with the airlines' position that the Commission's commercial revenue projections lack clarity and ignore divergences from DAA's forecasts. The Commission's use of simplified and inappropriate GDP elasticities has allowed CAR to propose forecasts which, while superficially similar to DAA's own, fail to adjust for the revenue-generating CIP projects which the Commission proposes not to remunerate. This means that the Commission is proposing to set challenging targets for DAA without allowing DAA the resources to achieve these targets.

Furthermore, should the Commission adjust it's base year for passenger forecast projections downwards, then the use of DAA's 2009 commercial revenue forecast as it's base year for projecting commercial revenues, would result in even more ambitious targets[16]. The base year used for commercial revenue projections should be adjusted to reflect any variance between the passenger forecast underlying DAA's assessment and the ultimate 2009 passenger figure used by the Commission in its final determination.

T1X

DAA also agrees with airlines that the position of T1X within the RAB needs to be clarified. However, contrary to airline submissions that T1X is not generating sufficient return, in its response to CP6/2009 DAA has confirmed that T1X more than covers its associated cost of capital, and so should be treated in the same manner as any other successfully completed capital investment at Dublin Airport. Such an approach is consistent with the Commission's treatment to date of all revenue-generating capital expenditure, and avoids the introduction of unnecessary regulatory risk.

Revenue generating projects

DAA is disappointed that DACC members remain opposed to the revenue-generating projects outlined in CIP 2010-2014. Such projects offer, over their lifetimes, to generate revenues in excess of their cost of capital, and so will subsidise airport charges in the years ahead, much as T1X will do. DAA has provided ample information to the Commission to substantiate these facts.

DAA would reiterate that allowance of these projects by the Commission must not be used to justify further increases in commercial revenue targets. While the Commission's existing targets are superficially similar to DAA's own forecasts, the Commission failed to take account of the impact of the projects required to reach those forecasts. Allowance into the

[16] As this was driven by DAA's then projected passengers for 2009 of 21m.

RAB of these projects is a necessary component of DAA's projected commercial revenue targets.

Asymmetric approach to T2

DACC has also alleged that the Commission's commercial revenue forecasts do not take account of the likely uplift resulting from the opening of retail areas in T2. DAA would remind the Commission and airlines that DAA's own forecasts, based on a detailed bottom-up approach, take account of all such circumstances, and therefore offer a superior alternative to the Commission's estimates.

DACC has made sustained arguments against the full pass through of T2 costs within the price cap. Given that T2 is also expected to generate commercial revenue, it logically follows that, although DACC has not referred specifically to it in its response to CP6/2009, it should adopt a similar approach to commercial revenues as it does to operating expenditure. The corollary of the DACC's position is that commercial revenues arising from T2 would not be used to subsidise airport charges until a similar passenger threshold is reached.

Treatment of Car Parks

DACC has also opposed the extraction of car parks from the single till, on the grounds that DAA would be incentivised to prioritise investments in such activities rather than *"ensuring that core passenger processing activities are adequately resourced".* DAA rejects this assertion and would remind DACC of its track record of facilitating and improving services at Dublin Airport while still having long standing and diverse interests outside of the single till. Furthermore, DACC's stance is undermined by the position of Ryanair - a member of the executive committee of the DACC - which favours the adoption of the dual till approach.

DAA believes the issue of car park removal from the single till is worthy of further consideration and engagement, and the Commission should not be diverted by unfounded suggestions such as the above.

8. Service Quality

DAA submits that the position of airlines with regard to the Commission's proposed service quality scheme has little to do with concern for passenger welfare but rather is viewed as another mechanism to artificially reduce the price cap below a sustainable level. Airline's disregard for any input from passengers highlights the divide between the interests of carriers and the interests of the travelling public.

Airline Proposals that 4% of Revenues at Risk is Insufficient

DACC, Ryanair and Aer Lingus claim that 4% of revenues represents too low a proportion of revenues to be at risk should DAA fail the proposed service quality scheme. DAA maintains that putting any proportion of revenues at risk is unfair and disproportionate, given that the Commission has still failed to provide evidence of the existence of a service quality problem at Dublin Airport that would merit the introduction of its proposed penalty scheme.

