Decision

on an

Interim Review of the 2019 Determination

in relation to

2022

Commission Paper 3/2021

17 December 2021

Commission for Aviation Regulation

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1. Executive Summary

1.1 This paper sets out our Decision on the Second Interim Review of the 2019 Determination in relation to the regulatory settlement for 2022. It follows consultation on our Draft Decision (CP2/2021) and our earlier consultation on altering the varied 2019 Determination in light of the impact of COVID-19 for 2022 and beyond (CP1/2021).

1.2 In CP1/2021, we recognised that the assumptions underpinning the 2019 Determination had been significantly impacted by the onset of the COVID-19 pandemic. We considered different potential responses: No review, Limited Interim Review, and a Full Review. Our Draft Decision CP2/2021 was a limited Interim Review which laid out our reasoning on why substantial grounds existed for such a review, the proposed scope of the review, and proposed amendments to the determination. It also outlined our plans for a full review to commence now, in time for implementation from 1 January 2023.

1.3 We received submissions to our consultation on the Draft Decision from six parties: Aer Lingus, Dublin Airport, Irish Airline Pilots Association (IALPA), International Air Transport Association (IATA), Liam O'Gradaigh and Ryanair.

1.4 This Decision is in line with our proposals set out in the Draft Decision. In this review we have sought to address the ongoing unintended consequences of COVID-19. The impact of COVID-19 clearly constitutes substantial grounds for carrying out such a review at this time.

1.5 This second interim review broadly carries forward the adjustments that were applied for 2021. This includes the continued removal of the capital expenditure (Capex) reprofiling triggers and Operating Cost (Opex) passthrough mechanism. It also includes the suspension of the Capex clawback mechanism, and the suspension of the commercial revenue rolling schemes. We have retained the requirement to consult on the progression of further CIP2020-2024 projects (or components of projects) with an expected final cost of more than €4m.

1.6 In 2022, the real price cap in February 2019 prices is €7.75 per passenger. This translates to a nominal price cap of €8.11.

1.7 In the Draft Decision, we proposed the reintroduction of certain quality of service revenue adjustments. We have decided to reintroduce the security queue time targets as defined in the 2019 Determination, but with the associated penalties reduced by half. We have also retained the service standard and associated financial penalty for the wait times for passengers with reduced mobility (PRMs). For all other quality of service measures, we will continue to monitor and report where possible throughout 2022. The maximum price cap at risk for these quality of service targets is reduced by half, to €0.11.

1.8 A full review of the 2019 Determination is required. This will take place in 2022 and provide for revised regulatory settlements from 2023, reassessing the building blocks of the price determination to account for prevailing circumstances. This wide-ranging review will consider a range of issues including passenger forecasts, commercial revenue, operating costs, the cost of capital, the timing and/or scale of the Capital Investment Plan (CIP) whivh was allowed in the 2019 Determination, quality of service, and any potential broad adjustments to the regulatory model.

2. Maximum Levels of Airport Charges at Dublin Airport for 2020-2024

2.1 In accordance with Section 32 of the Aviation Regulation Act 2001, as amended, the Commission hereby determines that the maximum levels of airport charges that may be levied by daa at Dublin Airport in the period 1 January 2020 to 31 December 2024 shall be as set out below.

2.2 daa shall ensure that, for the regulatory period of the calendar year 2020, the level of revenue accruing to daa per service unit for each airport charge set out in Table 2.1 shall not exceed the levels specified in Table 2.1. For the regulatory period of the calendar year 2020, daa shall ensure that the level of revenue accruing to daa from airport charges other than those set out in Table 2.1 is not greater than zero.

2.3 daa shall ensure that, for each year of the regulatory period 2021-2024, the level of revenue collected from airport charges accrued in that year, expressed as a per passenger yield, does not exceed the maximum permitted revenue per passenger (P_t), as set out by the following formulae.

2.4 In the event that daa should collect more than permitted, it shall arrange to rebate users within 90 days of the year ending a sum sufficiently large such that revenues collected, net of this sum, do not exceed the maximum permitted level or levels.

Regulatory Period 1 January 2020 to 31 December 2020

2.5 Referring to Table 2.1, for the regulatory period running from 1 January 2020 to 31 December 2020, daa shall charge airport users airport charges such that for each airport charge in column A, for each category of airport charge in column B (with the units of measurement in all cases as set out in column C):

- for the period 1 January 2020 to the 28 March 2020 the accrued revenue per unit in column D are not exceeded;
- for the period 29 March 2020 to 24 October 2020 the accrued revenue per unit in column E are not exceeded; and
- from 25 October 2020 to 31 December 2020 the accrued revenue per unit in column F are not exceeded.

Table 2.1: 2020 Price Caps

Column A	Column B	Column C	Column D	Column E	Column F
Airport Charge	Type	Service Unit	Cap on Accrued Revenue per unit from 1 January 2020 to the 28 March 2020	Cap on Accrued Revenue per unit from 29 March 2020 to 24 October 2020	Cap on Accrued Revenue per unit from 25 October 2020 to 31 December 2020
Runway movement charge	Band 1 – Tonnes from 0 to 175 tonnes for a single aircraft	per tonne	€4.10	€5.50	€2.15
	Band 2 -Tonnes in excess of 175 tonnes for a single aircraft	per tonne	€3.30	€1.50	€0.00
Aircraft parking (by stand type)	Wide/Contact	Per 15 minutes or part thereof	€34.90	€34.90	€34.90
	Narrow/Contact	Per 15 minutes or part thereof	€27.90	€27.90	€27.90
	Wide/Remote	Per 15 minutes or part thereof	€9.60	€9.60	€9.60
	Narrow/Remote	Per 15 minutes or part thereof	€7.70	€7.70	€7.70
	Wide/Satellite	Per 15 minutes or part thereof	€33.10	€33.10	€33.10
	Narrow/Satellite	Per 15 minutes or part thereof	€26.50	€26.50	€26.50
	Light Aircraft parking areas	Per 15 minutes or part thereof	€2.65	€2.65	€2.65
	Long term remote	per day of part thereof	€180.00	€180.00	€180.00
Airbridge use	N/A	Per 15 minutes or part thereof	€7.35	€7.35	€7.35
Passenger charge	Departure on a contact stand	per departing passenger	€10.69	€9.80	€7.25
	Departure on a remote stand	per departing passenger	€7.69	€5.20	€2.65
	Departure on a satellite stand	per departing passenger	€10.19	€8.80	€6.25
	Transfer passengers	per departing passenger	€2.00	€2.00	€2.00
PRM charge (passenger charge)	N/A	Per departing passenger	€0.56	€0.58	€0.58
Fast-track change (passenger charge)	N/A	Per Fast-track passenger	€0.80	€0.80	€0.80

