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DOB/9008

11th September, 2009

Mr Cathal Guiomard
The Commission for Aviation Regulation
3rd Floor
Alexandra House
Earlsfort Terrace
Dublin 2

Response to representations on the Draft Airport Charges Determination of 18th June 2009.

Dear Cathal,

I refer to your invitation to comment on the representations made on the draft determination on Airport charges at Dublin airport dated 18 June 2009 and hereby submit Ryanair's formal response as invited.

Please be advised that you should not interpret our lack of response on any particular point made, or on any particular issue raised in the responses of other parties to the Draft Determination as signifying concurrence on the part of Ryanair to any such points or issues.

Please be advised that the attached comments are in addition to the comments made in our submission of August 7th 2009.

We have repeatedly written to you expressing our concern at the failure, unwillingness or inability of the Commission to respond to our numerous requests for information, both before and since the issue of the Draft determination, either in a timely manner or at all. This repeated failure by the Commission has prevented Ryanair from adequately considering and responding fully to the Commission's Draft Determination and to the submissions made by other parties following the issuance of that draft determination.

Accordingly, we make the attached response whilst reserving the right to make such further responses as may become necessary when our previous requests for information are adequately answered by the Commission.

Yours Sincerely

David O'Brien
Director of Flight & Ground Operations

Ryanair Ltd.
Registered in Ireland No. 104547

V.A.T. REG. NO. 4749148U

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Section 1
Deferral of remuneration for required investment

a) Unitisation of depreciation and the two box approach are the regulatory factors that govern the deferral of remuneration for required investment. Both arise as a result of the DAA's ill-judged investment in T2.

b) Ryanair points out that the size of T2 was and remains inappropriately large. This is now conceded by all parties including the Commission and Aer Lingus (for whose requirements the Terminal was designed), with the exception of the DAA itself.

c) The deferral of remuneration that the DAA refers to (and seeks to have changed), arises specifically and exclusively from the DAA's over-sizing of and over-investment in T2. This over-sizing and over-investment was forced through by the DAA, notwithstanding user opposition and CAR concern.

d) The Commission indicated in CP6/2007 that *"The commission continues to believe that the planning parameters employed by the DAA to size T2, in particular the projected 4,200 passengers departing in the busy hour, is unusually large. It has not been convinced that there is a case for requiring all airport users to pay for the costs of such a large facility from its commencement. The DAA should assume some of the risk that the terminal is too large."*

e) The Commission has also confirmed in CP6/2007 that "*"the remuneration mechanism for T2 have been described, set out for consultation and refined, all prior to commencement of the DAA undertaking the project"*

f) It is clear that the consequences of the Commission deferring remuneration for investments that were deemed to be required by the DAA, but were not deemed to be required either by the regulator or by users, were clear to the DAA in advance of its decision to make the investment.

g) Now that the gamble has turned sour on the DAA, and now that its investment in T2 has been shown to be as inefficient and as inappropriate as both the Commission and users had warned in advance, the DAA must carry the down side risk, and its plea to the Commission to accelerate remuneration should be comprehensively rejected.

h) Ryanair considers that the DAA's ill-advised, inappropriate and un-required investment can not be considered to meet the "economic efficiency" or "user needs" criteria as required by the legislation. The over-investment in T2 amounts to blatant regulatory gaming by the DAA. Ryanair believes that there are no reasonable or rational grounds for remuneration of this investment in advance of there being a demonstrable need for same, i.e. in excess of 30mppa.

Section 2
The impact of the recession on passenger traffic and propensity to spend

a) Ryanair will increase its passenger numbers this year from 58 million to 67 million, an increase of 9mppa or 15%. Aer Lingus reported a 3% increase in passenger numbers during August. Both of these increases were delivered despite a period of deep recession, facts which refute the DAA's claim that a decline in traffic can be attributed to the recession.

b) In light of Ryanair and Aer Lingus's strong traffic growth at other locations, despite declines experienced at Dublin Airport, and the fact that both have confirmed Dublin Airport to be one of their most expensive Airports, it is logical to conclude that the DAA's high and rising costs are the cause of its steep traffic declines in 2009.

c) Passenger traffic at Dublin Airport has collapsed by up to 15% in 2009, not because of the recession, but because the DAA has failed to apply similar incentive packages as many competitive airports across the UK and Europe, who have significantly discounted their airport charges in order to minimise traffic declines and to stimulate traffic growth rather than induce traffic decline during the recessionary period.