Nevertheless, if the Commission is minded to proceed with a scheme, the 7% referenced by Ryanair and DACC represents a disproportionate amount of revenues to put at risk for a scheme which users appear to want to shape for their own interests. Statements that 25-30 million passengers should be expected to pass through T1, alongside a clear disregard for the voice of passengers through ACI surveys, indicates that airlines interests are not in any way aligned with the interests of passengers on the issue of service quality. If CAR is minded to continue with this scheme it has an obligation to ensure that any such scheme is not manipulated so as to become an opportunity for airlines to receive large and unreasonable transfers from DAA, without any corresponding benefits to the ultimate end users of the airport.

We also note the more balanced view of Failte Ireland which notes that a service failure could be evidence of a need for increased spending in a certain area – thereby requiring an increase in the price cap.

No respondent has articulated how, given the already substantial sums of revenue proposed to be at risk, increasing this percentage would genuinely incentivise DAA to further improve service quality.

Service Quality measures

Both DACC and Ryanair oppose the use of ACI survey measures, on the grounds that results are subjective. Ryanair also claims that sample sizes are not robust. Were such concerns justified, one would expect ACI scores on individual measures to vary significantly, reflecting both wide diversity in responses due to their inherent subjectivity and also due to small sample sizes distorting the results.

In reality, ACI scores across all the measures published by CAR in CP6/2009 are markedly consistent, with some instances of upward or downward trends but absolutely no evidence of variation or 'randomness' which would be apparent were DACC concerns grounded in fact.

In addition, the questionnaires for the ACI surveys are conducted so as to be representative of all routes and airlines at Dublin Airport, and have similar representative levels of responses to those adopted for nationwide polls.

DAA would submit that DACC's concerns do not relate to measurement issues but rather to the fact that airlines would not themselves benefit directly from improvement in such measures. When this fact is considered, airline claims to represent the voices of passengers ring hollow. DACC's and Ryanair's position offers a solid illustration of the diverging interests between airlines and passengers. DAA would recommend that any service quality scheme focus on primarily, if not exclusively, on passenger facing measures such as the ACI scores. Furthermore DAA would recommend that CAR scrutinise closely whether airline views are in reality in alignment with the views of passengers. To do otherwise would be to distort and undermine the ultimate goals of economic regulation.

Comments on the Proposed 'Airline Facing' Measures

DAA reiterates its opposition to each of the three proposed airline facing measures on the grounds outlined in its response to CP6/2009. Furthermore, DAA would remind CAR of the complications and difficulties associated with measurement of the outbound baggage system as outlined in its response to CP3/2008.

DAA also welcomes Ryanair's dismissal of a contact stand utilisation rate as being 'meaningless'. As highlighted in DAA's response to CP6/2009 the actual level of airline demand for contact stand use have never been clarified despite repeated requests from DAA.

Service Quality rebates

DAA opposes airlines' proposals that rebates be immediate and linked to specific service failures. Quite apart from the difficulties entailed in monitoring this to an auditable standard, or the significant and unreasonable increase in regulatory risk that would be entailed, such a proposal would directly reward airlines for particular incidences experienced by passengers, and would risk creating perverse incentives for airlines to deliberately sabotage individual passenger's experiences of service quality.

With regard to DACC's example of £15,650 being awarded to an airline in the event of a passenger queuing longer than 30 minutes at security screening, DAA would be interested to know what proportion of DACC's members would pass on that rebate to their passenger, or indeed what proportion would even offer a refund to the passenger in question. It is unacceptable that airlines should benefit financially should individual passengers experiencing delays, especially in light of the lack of commitment by any airline to pass on these proposed rebates to the affected party.

DAA also rejects Ryanair's statement that service quality rebates should be under no circumstances symmetrical. Such a stance again demonstrates airline's lack of genuine concern for the welfare of passengers. Were DACC and its users genuinely committed to a service quality scheme which would be to "incentivise performance improvements by DAA" as opposed to "simply to return money to users" then a system of symmetric rebates would be the natural choice.

Airline denial of SLAs' Existence

DAA agrees with and welcomes airline's proposals that any service quality scheme be subject to further consultation and engagement by the Commission. DAA hopes that all parties would engage constructively in any such process. However DAA is surprised that certain airlines have denied the existence of formal Service Level Agreements (SLAs) between DAA and users. The SLA was agreed with the AOC in the Summer of 2003 and has formed the basis of SLA reports published by DAA ever since (see attached press release announcing the agreement at Appendix B). The Commission should also note that certain specific SLAs provide for airline station managers to engage jointly with DAA in the measurement and calculation of targets. DAA's experience to date in this regard is that airlines have expressed little interest in such a role, despite the continued monitoring and publication of such data by DAA.