Regulatory Period 1 January 2021 to 31 December 2021

2.6 The maximum permitted yield per passenger for the regulatory period 1 January 2021 to 31 December 2021 shall be equal to:

$P_{2021} = € 7.50$

Regulatory Period 1 January 2022 to 31 December 2022

2.7 The maximum permitted yield per passenger for the regulatory period 1 January 2022 to 31 December 2022 shall be equal to:

$P_{2022} = (€ 7.75 - QS_{2022}) * (1+CPI_{2021})$

Where:

CPI_{2021} is the percentage change (whether positive or negative) in the consumer price index between February 2019 and October 2021.

Where:

$QS_{2022} = Minimum\ ((A + B + C + D), €0.11)$

Where:

A = €0.0025 * the number of days that the time passengers spend in security queue was less than 20 minutes 0 seconds less than 70% of the time but the maximum time passengers spend in security queue was less than 30 minutes 0 seconds

B = €0.005 * the number of days that the maximum time passengers spend in security queue was more than or equal to 30 minutes and 0 seconds but less than 45 minutes and 0 seconds

C = €0.01 * the number of days that the maximum time passengers spend in security queue was more than or equal to 45 minutes 0 seconds

D = €0.01 if, in total for the year, less than 95% of pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 15 minutes; or if less than 95% of non-pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 20 minutes; or if less than 93% of pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 10 minutes; or if less than 93% of non-pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 15 minutes; or less than 98% of pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 20 minutes; or if less than 98% of non-pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 30 minutes; or if less than 98% of pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 15 minutes; or if less than 98% of non-pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 20 minutes

Regulatory Period 1 January 2023 to 31 December 2023

2.8 The maximum permitted yield per passenger for the regulatory period 1 January 2023 to 31 December 2023 shall be equal to:

$$P_{2023} = (€\ 8.05 + Trigger_{2023} - QS_{2023}) * (1+CPI_{2022}) + k_{2023}$$

Where:

$$Trigger_{2023} = M2 + M3 + RPT1 + RPT2 + RPT3 + RPT4 + RPT5 + RPT6 + RPT7$$

Where:

Triggers 2023	Description	Amount	Enters the formula if:
M2*	If North Runway fully operational by end of 2022	€0.40*25m/Pax_{2022}	Dublin Airport provides us with the evidence of accomplishment as set out in CP4/2017. [1]
M3*	North Runway: if house buyout complete by end of 2022	€0.02*25m/Pax_{2022}	
RPT1	Reprofiling Trigger CIP.20.03.013 Terminal 1 Departures Lounge	- €0.06	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT2	Reprofiling Trigger CIP.20.03.011A Terminal 1 Check in	- €0.06	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT3	Reprofiling Trigger CIP.20.03.051B West Underpass	- €0.17	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT4	Reprofiling Trigger CIP.20.03.029 Pier 5	- €0.37	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT5	Reprofiling Trigger CIP.20.03.030 US Preclearance Expansion	- €0.08	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that

[1] www.aviationreg.ie/_fileupload/Decision%20MASTERCOPY%202017-04-28.pdf

			contract is signed and work has commenced.
RPT6	Reprofiling Trigger CIP.20.03.012 Terminal 1 Security	- €0.06	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT7	Reprofiling Trigger CIP.20.03.036 Pier 1	- €0.20	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.

** The Trigger values of M2 and M3 were recalculated based on the 2019 Determination WACC of 4.22%.*

CPI_{2022} is the percentage change (whether positive or negative) in the consumer price index between February 2019 and October 2022.

$$QS_{2023} = Minimum\ ((A + B + C + D + E + F + G + H + I + J),\ €0.21)$$
$$+ Minimum\ ((K + L + M + N + O + P + Q + R),\ €0.07) + Minimum\ ((S + T + U),\ €0.04)$$
$$+ Minimum\ ((V + W + X),\ €0.04)$$

Where:

A = €0.005 * the number of days that the time passengers spend in security queue was less than 20 minutes 0 seconds less than 70% of the time but the maximum time passengers spend in security queue was less than 30 minutes 0 seconds

B = €0.01 * the number of days that the maximum time passengers spend in security queue was more than or equal to 30 minutes and 0 seconds but less than 45 minutes and 0 seconds

C = €0.02 * the number of days that the maximum time passengers spend in security queue was more than or equal to 45 minutes 0 seconds

D = €0.01 if, in total for the year, less than 95% of pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 15 minutes; or if less than 98% of non-pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 20 minutes; or if less than 93% of pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 10 minutes; or if less than 93% of non-pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 15 minutes; or less than 100% of pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 20 minutes; or if less than 100% of non-pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 30 minutes; or if less than 100% of pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 15 minutes; or if less than 100% of non-pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 20 minutes