d) The reduction in passenger numbers at Dublin Airport has arisen because of price increases: the reduced volumes in turn feed the reduction in Commercial revenues.

e) The reduced passenger "propensity to spend" referred to by the DAA, arises partly because disproportionate portions of passengers' cost of travel are used up paying airport charges and government taxes.

f) Cost reductions to incentivise traffic volumes have been evident throughout Europe. UK provincial airports have substantially reduced passenger charges. The Belgian and Dutch Governments have scrapped passenger taxes. In Greece and Spain, airport charges have been reduced, in some cases to zero, in order to stimulate traffic demand.

g) The regulator, through reductions rather than increases in its proposed price cap, is in a position to (and should) incentivise the DAA and its shareholder to pursue like policies to encourage a return to passenger growth rather than passenger decline.

Section 3
Inefficient Investments, Viability and Financeability Issues

a) DAA declares the Commission's price cap determination to *be one of the most fundamental determinants of the financial strength and viability of the DAA.* Stating that *"While the pace of economic recovery will be a key factor, a recovery in DAA's financial position from 2010 onwards is inextricably linked with the regulatory price cap determination"*

b) Ryanair contends that any diminution in DAA's credit rating, financial position, viability or financeability arises wholly and exclusively as a result of DAA's own actions and inactions within both the regulated and unregulated portions of its business.

c) Ryanair further contends that price cap increases designed to offset any detrimental impact that deferred remuneration on the DAA's investment in T2 might have on its financeability or viability, would be wholly inappropriate and ultra-vires the power of the Commission, arising inter alia, from the fact that said investment in T2 was and remains demonstrably inefficient, poorly managed and unnecessary.

d) It is noted that the DAA was *"required by its shareholder to build T2 to the <u>current timetable</u>"* and that *"The shareholder is therefore aware of the financial pressure this places on the DAA".* However, it was the DAA who decided to ignore user input and Build T2 on an <u>excessive and wasteful scale</u>, requiring excessive investment as part of the DAA's deliberate policy of regulatory gaming to gain guaranteed regulatory profits for unnecessary capital expenditure. Arising from these facts, it is contended that the shareholder and the DAA, rather than airport users, should foot the bills for both the inappropriate timing and the excessive scale of the investment.

e) The attribution of responsibility for the inappropriate timing of the T2 investment to DAA's shareholder, together with the attribution of responsibility for the inappropriate scale of T2 to the DAA, lends support to Ryanair's contention that until such time as there is a clear user requirement for T2 (i.e. 30mppa), no increase in the price cap should be contemplated by the Commission that would allow the DAA to recover any increase in airport wide operating expenditure that would arise from the unnecessary opening of T2.

f) Clearly, responsibility for the inappropriate timing of the unnecessary and inefficient Capex on this investment rests with the DAA and its shareholder. Accordingly, the costs of mothballing T2 until such time as it becomes necessary and cost efficient, should be borne by the DAA and its shareholder and not by users.

Section 3
Inefficient Investments, Viability and Financeability Issues - continued

g) It would be perverse to penalise users and reward the DAA and its shareholder with "return on" or "return of" investment for this inefficient investment, the timing of which was imposed on the DAA by its shareholder and the excessive scale of which was a premeditated act of regulatory gaming by the DAA – exploiting the regulatory process by earning regulator guaranteed "returns on" and "returns of" unnecessary and unwanted Capex at the expense of users of Dublin airport.

h) It would be equally perverse to penalise users and reward the offending shareholder by manipulating the Price Cap in order to enable the DAA to contrive artificial financial ratios in an attempt to manipulate its credit rating to satisfy its artificially created need for further borrowing.

i) Ryanair contends that a recovery in the DAA's financial position from 2010 onwards will be contingent on the DAA pursuing normal commercial and competitive policies in its management of Dublin Airport, whereby the DAA deals with the impact of recession in a rational and enlightened way, so as to maximise throughput and thereby revenues, to minimise operational costs, and to limit investments to those that are necessary and affordable.

j) In a regulatory environment, this is unlikely to happen, if at each determination, demonstrably and materially inefficient investments are remunerated on the basis that not to do so would threaten the viability of the company.

k) Ryanair contends that if the DAA's management has destroyed shareholder value by a combination of engaging in "regulatory gaming" and blindly following shareholder policy to build unnecessary facilities in the face of user and regulator opposition (in relation to the scale and timing of T2 and of its investment in same), then the cost of this destruction in shareholder value must be borne by both the DAA and its shareholders and not by current or future users.