9. Opening RAB

The submissions of airlines with regard to the Opening RAB are inconsistent and ignore regulatory principles and incentives. Responses on individual projects centre on claw backs or disallowances regardless of the circumstances or long term resulting incentives.

7 Scenarios

DAA notes that airline's response on the 7 scenarios relating to RAB roll-forward presented by CAR were far more concerned with the potential for claw backs and disallowance of valid capital expenditure, than with the longer-term constructive incentives which would result from the application of such principles. Such a stance again highlights the difficulties associated with capital expenditure-related consultation with parties that are not fully committed to engaging in a constructive fashion.

Specific Projects

Some respondents have made specific recommendations in relation to certain projects, these are commented upon below:

Pier D: As outlined in DAA's response to both CP3/2008 and CP6/2009, any additional costs associated with the provision of extra pier and stand capacity to users in Pier D were either in respect of additional functionality or unavoidable and beyond the control of DAA. As such they were inherent costs involved in the provision of services to meet the requirements of users, and should be allowed into the RAB in full. DAA would reiterate the favourable comparison Pier D costs make with international benchmarks as submitted to the Commission in DAA's response to CP6/2008.

DAA considers Aer Lingus's position on Pier D to be illogical. If Aer Lingus believes that "cost overruns" were out of DAA control and simply due to the 'intrinsic uncertainty in predicting some cost elements' (and by implication unavoidable costs associated with the project) then it must be that DAA is remunerated for the costs involved in providing such facilities for airlines. Aer Lingus suggestion that there is some inherent risk involved in the forecasting of capital investment costs which DAA should bear is misleading. Were the extent of remuneration to be determined exclusively based upon projections of future cost, than some regulatory risk would enter the equation; however a prudent policy of allowing unforeseen but necessary costs into the RAB ensures that there is no risk which has to be borne by any party. DAA simply invests the required amount to supply the required facilities and airlines remunerate that investment via an appropriate term in the price cap.

In addition if Aer Lingus's argument were to be followed to its logical conclusion, then regulatory process would incentivise the overstatement of the cost estimates for capital projects, to lessen the risk that users would seize upon any unforeseen circumstances to deny remuneration for necessary investment.

To avoid such circumstances the Commission needs to analyse overspends rationally and on a case-by-case basis to establish whether unforeseen expenditures were necessary to meet the requirements of users. In instances where expenditures were out of DAA's control (as Aer Lingus had agreed is the case in this instance) the Commission should allow DAA to be reimbursed in full.

Pier B Connectivity Project: Aer Lingus also has a rather confusing position on the proposed Pier B connectivity project. Despite being in favour of the link as an 'essential component of the capital project', Aer Lingus argue that DAA should not be remunerated for provision of this necessary investment. It is inferred that the addition of this element to the T2 project subsequent to the initial scope definition will result in a higher cost for the asset. This is not the case, and no evidence is given by Aer Lingus to support that inference.

Aer Lingus also suggests that it would be unacceptable if DAA did not continue with the delivery of the project if airlines do not support it. This principle does not seem to be extended to any other elements of DAA's proposed CIP, which Aer Lingus appears to have rejected in large part under the auspices of the DACC.

In its treatment of Pier D Aer Lingus accepts that unforeseen costs were required to deliver a facility which meets user requirements. In its treatment of the Pier B connectivity project Aer Lingus accepts that costs must be incurred by DAA to provide a facility which also meets its requirements. However, in both instances Aer Lingus seem to be rejecting the principle that efficiently incurred capital expenditure which meets the requirements of users should be included in the RAB.

Indeed rejection of this principle is not consistent with the position of DACC (of which Aer Lingus is a member) on DAA's CIP. DACC refuses to accept that *any* capital expenditure should be allowed into the RAB if it lacks airline approval. Aer Lingus, which has stated that the DACC's submission is representative of its stance on DAA's CIP, is simultaneously claiming that even when users accept both the need for a project and in Pier D's case, the costs associated with that project, DAA should still receive no remuneration.

It is therefore unclear as to what grounds, if any, does Aer Lingus consider it appropriate for DAA to be remunerated for its investments?

TIX: This project has been shown to more than cover the costs of its capital, and to avoid regulatory complexity it should be included in the RAB in a similar fashion to any other appropriate investment.

Area 14: Contrary to the views of users who have suggested this asset should be excluded from the RAB, this project should be considered in line with the principles outlined in CAR's '7 scenarios', in particular Scenario 6. Such an approach maintains clear and efficient incentives for DAA, and is in harmony with circumstances where users have benefited from an asset having a longer lifespan than was initially anticipated.