E = €0.01 * the number of days where access to the outbound baggage belt system, in a terminal that has not fully implemented hold baggage screening standard 3 (HBS3), is denied to an airline or airlines for more than 30 minutes due to a single event system failure; or when the outcome of delivering departing bags through the outbound baggage system, in a terminal that has fully implemented HBS3, is denied to an airline or airlines for more than thirty consecutive minutes due to a single event system failure

F = €0.01 * the number of days where access to the inbound baggage belt system , in a terminal that has not fully implemented hold baggage screening standard 3 (HBS3), is denied to an airline or airlines for more than 30 minutes due to a single event system failure; or when the outcome of delivering arriving bags through the inbound baggage system , in a terminal that has fully implemented HBS3, is denied to an airline or airlines for more than 30 consecutive minutes due to a single event system failure

G = €0.01 * the number of months when Fixed Electric Ground Power (FEGP) is available, on average across units, less than 93.5% of operational time in the month for new units or less than 99% for old units

H = €0.01 * the number of months when the Advanced Visual Docking Guidance System (AVDGS) is available, on average across units, less than 93.5% of operational time in the month for new units and less than 99% for old units

I = €0.01 * the number of quarters where passenger-facing escalators, lifts and travellators in Terminal 2 are available, on average across units, less than 99% of the time within a quarter

J = €0.01 * the number of quarters where self-service check-in kiosks and bag drop machines are available, on average across units, less than 99% of the time in a quarter

K = €0.01 in a year where Dublin Airport scores less than 9.0 in the 'satisfaction with assistance for mobility or sensory impairment' measure of the Customer Service Monitor survey of Dublin Airport in 2023

L = €0.01 * the number of quarters where Dublin Airport scores less than 8.5 in the 'courtesy and helpfulness of security staff' measure on the Customer Service Monitor survey of Dublin Airport in 2023 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

M = €0.01 * the number of quarters where Dublin Airport scores less than 8.5 in the 'courtesy and helpfulness of airport staff' measure on the Customer Service Monitor survey of Dublin Airport in 2023 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

N = €0.01 * the number of quarters Dublin airport scores less than 8.5 in the 'overall cleanliness of the airport terminal' measure of the Customer Service Monitor survey of Dublin Airport in 2023 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

O = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'overall satisfaction with the departure (arrival) experience' measure of the Customer Service Monitor survey of Dublin Airport in 2023 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

P = €0.01 * the number of quarters Dublin Airport scores less than 8.0 in the 'cleanliness of toilets' measure of the Customer Service Monitor survey of Dublin Airport in 2023 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

Q = €0.01 * the number of quarters Dublin Airport scores less than 8.0 in the 'satisfaction with the departure lounges (gates)' measure of the Customer Service Monitor survey of Dublin Airport in 2023 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

R = €0.01 * the number of quarters Dublin Airport scores less than 7.5 in the 'overall walking distances to departure gate (from the plane to baggage reclaim area)' measure of the Customer Service Monitor survey of Dublin Airport in 2023 for departing and arriving passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

S = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'finding your way around' ('ease of finding the baggage carrousel for your flight') measure of the Customer Service Monitor survey of Dublin Airport in 2023 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

T = €0.01 * the number of quarters that Dublin Airport scores less than 8.5 in the 'flight information screens' measure in the Customer Service Monitor survey of Dublin Airport in 2023 for departing passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

U = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'satisfaction with ground transportation information on arrival' measure of new ground transport survey of Dublin Airport in 2023 for arriving passengers in 2020

V = €0.01 * the number of quarters Dublin Airport scores less than 9.0 in the 'satisfaction with facilities for passengers with reduced mobility' measure in the Customer Service Monitor survey of Dublin Airport in 2023 in 2020

W = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'Availability of trolleys' ('Ease of finding a trolley') measure in the Customer Service Monitor survey of Dublin Airport in 2023 for departing (arriving) passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

X = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'satisfaction with Wi-Fi' measure in the Customer Service Monitor survey of Dublin Airport in 2023 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

K_{2023} is a correction per passenger to be made in the regulatory year 2023 on account of any under collection of airport charges accrued by Dublin Airport in the regulatory year 2021. It is derived using the following formula:

$$k_{2023} = Minimum\left((P_{2021} - P_{2021outturn}), (0.05 * P_{2021})\right) * (1 + I_{2021}) \ * (1 + I_{2022}) \ * (PAX_{2021}/PAX_{2023})$$

Where

$P_{2021,\ outturn}$ is the outturn yield per passenger in 2021;

PAX_t is the outturn of total annual passengers at Dublin Airport in year t;

I_t is the average daily three-month interest rate between 1 November in year t-1 and 1 November in year t using the Euribor rate or some other suitable measure.

Regulatory Period 1 January 2024 to 31 December 2024

2.9 The maximum permitted yield per passenger for the regulatory period 1 January 2024 to 31 December 2024 shall be equal to:

$$P_{2024} = (€\ 8.32 + Trigger_{2024} - QS_{2024}) *(1+CPI_{2023}) + w_{2024} + k_{2024}$$

Where:

$$Trigger_{2024} = M2 + M3 + RPT1 + RPT2 + RPT3 + RPT4 + RPT5 + RPT6 + RPT7 + RPT8$$

Where:

Triggers 2024	Description	Amount	Enters the formula if:
M2*	If North Runway fully operational by end of 2023	€0.40*25m/Pax_{2023}	Dublin Airport provides us with the evidence of accomplishment as set out in CP4/2017. [2]
M3*	North Runway: if house buyout complete by end of 2023	€0.02*25m/Pax_{2023}	
RPT1	Reprofiling Trigger CIP.20.03.013 Terminal 1 Departures Lounge	- €0.08	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT2	Reprofiling Trigger CIP.20.03.011A Terminal 1 Check in	- €0.07	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT3	Reprofiling Trigger CIP.20.03.051B West Underpass	- €0.21	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT4	Reprofiling Trigger CIP.20.03.029 Pier 5	- €0.45	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT5	Reprofiling Trigger CIP.20.03.030 US Preclearance Expansion	- €0.09	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the

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			main construction contractor package and that contract is signed and work has commenced.
RPT6	Reprofiling Trigger CIP.20.03.012 Terminal 1 Security	- €0.07	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT7	Reprofiling Trigger CIP.20.03.036 Pier 1	- €0.24	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT8	Reprofiling Trigger CIP.20.03.54 Apron 5 M	- €0.12	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.