l) There is a reality that is being faced by practically all property developers who have been caught with oversized, unfinished, ill-advised and unwanted property developments in the market place. The Regulator, through lowering rather than raising the price cap set out in the draft determination, should incentivise the DAA to face up to the new reality regarding valuation of uncompleted, unwanted and unnecessary property developments.

m) That Aer Lingus has now confirmed its opinion that T2 is both over-specified and over-priced, is a damning indictment of the level of diligence applied by the DAA when designing, contracting for and financing such an extensive and expensive €0.84 billion investment project. The impact of the inefficiency of this investment on the finances of the DAA should be rectified from its own internal resources and not recovered from users through price cap increases.

Section 4
Operating Expenditure at Dublin Airport

a) Real reductions in DAA's operating expenditure are a fundamental necessity if the DAA pricing is to become competitive. Such reductions will become more and more necessary as the Irish Government continues its policy of competitive devaluation, mainly through wage cuts. The DAA should not be sheltered from such devaluation in any way through price cap increases.

b) Ryanair contends that it is inappropriate, against the interests of users and against the interest of the longer term efficient economic development of Dublin Airport that the DAA should be sheltered from the Government's policy of competitive devaluation by price cap increases, whether as proposed in the Commission's Draft Determination, or as pleaded for by the DAA in its submissions.

c) The degree of inappropriateness cannot be overemphasised and must take into consideration that the DAA's shareholder is the propagator and promoter of the competitive devaluation policy.

Section 5
Commercial Revenues at Dublin Airport

a) The DAA claims that commercial revenues subsidise airport charges. Ryanair have indicated that whereas sufficient information has not been made available to users to enable a thorough analysis of net commercial income and net aeronautical income, its assessment is that an anomalous situation exists at Dublin Airport whereby Aeronautical Revenues are subsidising DAA's Commercial Investments.

b) Ryanair would suggest that adequate and appropriate accounting information be made available to enable both users and the Commission to ascertain conclusively whether or not the size and nature of the DAA's investment in commercial infrastructure, allied to its inefficient operating expenditures, have resulted in aeronautical revenues being used to subsidise commercial activities, as would appear to Ryanair to be the case.

c) DAA claims that commercial revenue targets are unachievable in the current economic climate because further investment required by the DAA plans is necessary to achieve those targets.

d) In making this claim the DAA chooses to ignore the massive incremental and inefficient investment in commercial infrastructure that has already taken place and that is failing to deliver appropriate commercial revenues.

e) The solution proposed by Ryanair is to operate a dual till rather that a single till thereby removing both incremental investment and the incremental commercial revenues from the regulatory process, and incorporating a per passenger deduction from actual aeronautical costs to account for the benefits to airport commercial activities of airline delivery of passengers to the airport.

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Section 6
Regulatory Risk and Cost of Capital

a) The DAA in its submission seeks to have the Commission increase the allowed cost of capital in order to compensate for alleged increases in risk to its investors and lenders. Ryanair contents that, to the extent that DAA operates within the constraints envisaged by the Regulator, its "return on" and "return of" investment are guaranteed by the regulatory process. As a consequence a reduced rather than increased cost of capital is necessary and appropriate.

b) To the extent that investors and lenders attribute heightened risk profiles to their existing or prospective DAA investments and loans, such heightening arises because of DAA activities that fall outside the remit of the regulator or from investment activities undertaken by the DAA in the face of pre-notified regulatory concern and user opposition setting out that not all of the proposed inefficient investment would be remunerated.

c) It is wholly inappropriate that the DAA should now be seeking price cap increases designed to compensate investors for the downside of the DAA's inefficient investment as they predictably materialise.