Pier C: Ryanair and DACC have demanded that the Commission consider the treatment of Pier C in line with 'scenario 6' of the guidelines issued by the Commission regarding roll forward of the RAB. DAA notes that 'scenario 6' relates to obsolete assets. Pier C is not an obsolete asset. Not only do some Pier C stands and gates remain active, but the pier has been modified to form part of the required connection between T1 and T2. DAA considers that 'scenario 4' would offer a more appropriate framework to consideration of Pier C as in this instance, as outlined in 'scenario 4' the investment does not deliver the outputs envisaged at the time of the original capex allowance, but the unplanned outputs certainly do meet the reasonable interests of users. In line with the Commission's principles there should be no adjustment made in the RAB in relation to Pier C.

Non-CIP projects: DACC's and Ryanair's suggestion that non-CIP projects should be automatically disqualified risks reducing DAA's operational flexibility to the detriment of end users. For example were CAR to disallow any expenditure to increase the circulation space at GNIB, DAA might be dis-incentivised to carry out similar necessary but unforeseen work in the future. DAA requires flexibility to ensure that unforeseen capital projects which meet the requirements of users (passengers or airlines) can proceed without fear of non-remuneration.

T2 'Operational Readiness'

Aer Lingus and Ryanair argue that the Commission's proposed definition of 'Operational Readiness' is inadequate. Neither clarify why they draw this conclusion, other than Ryanair's suspicions that the Commission is more concerned with the welfare of the (as-of-yet unknown) T2 contractor. In addition, neither party advanced any alternative definition.

DAA considers that the Commission's definition of 'operational readiness could be feasibly adopted. As is standard in any such operation, any contract signed will include provision for familiarisation, staff training, and operational trialling to be carried out to ensure that the opening of T2 is seamless and disruption-free. These preparations are as essential to the level of service experienced by passengers as the visible daily operations post T2-opening.

DAA also notes the support of the Consortium (as represented by Goodbody Corporate Finance) for this definition.

Depreciation

DACC suggests that DAA in some way benefits unfairly from the manner in which depreciation is calculated. It is appropriate that DAA, like airlines or any other commercial body, is allowed to maintain the real value of its assets. There is no reason why DAA alone should be in some way exempt from this commonly adopted approach. In particular DAA rejects Ryanair's suggestion that depreciation should in some way be used to avoid remuneration for the costs of maintenance and repair as misunderstanding the basic tenets of depreciation policy. Essentially depreciation is a return of the real value of the investment while maintenance and repair is expenditure to ensure the fulfilment of asset lives.

10. CIP 2010-2014

Airlines, under the auspices of the DACC, have declined to engage in a constructive manner on DAA's proposed CIP 2010-2014. Suggestions that DAA has not provided sufficient information are undermined by the substantial efforts made by the DAA to engage, as well as the absence of detail or technical back-up in the 'DACC CIP'.

Airline's approach towards DAA's CIP 2010-2014

Both Ryanair and Aer Lingus have intimated that the DACC position can be considered to mirror their own views on DAA's proposed Capital Investment Programme over the forthcoming five years.

The Commission is aware of the extensive time and resources at a senior level that DAA has invested in engaging with the DACC and airport users on capex plans and the overwhelmingly negative approach adopted by DACC to the engagement process. DACC has now introduced a ‘DACC CIP’ in Annex D of its response to CP6/2009. This ‘DACC CIP’ is characterised by a dearth of meaningful information or comment. Projects are either not accepted on flimsy grounds, or their cost is discounted by means of arbitrary adjustments. No technical analysis is provided to illustrate how the exclusion of projects will not have a detrimental effect on the operation and maintenance of airport infrastructure. The suggestion that, of the €745m proposed in DAA’s CIP (€353m of which is triggered) only €67.3 is genuinely required to maintain and improve an international airport across a five year period is not credible or in any way substantiated by DACC.

DAA reiterates its belief that the behaviour of DACC in this consultation process was not motivated by any genuine interest to engage constructively. Instead DACC’s approach appears motivated by

- the belief that DAA might be forced to provide the necessary facilities regardless of airline intentions to pay,
- a short term approach towards airport development which is focussed only on maintaining unsustainably low charges, and
- an awareness that any increase in capacity at Dublin Airport that might ensue from trigger projects would result in the entry of new competitors to the market.