** The Trigger values of M2 and M3 were recalculated based on the 2019 Determination WACC of 4.22%.*

CPI_{2023} is the percentage change (whether positive or negative) in the consumer price index between February 2019 and October 2023.

$$QS_{2024} = Minimum\,((A + B + C + D + E + F + G + H + I + J), €0.21)$$
$$+ Minimum\,((K + L + M + N + O + P + Q + R), €0.07) + Minimum\,((S + T + U), €0.04)$$
$$+ Minimum\,((V + W + X), €0.04)$$

Where:

A = €0.005 * the number of days that the time passengers spend in security queue was less than 20 minutes 0 seconds less than 70% of the time but the maximum time passengers spend in security queue was less than 30 minutes 0 seconds

B = €0.01 * the number of days that the maximum time passengers spend in security queue more than or equal to 30 minutes and 0 seconds but less than 45 minutes and 0 seconds

C = €0.02 * the number of days that the maximum time passengers spend in security queue was more than or equal to 45 minutes 0 seconds

D = €0.01 if, in total for the year, less than 95% of pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 15 minutes; or if less than 98% of non-pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 20 minutes; or if less than 93% of pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 10 minutes; or if less than 93% of non-pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 15 minutes; or less than 100% of pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 20 minutes; or if less than 100% of non-pre-notified departing passengers with reduced mobility or disabilities were assisted from the terminal reception point within 30 minutes; or if less than 100% of pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 15 minutes; or if less than 100% of non-pre-notified arriving passengers with reduced mobility or disabilities were assisted from aircraft to terminal holding point within 20 minutes

E = €0.01 * the number of days where access to the outbound baggage belt system, in a terminal that has not fully implemented hold baggage screening standard 3 (HBS3), is denied to an airline or airlines for more than 30 minutes due to a single event system failure; or when the outcome of delivering departing bags through the outbound baggage system, in a terminal that has fully implemented HBS3, is denied to an airline or airlines for more than thirty consecutive minutes due to a single event system failure

F = €0.01 * the number of days where access to the inbound baggage belt system , in a terminal that has not fully implemented hold baggage screening standard 3 (HBS3), is denied to an airline or airlines for more than 30 minutes due to a single event system failure; or when the outcome of delivering arriving bags through the inbound baggage system , in a terminal that has fully implemented HBS3, is denied to an airline or airlines for more than 30 consecutive minutes due to a single event system failure

G = €0.01 * the number of months when Fixed Electric Ground Power (FEGP) is available, on average across units, less than 93.5% of operational time in the month for new units or less than 99% for old units

H = €0.01 * the number of months when the Advanced Visual Docking Guidance System (AVDGS) is available, on average across units, less than 93.5% of operational time in the month for new units and less than 99% for old units

I = €0.01 * the number of quarters where passenger-facing escalators, lifts and travellators in Terminal 2 are available, on average across units, less than 99% of the time within a quarter

J = €0.01 * the number of quarters where self-service check-in kiosks and bag drop machines are available, on average across units, less than 99% of the time in a quarter

K = €0.01 in a year where Dublin Airport scores less than 9.0 in the ‘satisfaction with assistance for mobility or sensory impairment’ measure of the Customer Service Monitor survey of Dublin Airport in 2024

L = €0.01 * the number of quarters where Dublin Airport scores less than 8.5 in the ‘courtesy and helpfulness of security staff’ measure on the Customer Service Monitor survey of Dublin Airport in 2024 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

M = €0.01 * the number of quarters where Dublin Airport score less than 8.5 in the ‘courtesy and helpfulness of airport staff’ measure on the Customer Service Monitor survey of Dublin Airport in 2024 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

N = €0.01 * the number of quarters Dublin airport scores less than 8.5 in the ‘overall cleanliness of the airport terminal’ measure of the Customer Service Monitor survey of Dublin Airport in 2024 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

O = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'overall satisfaction with the departure (arrival) experience' measure of the Customer Service Monitor survey of Dublin Airport in 2024 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

P = €0.01 * the number of quarters Dublin Airport scores less than 8.0 in the 'cleanliness of toilets' measure of the Customer Service Monitor survey of Dublin Airport in 2024 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

Q = €0.01 * the number of quarters Dublin Airport scores less than 8.0 in the 'satisfaction with the departure lounges (gates)' measure of the Customer Service Monitor survey of Dublin Airport in 2024 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

R = €0.01 * the number of quarters Dublin Airport scores less than 7.5 in the 'overall walking distances to departure gate (from the plane to baggage reclaim area)' measure of the Customer Service Monitor survey of Dublin Airport in 2024 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

S = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'finding your way around' ('ease of finding the baggage carrousel for your flight') measure of the Customer Service Monitor survey of Dublin Airport in 2024 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

T = €0.01 * the number of quarters that Dublin Airport scores less than 8.5 in the 'flight information screens' measure in the Customer Service Monitor survey of Dublin Airport in 2024 for departing passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

U = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'satisfaction with ground transportation information on arrival' measure of new ground transport survey of Dublin Airport in 2024 for arriving passengers

V = €0.01 * the number of quarters Dublin Airport scores less than 9.0 in the 'satisfaction with facilities for passengers with reduced mobility' measure in the Customer Service Monitor survey of Dublin Airport in 2024

W = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'availability of baggage trolleys' ('Ease of finding a trolley') measure in the Customer Service Monitor survey of Dublin Airport in 2024 for departing (arriving) passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

X = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'satisfaction with Wi-Fi' measure in the Customer Service Monitor survey of Dublin Airport in 2024 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

W_{2024} allows for a pass through of legislatively mandated Opex (LM OPEX) costs that comply with the conditions set out in Section 6 of the varied Determination published in July 2020. It is derived using the following formula:

$$w_{2024} = \frac{\left(LM\ OPEX_{CAR\ approved\ outturn2023} - LM\ OPEX_{CAR\ Forecast2023}\right)}{PAX_{2024f}}$$

Where:

$LM\ OPEX_{CAR\ approved\ outturn\ t}$ is the outturn of legislatively mandated Opex costs in year t, justified by Dublin Airport with supporting evidence set out in Section 6 of the varied Determination published in July 2020 and approved by the Commission

$LM\ OPEX_{CAR\ forecast\ t}$ is the forecast of legislatively mandated Opex for year t allowed for in the base Price Cap in year t

PAX_{2023} is the outturn of total annual passengers at Dublin Airport in year 2023

PAX_{2024f} is the latest available forecast of passenger numbers in 2024

K_{2024} is a correction per passenger to be made in the regulatory year 2024 on account of any under collection of airport charges accrued by Dublin Airport in the regulatory year 2022. It is derived using the following formula:

$$k_{2024} = \text{Minimum}\left((\mathrm{P}_{2022} - \mathrm{P}_{2022\text{outturn}}), (0.05 * \mathrm{P}_{2022})\right) * (1 + \mathrm{I}_{2022}) * (1 + \mathrm{I}_{2023}) * (\mathrm{PAX}_{2022}/\mathrm{PAX}_{2024})$$

Where:

$P_{2022,\ outturn}$ is the outturn yield per passenger in 2022

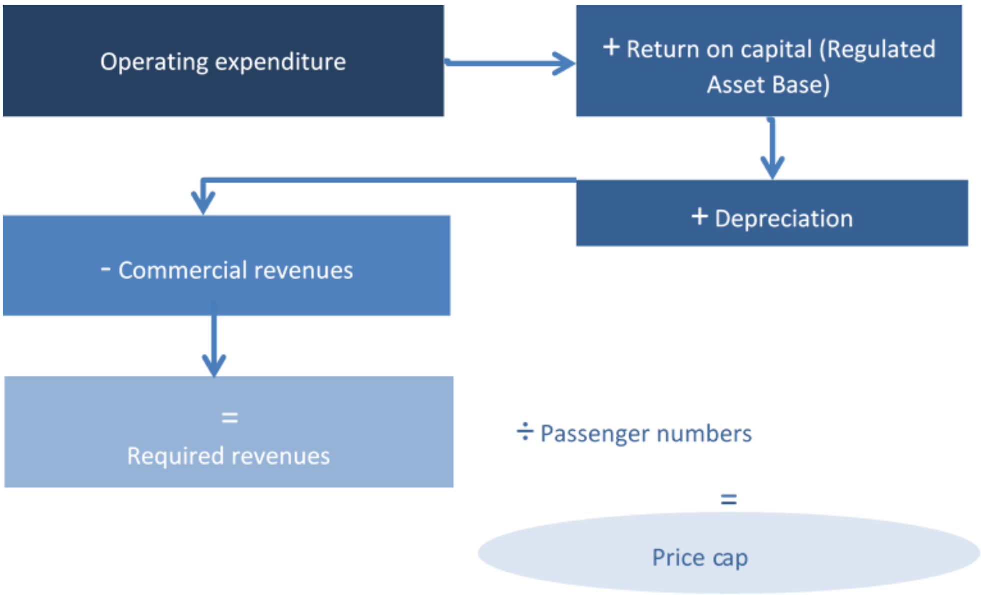
PAX_t is the outturn of total annual passengers at Dublin Airport in year t

I_t is the average daily three-month interest rate between 1 November in year t-1 and 1 November in year t using the Euribor rate or some other suitable measure.

3. Background

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

Chart 3.1: The building blocks approach



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

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

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

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

3.6 Table 3.1 sets out the base price caps per passenger originally determined in October 2019, as well as the final varied price caps set pursuant to the referrals from the appeals panel. These price caps were subject to change within the period due to a range of adjustments and triggers set out in the price cap formulae. Full details of the analysis and calculations underpinning the 2019 Determination are available on the Commission's website.[3]

Table 3.1: Base Price Caps

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

Source: 2019 Determination (24 October 2019), Varied 2019 Determination (3 July 2020)

Response to COVID- 19

3.7 Subsequent to the publication of the Determination in October 2019, in early 2020, it became clear that the COVID-19 pandemic would have a substantial impact on the assumptions and forecasts underpinning the determination. In June 2020, we issued a high level, wide-ranging consultation paper (CP3/2020) seeking views on the appropriate response from the Commission and setting out our current thinking in relation to potential reviews of the 2019 Determination.[4] In this paper we indicated an expectation that we would carry out at least one interim review of the 2019 Determination due to the impact of the pandemic on the assumptions and expectations underpinning it.

3.8 In December 2020, we issued a Decision on a first Interim Review, in which we set out adjustments relating to the regulatory settlements which we considered to be warranted in light of the impact of COVID-19 (CP9/2020).[5] The varied base price caps from 2021 to 2024, as per Table 3.1, were not changed in this review.