Section 7
Current and Prospective Airport Users

a) It should be noted that Ryanair and Aer Lingus combined passenger volumes currently account for in excess of 80% of traffic through Dublin airport. Any assessment aimed at meeting the needs of "current and future airport users" should, of necessity, apply a heavy weighting to the opinions and requirements of such airlines.

b) Both Ryanair and Aer Lingus, who currently account for 80% of users, are likely to continue to account for such a substantial majority for the foreseeable future. The DAA has provided no credible evidence that any other future users will alter this 80% share, since most are likely to be long haul carriers who deliver few flights and disproportionately small passenger volumes.

c) Ryanair concurs with much of the Aer Lingus submission including, inter alia, its assertions as follows ;

d) Proposed Price Cap
    i. That the increase in maximum charges proposed by the commission does not reflect the reality of current economic conditions and fails to adequately balance the interests of the DAA and of current airport users.
    ii. That in a competitive market it is to be expected that prices fall rather that rise during times of weak demand.

e) Terminal 2
    i. That it believes, in line with the commission's own advisors that T2 is over-specified; at least 40% larger than it need be, and that because it is not appropriate for the commission to allow funding for inefficient levels of investment the total allowance for T2 included in the RAB (at whatever point) should be adjusted down to reflect an efficient level of investment.
    ii. That it is inappropriate for the commission to allow overall operating costs per passenger to increase as a result of the opening of T2.
    iii. That no cost recovery should be allowed for expenditure on a project that is not delivered in a manner that is not fit for purpose for an airline to use.

f) Operating Costs
    i. That it is only appropriate for the commission to allow efficient operating costs.
    ii. That the lack of detail provided in support of the draft determination combined with the extensive redaction of data prevents users from effectively commenting on the detail of the draft determination.
    iii. That the commission's draft determination contains no Opex and capex reductions in the coming quinquennium as a consequence of the fall in demand and that this does not seem credible

Section 7
Current and Prospective Airport Users

g) Cost of Capital
   i. That the commission has overstated the degree of risk faced by the DAA and has therefore chosen an excessive Beta value that results in a cost of capital that is too high.
   ii. That the real cost of debt used by the commission in its WACC calculation is too high and not supported by the full range of available evidence.

Section 8
Required Capital Investment at Dublin Airport

a) There are two common themes evident in the submissions received from parties who are not directly involved in paying for the services delivered or the investments made by the DAA as set out at b) and c) hereunder:

b) Dublin Airport as a destination for Long Haul Asian Carriers.

i. In the first instance there are those parties who support the investment by the DAA in runway capacity targeted at delivering new passengers from Asian destinations without any evidence whatsoever to suggest that any Asian carriers are ever likely to use Dublin Airport. Ryanair believes that there is no reality to the DAA expectation that Asian long haul operators will over-fly other major European Airport Hubs such as London Heathrow, Frankfurt Main, Paris CDG, Amsterdam Schipol or others, in order to arrive at a peripheral European Airport such as Dublin with little or no connecting traffic and tiny volumes of originating and/or departing traffic.

ii. Despite many years trying, the DAA has failed to attract any such Asian carriers and even Aer Lingus's recent long haul routes to Dubai and South Africa have proved to be commercial failures.

iii. The DAA's plan for significant investment to accommodate long haul carriers is a further example of planned regulatory gaming – the provision of expensive, unnecessary and unwanted facilities for non existent customers where "returns on" and "returns of" investment, guaranteed by the Regulator will be extracted from users who neither want nor require the facilities.

iv. Ryanair would be further concerned as to how the principle of "user pays" might be applied to ensure that the investment deemed necessary to accommodate such Asian long haul carriers would be paid for by the users of such services and not by airport users in general.

c) Dublin Airport as an Advertisement for Ireland / Low cost facilities.

v. In the second instance, there are those parties who support the development of Dublin Airport to the highest full service standards in order to alleviate possible concerns of the executives of Ireland's multi-national and FDI clients and as an advertisement of Irish progressiveness.

vi. Again Ryanair would express concern as to how the principle of "user pays" might be applied to ensure that the investment deemed necessary to deliver such airport characteristics might be paid for by the users and beneficiaries of such attributes rather than by the 80% of passengers using Dublin Airport who, through their choice of airline, express a preference for low cost, no frills travel.

Section 8
Required Capital Investment at Dublin Airport

vii. Ryanair contends that an abundance of facilities for business and/or full service travellers can be accommodated in the infrastructure that currently exists at Dublin Airport. However, no facilities currently exist or are contemplated that cater for the needs, requirements and pockets of low cost travellers.

viii. The detrimental effect on Irish Tourism and on the image of Ireland, of our failure to providing appropriate low cost facilities far exceeds the infrastructural costs of developing and operating such facilities. Ryanair would contend that in the current age, it is a matter of national strategic importance that appropriate facilities be made available to low cost travellers.