Many respondents to CP6/2009 have voiced concern that facilities at Dublin Airport will not be adequate to facilitate Ireland’s return to economic growth. The nature and outcome of the consultation process over the last number of months provides stark evidence that current incumbents at Dublin Airport are actively seeking to restrict the provision of required infrastructure.

DAA will continue to engage with users on the provision of necessary capital investment at Dublin Airport, but would urge the Commission to take all steps necessary to incentivise all users to participate in the consultation process actively and constructively. Given the evident failure of the consultation process to date, DAA believes that, where the bulk of evidence provided supports a project, and airlines have not provided adequate justification for its exclusion, then the Commission should allow it into the RAB. Any alternative approach gives an unreasonable and anti-competitive veto over capital investment to incumbent players at Dublin Airport.

Triggers

DACC maintain that the triggers devised to ensure that capacity-enhancing projects would be delivered at an optimal timing should instead be used to signify the beginning of consultation on, rather than actual commencement of, individual projects. Such a stance ignores the fact that consultation on such projects has already commenced and is an ongoing process. In light of DACC’s dubious track record on the issue of capex consultation, and the perverse incentives it faces to limit competition, DAA would submit that this position is simply an attempt to introduce a further stalling mechanism into the approval process.

Suggesting that consultation on a new runway should only begin when demand returns to the levels experienced in 2008 completely contradicts DACC’s repeated declarations that Dublin Airport was already reaching its limits in 2008 and that the runway was its main constraining factor. In addition, other respondents e.g. Chambers Ireland, Dublin Chamber, Failte Ireland have noted the importance of the timely introduction of new capacity. The trigger mechanism proposed by DAA and viewed by the Commission as “a sensible regulatory approach[17]” will facilitate that delivery.

[17] Paragraph 9.33, CP6/2009

Dublin Airport has grown by over 7m passengers in a 4 year period before (e.g. between 2003 and 2007). Even a 5m passenger bounce in traffic would put some considerable pressure on infrastructure. It would be negligent of DAA if it didn't consider this prospect.

DAA rejects UPROAR's argument that the proposed triggers are too low on the grounds that demand at Dublin Airport is artificially high due to charges not reflecting the social external costs created as a by product of operating an airport.

Firstly UPROAR has failed (much like DACC) to demonstrate that demand at Dublin Airport is sufficiently price sensitive.

Secondly regardless of a notional 'social cost' involved in the operation of Dublin Airport, setting the proposed triggers at a higher level would simply delay the delivery of required infrastructure without any attending benefits, but with a significant impact upon capacity and service quality.

DAA agrees with IATA's statement that in its experience, "*such incentives have achieved their objectives at other airports*", and believes that triggers are an appropriate mechanisms for the remuneration of required capacity investments.

Runway 11/29

DACC states that it "considers that refurbishment of Runway 11/29 at a cost of €4.5 million would provide sufficient incremental capacity to meet demand for the foreseeable future as it would provide …..potentially 30 movements per hour additional capacity compared to 43 with the parallel runway option at a cost of €305 million." This is factually incorrect and is a misrepresentation of information provided by DAA in consultation. The refurbishment of Runway 11/29 at a cost of €4.5m would **not** provide any increase in declared capacity and represents complete nugatory expenditure in that this runway is due to be removed to accommodate the north runway.

The investment would reinstate the surface of existing Runway 11/29 (length 1,339 metres), and its use would be limited to Category A and B aircraft only [18]. In addition, the runway has no navigational aids and this would further restrict accommodation of this limited traffic to certain visibility conditions only.

Following a €4.5m investment, Runway 11 / 29 could therefore only be used on a tactical basis to reduce delays where possible. This conclusion is supported by a 2002 NATS study[19] and a 2003 Scott Wilson report[20].

The additional movements per hour referred to by DACC could only be realised if the following steps were implemented:

- An extension to Runway 11/29 to accommodate at least Category C aircraft. This is not safeguarded in any development plan and would therefore be almost impossible to achieve. The cost of such an extension would be comparable to the cost of a new parallel runway as has been demonstrated previously [21].

