David Mahon
Irish Aviation Authority
The Times Building
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Dublin 2, D02 T449

February 22nd, 2024

Dear David,

Aer Lingus is pleased to respond to this consultation and stands ready to assist the IAA in further developing its approach to RP4 and resolving any remaining issues.

Our comments fall into two broad areas: dealing with the performance of ANI, MET and NSA in RP3 and the implications of this performance for RP4, and the IAA's proposed methodological approach for RP4. For the avoidance of doubt, where Aer Lingus has not commented on a specific issue in the Consultation, we reserve our position, and this should not be taken as an implicit agreement with the IAA's proposal.

At the most strategic level we share the IAA's concern that the current of ANS proposals do not meet the PRB recommendation for cost reduction. We agree with IAA that this should mean some significant cost efficiencies need to be set. We do not think that this issue could or indeed should be fixed by simply generating higher traffic forecasts.

In terms of ANI, MET and NSA performance in RP3 and its impact on the opening building block levels for RP4, we believe that the IAA is correct to question what is the driver of any variation from allocated budget. So, for example, was it related to inaccurate forecasting, events that were beyond the regulated entity's control (e.g., Covid) or management (either better than planned in the case of underspend or worse than planned in the case of overspend). However, whilst we agree with the IAA's broad approach, we require further information of the detail of the approach.

Aer Lingus believes, for example, that the burden of proof should rest with the regulated entity to conclusively prove that any adverse variation from forecast regulated budgets was efficiently incurred. Where the regulated entity is unable to do this the overspend should be disallowed prior to the IAA setting opening building block allowances for RP4.

In our correspondence to you in 2023 concerning ANS performance in 2022 and unit rates for 2024, we put forward three tests for deciding whether negative variation from control total allocations should be allowed. These were:

1. Is the variance material? We consider that the IAA has only reported material variances and so all variances in this consultation pass this test.

2. Are these variances genuine or do they stem from a failure of the ANS provider to correctly forecast? Aer Lingus believes that the regulated business should be subject to the same rigour in its business planning that our shareholders expect of us. Consequently, it should not be

rewarded for failing to forecast properly, and only variances that it could not have reasonably foreseen should be recouped.

3. Were the costs efficiently incurred? Our passengers should not be expected to pay for costs that were not efficiently incurred or that do not represent good value for money. The burden of proof should rest with the regulated company i.e., it must prove the expenditure related to the variance was efficiently incurred and represents good value for money (including if it was from an external supplier that the service was competitively procured).

The IAA will of course recognise that our three tests in this regard have strong regulatory precedent and are similar for example to those applied by Ofgem, the UK energy regulator. We believe that these tests should be incorporated into the next level of detail around how IAA will decide what RP3 costs to allow to inform RP4 control totals.

Our general concern about the negative variance in the current reported set of cost performance is that there is insufficient evidence to determine whether they were efficiently incurred. For example, MET cost over-runs are in places attributed to inflation and to higher than anticipated overtime as a result of unexpectedly high levels of sick leave. In order to conclude that this cost should inform the RP4 costs we would need conclusively evidence that they were efficiently incurred e.g., that MET had done all it could to minimise the impact of inflationary pressure, for example by renegotiating with its suppliers, and that its management of sick leave and absence is in line with industry best practice. Our passengers should not be expected to pay for poor programme and/or poor staff management.

Similar questions are raised with the proposed ANI impairment loss of €4.7m, due to an asset in the course of installation deemed to be non-viable due to emerging technology. This could have been foreseen had there been proper due diligence. Again, our customers should not be expected to pay for the failures of the regulated business' management. Furthermore, in line with our principles, we believe the burden of proof lies with the ANI to prove it behaved efficiently, rather than for the IAA to prove it did not. This is in keeping with the position adopted by other regulators e.g., Ofgem.

In terms of the IAA's proposed methodology for RP4, we are happy to provide further detail if that would be helpful, but the table below summarises our position:

ANS Provider/Topic	IAA Proposal	Aer Lingus Position
Traffic	Use latest available STATFOR forecasts	Agree – subject to any other guidance from European Commission. In addition, recommend that forecast be supplemented, especially in early forecast years with airline forecasts/planned fleet deployment

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ANI Costs	Bottom-up approach, assessment of efficient costs	Agree. Our initial position is that an additional allowance for staffing resilience is unnecessary, as proper workforce planning should be included as a BAU function
ANI Capex	Bottom up and portfolio review for need efficiency and cost. Review reason for underspend in RP3 and impact on RP4. Deal with potential double count issues.	Agree – RP3 plan was overly ambitious, and our passengers should only pay for what was delivered. We ask the IAA to look again at its proposed gearing, and whether such a difference from PRB recommendations is acceptable. We also agree with IAA that an aiming up allowance is unnecessary. With respect to the WACC this is a complex matter and further detail, and consideration is required, and we therefore reserve our position.
MET Cost allocation	Review of cost allocation keys	Agree – but this review must be conducted by IAA and any decisions made by IAA and not MET
MET Capex	As for ANI capex	Agree – however see our comments below on Business Plan guidance. There should be enhanced stakeholder engagement to ensure the proposed capex plan is indeed the best solution and that its costs are known and supported by stakeholders.
NSA Cost	Forecast by segment	Agree. Re potential for review of allocation keys, we do not believe that there is sufficient evidence in the consultation to support a review
TRS	No change	Agree – we are not yet convinced of the need or benefit of changing the existing TRS mechanism
Incentives	Various – depending on exact incentive	Incentive mechanics look satisfactory at a high level. Agree subject to any guidance from the European Commission
Local Targets	Notes the difficulties of enhanced targets for environmental performance and the Steer review	Recommend that any decision is subject to the recommendations of the Steer Review (if timings allow)

In terms of your Business Plan guidance, we generally support IAA's approach and objectives, and the Guidance seems to cover the main issues. With respect to the guidance on costs we generally agree but refer the IAA back to our principles around which adverse cost variances should be included in the estimate for RP4 costs.

In addition, we feel that there is an opportunity to enhance the RP4 process, specifically in relation to stakeholder engagement. The Guidance explains clearly what the IAA expects to see in the Business Plan but is silent in terms of how the Business Plan is produced.

Many regulators, for example Ofgem, Ofwat, Ofcom and the CAA, require the regulated entity to demonstrate not only good stakeholder engagement, but also demonstrate that this engagement has both shaped the Business Plan, and produced a plan and capex programme that is both understood (in terms of capability and cost) and endorsed by stakeholders.

We believe that improved IAA guidance in this respect could significantly improve the quality of the Business Plans that IAA receive and lead to enhanced regulatory decision making.

We are happy to discuss any of the comments in this submission.

Yours sincerely

Marta Drozdz
Airports Commercial Manager