Section 9
Competitiveness of pricing at Dublin airport

a) With respect to competitiveness of pricing at Dublin Airport the submissions received in response to the Draft Determination fall into two directly contradictory camps:

b) The first is a group who are not customers of Dublin Airport, who bear none of the charges and whose opinions on pricing have no basis in fact or reality whatsoever.

- The DAA contend that Dublin is "an extremely competitively priced airport".
- Chambers Ireland that "Dublin Airport's charges are amongst the lowest in comparison to other European Capital city airports"
- IBEC assert that "with Dublin Airport charges amongst the lowest in Europe."
- SIPTU submits that "Dublin Airport is extremely competitive in terms of price"

c) The second group comprises Airline users, all of whom actually pay the current charges at Dublin Airport and have extensive databanks pertaining to Airport charges throughout Ireland, the UK and Europe. All confirm that pricing at Dublin Airport is not just expensive but has materially contributed to Dublin Airport's traffic decline.

- Aer Lingus points out that Dublin Airport is "expensive".
- BMI point to "the inexorable rise of the price to the passenger of departing/arriving at Dublin Airport" indicating that "this has resulted in passengers voting with their feed, and in droves"
- Ryanair point to the fact that Dublin Airport has consistently ranked as either the second most expensive or the most expensive of the 150 European airports into which it flies.

d) All relevant parties making submissions acknowledge the overriding necessity for competitive pricing at Dublin Airport.

e) Ryanair considers that it is crucial that the Commission, which has repeatedly failed to do so to date, should obtain and maintain a databank of accurate, appropriate and up to date pricing at airports across the UK and Europe, to enable it to properly and accurately assess the un-competitive pricing at Dublin Airport and the damaging impact of high charges on passenger volumes.

f) Ryanair and other Airlines would be willing to provide accurate and up to date information on pricing at over 150 Airport Destinations in Ireland, the UK and Europe to the Commission, on a confidential basis, as required to enable the Commission to debunk the fantasy propagated by the DAA that it operates a competitive pricing regime.

Section 10
Competence and Ability of the Commission

a) Throughout the submissions of both users and of the regulated entity, there is evidence of dissatisfaction regarding of the competence and ability of the Commission to appropriately gather, analyse and process the basic accounting information necessary to inform the consultation process, to corroborate analyses and to support economic arguments.

b) Ryanair suggests that the Commission makes available to itself sufficient independent accounting expertise to enable a rational review of historical business performance, both within the regulated entity and in the unregulated portion of the DAA's business, in order to inform both users' and the Commission's decision making.

c) It is clear that such expertise either does not exist or is not utilised within the Commission. It appears equally clear that the negative impact that this absence of basic independent professional accounting expertise from the decision making process of the commission, could be hugely material and is impugning the competence and integrity of the commission.

d) Ryanair believes that the Commission's repeated failure to request, obtain and maintain accurate Airport pricing information on airport charges for competitive airports throughout Ireland, the UK and Europe, as noted in Section 9 of this document, is evidence of the Commission's incompetence and ineptitude.

User Consultation Process

e) The DAA submissions in response to the Draft Determination fail to acknowledge, let alone accommodate, the reasonable requests of users or user contributions at consultative meetings.

f) Ryanair points to the Commissioner's failure to attend user consultations in person, at any time during the entire consultation process, as being indicative of contempt for users, for the consultation process and for the regulatory process, each of which are factors which call into question the suitability and competence of the Commission to oversee the regulatory process.

g) The Commission demonstrated further unacceptable bias and incompetence in its approach to the consultative process and to the regulatory process by limiting the material it made available to Booze & Co, its own consultants, to the slides of the DAA's presentation to these meetings, whilst <u>withholding</u> from Booz & Co the full transcript of the meetings.

h) Ryanair points to the fact that many of the DAA's presentations were rubbished by users, were demonstrated to be inaccurate, or were withdrawn by the DAA following debate at user consultation meetings. That Booz and Co were denied access to such information by the commission is unacceptable.

Section 11
Other Submissions

a) Ryanair considers that the views of organisations that are not independent from the DAA or its shareholder, or who are not customers/users of Dublin Airport, should be heavily discounted by the commission. The commission should be aware that the repetition of false and/or misleading assertions should not be interpreted as lending credibility to same.

b) Ryanair further contends that submissions from organisations regarding matters that have been subject to detailed user consultations should not be entertained from organisations who failed to attend and participate at those user consultations, or, should be weighted appropriately by the Commission.