[18]Category A & Category B aircraft as determined from ICAO PANSOPS 8168 (small "commuter type" aircraft). The A320 and the B738, the aircraft operated by Aer Lingus and Ryanair, are Category C.
[19] National Air Traffic Services : Dublin Airport Capacity Study Final Report March 2002.
[20] And [4] Scott Wilson : Dublin Airport Options for Delivering Additional Runway Capacity April 2003

- ILS [22] to be provided on Runway 11.
- Segregated mode of operation (Arrivals and departures not interchangeable)
- ILS on Runway 29. This would require the removal of Hangar 6 to avoid penetration of the transitional or the approach surfaces, and would limit the aircraft parking available on the north apron.
- Holding areas that allow the Tower Controller to select from 1 of 3 departures
- Appropriate go-around procedures on arrival runways
- Support of pilots to use the shorter runway when requested to.

In conclusion, the refurbishment of Runway 11 / 29 cannot be seen as a full or even partial substitute for investing in a new parallel Runway.

Multi-Storey Car Park/Hotel

The DACC statement that the MSCP scheme would not achieve a positive rate of return over its life is incorrect. While it is unclear from its response how DACC has arrived at this conclusion, DAA suspects that any analysis that might have been undertaken was based on an average revenue per car park space. Not differentiating between long term and short term spaces, would be a fundamentally flawed approach as there is a significant disparity between long term and short-term car parking prices e.g. the gate price in DAA's short-term car park is €40 whilst the gate price in its long-term 'Blue' car park is €7. Accordingly, and as stated in the Capex Consultation Meeting on 22nd April 2009, when one takes into account short-term car park revenues per space the rate of return from the MSCP scheme is in excess of the hurdle for commercial projects. DAA has provided detail to CAR to support this.

Accommodation Projects (CIP 2.014, 2.015 and 2.016)

As part of its objection to these capital investments, DACC has repeated its comments made at the 29 May consultation meeting that "*tenants are leaving the airport as a consequence of excessive rental levels and available ramp accommodation on Pier D has not been taken up due to excessive rents being sought by DAA*".
DAA would like to clarify that both of these statements are untrue.

- It is not DAA's experience that major tenants typically leave the airport and relocate to alternative accommodation in the area. The only recent major tenant departures relate to situations where the companies concerned are exiting the Irish market entirely (e.g. SR Technics).
- Pier D rents are not excessive, as evidenced by the fact that 50% of available ramp accommodation has already been let (tenants include Cityjet and Aer Lingus).
- DAA does not engage in speculative fit-outs of vacant accommodation, instead waiting until tenants are secured before embarking on such investment.
- As temporary accommodation facilities associated with the Transformation Programme are decommissioned (e.g. TBG, South Apron Village), we anticipate that the ramp occupancy rates will increase significantly.

[22] Instrument Landing System

11. DAA's Cost of Capital and Financeability

DAA faces considerable risks and challenges in the forthcoming Determination period. These risks are in no small part due to reliance upon a customer base characterised by a particularly cynical approach towards the regulatory regime and principles. The regulatory risks faced by DAA must not be allowed to be enhanced by over reliance upon the self serving views of incumbent operators at Dublin Airport.

Degree of Risk faced by DAA

On issues of financeability and DAA's allowed cost of capital, airlines have suggested that the beta should be lower on the grounds that Dublin Airport is less risky than comparator airports. DAA would submit that, quite apart from the normal business risks it faces, and the unprecedented volatility in demand in the current environment DAA is also faced with:

- Airlines that support major infrastructural developments yet then attempt to avoid remunerating such developments.
- Airlines that oppose infrastructural projects which would allow DAA expand its business to new market entrants
- Airlines that propose to pay airport charges which could not conceivably cover the (already subsidised) costs of operating Dublin Airport
- Airlines who propose that the passenger levels for determining the airport charge should be set at a far higher level than the actual passenger demand they forecast.
- Airlines that engage in gaming of the capex consultation process for their own benefit
- Airlines that push for onerous service quality rebates without due regard for the actual impacts upon service quality.
- Airlines that believe DAA should bear all the downside risk associated with the Commission's passenger forecast but demand that airlines receive annual rebates within 45 days should passenger numbers exceed the Commission's projections.

Given DAA's dependence upon the regulatory process for its continued financial viability, and in light of the significant influence of the above airlines upon that process, DAA would submit that the operation of Dublin Airport is significantly riskier than comparator airports.

Relevance of FFO: Debt Ratio

Ryanair has asserted that the FFO: Debt ratio is an 'irrelevant and meaningless ratio'. This is in contrast with the views of credit rating agencies, which are on record as considering it one of the key metrics in assessing companies' financial viability. As such Ryanair dismissal of this key indicator is to disregard their relevance in financial markets. In addition, Ryanair seem concerned that Group as opposed to Dublin Airport-specific ratios are used. We would note that the Commission's statutory obligation is to the financial viability of DAA.