3.9 In 2021 it became apparent that a second Interim Review would be required, due to the ongoing impact of the Covid-19 pandemic. A Draft Decision on an Interim Review of the 2019 Determination in relation to 2022 was published in October 2021.

3.10 In this document, we set out our decision on amendments to the 2019 Determination pursuant to this second Interim Review.

3.11 Section 2 sets out the amended Determination. Section 4 considers the responses received in relation to grounds for carrying out this review, the scope of the review, and the objective. Section 5 considers responses we received in relation to other proposed adjustments to the regulatory settlements currently in place for 2022. Section 6 considers responses we received in relation to the Quality of Service for 2022, and sets out our decisions. Section 7 sets out how the decisions we make in this Interim Review are guided our statutory objectives under Section 33 of the 2001 Act, as amended. Section 8 considers responses we received relating to potential future reviews as well as more general comments.

[3] https://www.aviationreg.ie/regulation-of-airport-charges-dublin-airport/2019-determination.841.html
[4] https://www.aviationreg.ie/_fileupload/COVIDConsultation%20(1).pdf
[5] https://www.aviationreg.ie/_fileupload/2019%20Determination/2020%20Interim%20Review/Draft%20Decision%20_Interim%20Review.pdf

4. Substantial Grounds, Scope and Objective

4.1 Pursuant to Section 32(14) of the Aviation Regulation Act 2001, as amended by the State Airports Act, 2004, ('the 2001 Act') the Commission may carry out an interim review of the prevailing Determination if it considers that there are substantial grounds for doing so.[6] If it sees fit, it may amend the determination.

Substantial Grounds

4.2 The Commission has previously used the following test to establish whether substantial grounds exist for conducting an interim review:[7]

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

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

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

4.4 In the first Interim Review published in December 2020, we stated that the profound impact of the COVID-19 pandemic on aviation in Ireland to date in 2020, and the likelihood of this impact substantially continuing into 2021, clearly constitutes substantial grounds to review the 2019 Determination with respect to the regulatory settlements set out for 2020 and 2021. The circumstances arising from the COVID-19 pandemic are exceptional by any reasonable metric, and outside the control of Dublin Airport. We did not receive any submission in response to the Draft Decision which challenged our view that the impact of the COVID-19 pandemic constitutes substantial grounds, within the meaning of Section 32, to review the 2019 Determination with respect to the regulatory settlements set out for 2020 and 2021.

4.5 In the Draft Decision on this second Interim Review, we stated that the likelihood of this impact continuing into 2022 similarly provides such grounds to review the 2019 Determination in relation to 2022. The circumstances arising from the COVID-19 pandemic are exceptional by any reasonable metric, and outside the control of Dublin Airport. Certain aspects of the regulatory settlement for 2022 are no longer fit-for-purpose and, if not adjusted, would now run contrary to our statutory objectives, thereby compromising the objectives of the original decision. Thus, the objective of this review is to consider how the 2019 Determination should

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

best be adjusted at this time, to fit the changed circumstances prevailing in 2022.

Scope and Objective of the Review

4.6 In our Draft Decision, we stated that the scope of this interim review would remain relatively similar to the review that was carried out for 2021. We further stated that the scope of this review does not encompass changes to the regulatory building blocks used to derive the base price cap for 2022.

4.7 For the reasons set out in the Draft Decision and reiterated in Section 5 below, a review of the base price caps should be based on a detailed, consultative, and forward-looking business and investment planning exercise. Thus, it will be necessary to develop revised forecasts for Dublin Airport in relation to traffic and operational income and a revised investment plan in order to reset the base price caps. We consider that the recovery and its relative stabilisation in recent months compared to the previous 18 months, and anticipation that this will continue next year, now makes such planning more feasible. We anticipate that this will continue in 2022 and that the benefits of undertaking this process in 2022 outweighs the risks. Thus, as set out in Section 8, in 2022 the Commission will undertake a full review of the 2019 Determination, to take effect from 2023.

Submissions Received

4.8 Dublin Airport states that, early in 2021, it set out and discussed with the Commission it's preference for a '*meaningful regulatory intervention'* for 2022 and beyond, where the Commission would undertake a detailed price review for Dublin Airport. It states that such a review is now no longer possible for 2022 given the time constraints, which puts Dublin Airport at a considerable disadvantage. Dublin Airport also states that it looks forward to engaging with the Commission on the commencement of the detailed review due to take effect from 2023.

4.9 IATA states that the scope of this intervention should be limited to where it is strictly necessary and welcomes the narrow focus of the Interim Review.

Decision

4.10 As set out in the Draft Decision, sections 5.28 to 5.35, we did not agree with Dublin Airport regarding either the merit or practicality of the high-level, partial building block review which it proposed.

4.11 We have not made changes to the overall purpose or scope of this review. The submissions on specifics points of detail raised by stakeholders are addressed in Section 5.

5. Regulatory Settlement in Relation to 2022

5.1 This section sets out our Decision in relation to 2022. It follows our consultation proposal and considers the responses we received to that consultation.

Regulatory Settlement for 2022

5.2 As set out above, the Commission is guided in its decision making by seeking to strike a balance between its statutory objectives. In making the 2019 Determination, the base price caps for 2020-2024 were established in line with our Statutory Objectives, as required by Article 33 of the 2001 Act. The base price cap for 2022 was set at €7.75, subject to potential adjustments for issues such as failure to deliver the allowed investment programme or provide an appropriate quality of service to airport users.

5.3 For the first Interim Review, drawing on our statutory objectives and the key elements of the 2019 Determination, we established a principle whereby we would address '*unintended pricing consequences, arising from the pandemic in 2020 and/or 2021, in a balanced way*.' We further noted that '*disproportionate or unjustified transfer of financial impact, generated by circumstances arising from the pandemic, between Dublin Airport and airport users*' should be avoided.