Disposal of assets outside of the single-till

Airlines have again demanded that the Commission make specific allowance for funds raised from the divesting of DAA-owned assets. Such a position ignores the reality that such assets clearly had insufficient nexus to the regulated business, and costs related to these investments never impacted upon airport charges directly. In fact, the financing benefits arising from the sale of these assets has been taken into account in the calculation of group ratios referred to above.

A ‘Long term Approach’ to DAA’s Cost of Capital

DACC and Aer Lingus argument that the Commission should take a ‘long term approach’ to DAA’s cost of capital is a transparent attempt to convince the Commission to ignore current economic data. It is clear that risk, and the associated costs of financing, have increased considerably in recent times, and are likely to remain high for a substantial proportion of the duration of the forthcoming Regulatory period. The Commission cannot ignore the real and unprecedented costs and challenges facing DAA in current market conditions.

12. Other

Dublin Airport City

The position of DACC is broadly in line with that of DAA regarding Dublin Airport City, although DAA considers it premature to propose specific adjustments to the regulatory model, as DACC has done, when the principles which will guide this adjustment have not yet been clarified by the Commission.

Cargo

Ryanair’s proposals concerning the treatment of cargo are unnecessary and unprecedented. No other users have expressed discontent with the existing cargo arrangements at Dublin Airport. DAA welcomes the Commission’s proposal not to implement sub-caps as part of the next review.

General Aviation

Ryanair states that General Aviation users should pay 7% of the operating and capital costs of Dublin Airport on the grounds that such users account for 7% of overall movements. As well as being unworkable in practice, this proposal would also be inequitable, as General Aviation users do not account for anything close to 7% of the costs of operating Dublin Airport. DAA welcomes the Commission’s decision not to implement sub-caps as part of the next review.

Price Cap Compliance

DACC has agreed with the Commission’s proposals that any over recovery against the cap should be refunded to airlines within 45 days. DAA reiterates its opposition to this regulatory innovation, on practical and cost grounds as well as on principle. Such a proposal is asymmetric and unnecessarily increases financial risk.

The asymmetric nature of the proposal may have encouraged DACC to suggest that any refund should be *“the amount of total revenue by which it under recovered in any given year and not simply (...) the difference between average revenue yield and cap”.* Such a demand implies that DAA should bear all the downside risk associated with reliance on the Commission’s forecasts, but that airlines should receive lump sums should the Commission’s forecasts prove too pessimistic.

This is a further example of DACC’s refusal to consider the long-term implications on DAA’s financeability with its associated threat to the sustainable development of Dublin Airport facilities. The Commission should not only reject this proposal but also recognise the disregard for regulatory principles which underlies it.

Appendix A – DAA Response to York Aviation's 'Dublin Airport T1 Capacity Assessment'

DAA notes that Ryanair (via York Aviation) has once again raised the capacity of T1. This is despite the fact that the issue was dealt with by the Commission in its response to the Aviation Appeal Panel[23]. During that process, the DAA again made a considerable effort to explain the basis for its capacity declarations and the complexities behind converting hourly capacity into annual throughput. See "*DAA Response to the Commission for Aviation Regulation's Consultation on the Decisions of the Aviation Appeal Panel*", 16th Feb 2009.

In the Commission's response, it broadly accepted the arguments put forward by the DAA:
"The Commission accepts the DAA argument that the declared capacity and planning capacity may not be the same, and that in the case of Dublin airport in 2007 the declared capacity was higher than a suitable planning capacity. Many users were not satisfied with the existing facilities."

Despite 2007 (and indeed 2008) been widely recognised as congested years, York Aviation continues to claim that T1 can handle its existing throughput, claiming that 23.5mppa were "handled without substantive congestion" in 2008, even though this was further increase on the 2007 throughput. In fact, York Aviation has taken this several steps further and has now concluded that T1 can handle 30mppa.

It is not possible for the DAA to respond to the modelling work done by York Aviation, as it does not have access to the model and schedules created by York Aviation for the 27m and 30m throughput years. However, when modelling any system a "sense check" must be made i.e. if one gets results from modelling which fly in the face of experience on the ground and which contradicts the customer feedback received, then this suggests that the modelling is faulty, not that everyone's experiences are somehow mistaken. The York Aviation analysis also refers to the previously done by WHA, which also produced counterintuitive results. In that case, the DAA did have access to the details of WHA's modelling and discovered major flaws in the work done, which have been comprehensively detailed to the Commission previously.

Given our lack of confidence in the outcome and without the details behind the modelling work done by York Aviation, the DAA will not make another full submission on the capacity of T1, especially given that the Commission has already ruled on this issue. However, for the record, we note a number of serious flaws with respect to the work done by York to ensure there can be no doubt that this analysis is as inappropriate as previous submission from Ryanair on the issue.

Security: York has gone to considerable lengths to discuss how passenger processing dynamics in the airport are changing. But it only discusses those changes which might theoretically improve processing times through an airport. It does not discuss how some of these proposed improvements may have a negative impact on other processes, such that pinch-points are simply been moved from one area to another. The key example of this would be the security area, which has been significantly negatively affected by online check-in[24]. Passengers are arriving later, which increases the processing requirements during the peak (e.g. instead of passengers arriving between 150 and 60 minutes before a flight in a rather even distribution, passengers are been compressed into a 90 to 45 minute window). In addition passengers are carrying more hand luggage (which has go through security

[23] 23-Feb-2009, Decision of the Commission further to Referral by the 2008 Aviation Appeal Panel
[24] 7-Aug-2009, DAA Response to CP3/2009, Maximum Level of Airport Charges at Dublin Airport Draft Determination, Section 2.5.3.

screening), while increasing levels of security regulations are putting increased pressure on existing facilities. Thus peaks in this area are actually increasing, not decreasing.

However, it is important to ensure that Ryanair and its consultants recognise the implications of what they are suggesting, and in this regard we note that York Aviation recognises the possibility that more staff is needed to deal with security issues.

"An option worth exploring is for DAA to facilitate a more dynamic opening of security channels to be available ahead of peak demand each day rather than perhaps the 'just in time' practice that is common at most airports"

Opening more security channels ahead of time will obviously result in higher operating expenditure but it may also improve customer service. It would be logical and reasonable to assume that Ryanair accepts this is an inevitable outcome of its proposal. However, given that it has separately challenged the level of operating expenditure proposed by the DAA, it is apparent that Ryanair are continuing to run mutually incompatible arguments.

Baggage Reclaim. The analysis presented on the baggage reclaim area can be viewed as similarly simplistic. First York Aviation speculate on baggage trends into the future which are difficult to assess with any confidence, given the dynamic nature of the aviation industry. Secondly, York Aviation seems to assume that any decrease in the number of bags gives a pro-rata reduction in demand across the baggage handling process. For example, it suggests that increasingly combining a number of flights onto 1 baggage reclaim belt will create no ground handling or customer service difficulties. This is not the case and York Aviation in its simplistic analysis has ignored a number of factors such as the flight schedules, the amount of time that a ground handler will take to process a flight, and access to and egress from a baggage carousel loading area which is already in use by another handler(s).

Appendix B Press Release re SLAs

Passengers to benefit from New Service Level Agreements at Dublin Airport

Aer Rianta and the airlines operating at Dublin Airport have agreed to implement new measurable customer service standards at the airport, in order to enhance the travel experience of all those flying in and out of the city.

The service standards will apply to a number of key processes at the airport including passenger check-in, security screening, and baggage collection.

The agreement commits Aer Rianta and the airlines amongst other service level targets to:

- Open check in desks at least one hour forty minutes before scheduled Departure time.
- Limit queuing time at check-in desks to a maximum of 15 minutes for all flights except transatlantic, where the limit will be 20 minutes.
- Limit queuing time at passenger security screening points to a maximum of seven Minutes. Queuing time targets at check-in and security screening to be met 95% of the time.
- Ensure efficient management of queues.
- Deliver luggage from arriving aircraft within set time limits depending on the size of aircraft and where it is parked.

“This service level agreement follows a detailed consultation process involving Aer Rianta and the Airline Operators Committee (AOC), representing all airlines at the airport. Dublin Airport is one of the fastest-growing airports in Europe and it is in all our interests to co-operate fully in providing the most pleasant and efficient service possible to the travelling public,” said Robert Hilliard, Director Dublin Airport.

"The performance targets set under this agreement will be monitored and reviewed at the highest operational level by Aer Rianta and the airlines," said Brendan Cummings, British Airways' Service Delivery Manager, Ireland, and Chairman of the AOC. "We also intend to publish how we measure up to our targets, and will announce further details in due course."

Ends
30th April, 2003

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