5.4 The assignment of risk set out in the 2019 Determination is a key element of the regulatory model, which has been in place since 2001. Within a determination period, Dublin Airport holds most of the risk of building block outturns deviating from forecasts; when a full building block review is carried out, there is a re-set of the building blocks. When the re-set of the building blocks occurs, the result of materialised risk across the building blocks is broadly transferred to airport users. Dublin Airport is compensated for holding this within-period risk in the allowed Weighted Average Cost of Capital (WACC).

5.5 We accepted the arguments from certain airlines that our approach involved an element of within-period risk reassignment. Given the scale of the downside risk which had materialised, we considered it reasonable to provide an element of regulatory relief to Dublin Airport, where we considered this to be proportionate relative to any impact on airport users. We also considered that certain triggers and adjustments, if left in place, may have had unintended consequences which would not be in the interests of either airport users or Dublin Airport. The reassignment of risk inherent in removing those adjustments was thus not itself the main objective, but rather resulted from the goal to remove unintended consequences or undesirable incentives.

5.6 However, this did not involve the wholesale transfer of financial damage suffered by Dublin Airport to the airport users, to compound the damage the users themselves were suffering. Nor, as was also requested by a number of airport users, did we implement short term reductions to charges, which would have had the effect of compounding the damage being suffered by Dublin Airport. This principle was accepted by a number of stakeholders; for example, Dublin Airport stating in response to the Draft Decision that 'transferring further financial damage from one affected stakeholder should be avoided, as it simply moves the problem around'.

Draft Decision on Regulatory Settlement for 2022

5.7 In the Interim Review of the 2019 Determination in relation to 2020 and 2021, published in December 2020, we implemented an approach for 2021 whereby all adjustments were removed, leaving a fixed ex-ante price cap of €7.50. For 2022, we proposed a similar approach, with two variations:

- The inflation adjustment would be retained as set out in the 2019 Determination. It converts the base price cap from February 2019 prices to October 2021 prices.
- A reduced scope, reduced penalties version of the Quality of Service (QoS) scheme would be retained. This is laid out in Section 6.

5.8 In real terms, the base price cap is set to increase from €7.50 in 2021 to €7.75 in 2022. In nominal terms, at the time of the Draft Decision we expected the 2022 figure to be approximately €8, however, given that the CPI for October is higher again, the ex-ante price cap will be €8.11 for 2022. This is a year-on-year increase of approximately 8% from 2021 to 2022.

5.9 The 2020 Interim Review process outlined the rationale for removing the other triggers and adjustments. In the Draft Decision in relation to 2022, we laid out our assessment that these reasons remain valid for 2022:

- The Commercial Revenues rolling schemes should remain suspended, given the potential for unanticipated volatility in performance.
- The Opex passthrough mechanism could potentially lead to a much higher degree of volatility in the price cap than was anticipated, due to both reduced passenger numbers and cost variability.
- The reprofiling triggers were introduced based on the planned delivery of major capital projects, as set out before the impact of the pandemic. In the context of the pandemic, deferral of these projects remains a valid and generally desirable response by Dublin Airport. Maintaining the incentive to deliver these projects might lead to a mismatch between demand and capacity and consequently inefficiently high levels of future charges.

Submissions received on the Draft Decision for 2022

5.10 IATA acknowledges that amendments to the Opex pass through mechanism, the reprofiling triggers and commercial revenue rolling mechanism may be merited.

5.11 Aer Lingus states that the daa EBITDA loss in 2020 was limited to €2m due to the combination of government supports, and the Commission's first Interim Review, which transferred value from the consumer to Dublin Airport and it's shareholder. It further states that this EBITDA loss included €87m in restructuring costs associated with severance packages, meaning that, if the packages had been more '*efficient',* daa would have made a small profit. Aer Lingus describes this performance as '*remarkable*', given the impact of COVID-19 on the industry and the losses being made by aviation businesses not protected by a regulator. Aer Lingus states that its own EBITDA loss over this period was €405m. Aer Lingus is concerned that the Commission is prioritising *'the financial health of daa's shareholders over sending proper market signals that force daa to behave as if they were a competitive business'*.

5.12 Ryanair states that the intention of the Commission in conducting interim reviews of the 2019 Determination should be to lower costs at Dublin Airport in order to stimulate traffic, but this review is designed to improve the daa's financial position at the expense of airline users, and ultimately passengers. It believes that the actions proposed in the review are not needed due to the decision of the Irish State to provide aid to Dublin airport. It asserts that a '*no review*' option is the most appropriate approach at this time, in the context of significant uncertainty around how traffic will recover as the economy recovers from the crisis. Finally, Ryanair believes that the reinstatement of the inflation adjustment is premature as it expects airfares to stay low well into 2022.

5.13 Dublin Airport states that the proposed price cap for 2022 was calculated before the impact of COVID-19 and that it is based on peak air travel. It believes that this price cap is understated and will compromise its ability to invest in growth and sustainability. It also argues that it will negatively impact upon Dublin Airport's credit rating, and force it to suspend a range of critical airport improvements and developments. It believes that the price cap will result in the regulated entity incurring losses and not earning its allowed return on its cost of capital.

5.14 Dublin Airport asks how the price cap is justified by and proportionate to the Commission's overarching legislative purpose of ensuring that Dublin Airport cannot exert market power by setting excessive charges which are out of line with a competitive market and making monopoly profits.

5.15 Dublin Airport cites the 2014 passenger and price cap levels as justification for increasing charges (as passenger traffic was broadly similar what is projected for 2022 and yet the price cap was higher), and states that a price cap of €10.50 per passenger would be appropriate for 2022 as this is more in line with 2014. It also notes its support for the reintroduction of the CPI adjustment in the price cap for 2022 and welcomes the draft decision by the Commission to remove the capital expenditure reprofiling triggers originally included in the price cap for 2022. However, it disputes the impact this removal will have. Dublin Airport requests that the Commission reinstates the K factor term in the regulatory formula to allow for a limited carry over of under recovered revenues against the annual price cap.

5.16 Dublin Airport contrasts the Commission's response to the COVID-19 crisis in respect of the IAA ANSP and its air navigation charges, with its regulatory treatment of Dublin Airport. It states that in the Decision on the Irish Draft Performance Plan for Air Navigation Services for RP3, the Commission completed a comprehensive and full review of the regulatory settlement for the period 2020-2024 in the aftermath of the pandemic. It states that the Commission gave a commitment to recovery of lost revenues where it stated that allowed revenue which is unrecovered in 2020 and 2021, due to the impact of COVID-19, is recoverable through adjustments to Unit Rates over seven years commencing in 2023. Dublin Airport further notes that the CAA in the UK has carried out a comprehensive review Heathrow Airport's price caps and concludes that there is scope for the Commission to offer more comprehensive support to Dublin Airport.

5.17 Dublin Airport provides an overview of actual or proposed increases in charges at a number of other airports.

5.18 Dublin Airport states that the Commission's price cap proposal for 2022 is contrary to its statutory objectives. It believes that at this pricing level, Dublin Airport cannot operate or develop as needed. It also argues that the Commission is in violation of its legal requirement to have due regard to the daa's level of operational income from Dublin Airport, the costs or liabilities for which the daa is responsible, and the cost competitiveness of airport services at Dublin Airport. It is also concerned that the price cap will conflict with daa's own statutory objectives in managing Dublin Airport. Dublin Airport calls upon the Commission to disclose the evidence it relied upon to determine the proposed price cap.

5.19 Dublin Airport also states that the Commission's proposal may be based on an illegitimate consideration, namely a concern regarding the fairness of within-period risk assignment. It notes that any such concern does not fall under the statutory objectives and considerations in making a determination. Nothwithstanding this, Dublin Airport supports the Commission's proposal to carry out an Interim Review, because it believes that the adverse impacts to date have so far been beyond the limits of any intended assignment of risk to Dublin Airport.

Final Decision on Regulatory Settlement for 2022

5.20 We have considered the representations listed above, but we have not been persuaded that we should change our approach for 2022. The responses we received are generally consistent with responses to the March consultation; thus, we had already considered and addressed many of the issues raised as part of our Draft Decision. We set out our responses and rationale below.

5.21 As identified in the Draft Decision, the EBITDA loss of €2m for 2020 relates to Dublin Airport (i.e. the regulated entity), not daa as stated by Aer Lingus. Furthermore, as stated in the Draft Decision, this figure excludes exceptional items associated with restructuring costs. Thus, contrary to Aer Lingus' statement, this figure does not include the restructuring costs for 2020.

5.22 Consistent with its previous submissions, we note Ryanair's view that we should reduce Airport Charges to stimulate a recovery in traffic. We have not taken an approach where we would simply reduce (or increase) the base price cap. This would not be consistent with the principle we have developed; to address unintended pricing consequences arising from the pandemic in a balanced way. We previously noted that '*disproportionate or unjustified transfer of financial impact, generated by circumstances arising from the pandemic, between Dublin Airport and airport users*' should be avoided. While there is an element of risk reassignment implicit in addressing unintended pricing consequences, we have not made adjustments to pricing with the goal of transferring risk. In particular, it would not be appropriate to adjust the base price caps up or down in advance of the detailed, consultative regulatory review of the post COVID-19 requirements of the regulated entity.

5.23 Regarding Ryanair's comments on the inflation adjustment, this is a common component of the CPI-X approach to regulation. We do not see a rationale to leave the price cap in February 2019 prices. This adjustment is being made to reflect the likely impact that inflation will have on the regulated cost base. If parties believe that the approach to indexation should be changed, this can be considered as part of the full review next year.

5.24 We do not accept Dublin Airport's assessment of the likelihood that it will be loss making in 2022. Given the level of uncertainty, it remains possible that Dublin Airport will make a loss, however a return to profitability is also possible. We expect Dublin Airport to continue to achieve Opex levels in 2022 that are considerably lower than 2019 (this will likely be helped by the extension of the Employee Wage Subsidy Scheme into 2022). We also expect depreciation to be lower than projected in 2019 and for passenger levels to improve significantly on 2021. To restate the high-level scenario of possible 2022 performance as set out in the draft determination, if Opex per passenger (net of the ongoing financial supports) were €9, with Commercial Revenues of €8 per passenger, and a price cap of €8, with 21m passengers Dublin Airport's EBITDA would be in the region of €150m. Accounting for depreciation, interest, and tax at approximately €125m, this scenario would see a return to profitability in the region of €25m for 2022.

5.25 As set out in the Draft Decision, we note that had we undertaken a building block review for 2022, it is not clear what the outcome would have been. It is possible that such a review would have led to a lower price cap to for 2022, particularly given the extension of state supports into 2022. The outcome would depend on a range of decisions taken in relation to the building blocks, which would need to consider the views and priorities of other stakeholders, as well as Dublin Airport, in a balanced way.

5.26 For example, the air navigation charges review referenced by Dublin Airport has resulted in a lesser year-on-year increase in air navigation unit rates compared to what we have set for the price cap on Airport Charges. The air navigation charges set in 2019 (i.e. predating the impact of COVID-19), were in effect for 2020 and 2021. As required by the Performance Planning Regulation, we have now re-set the charges for the IAA ANSP from 2022, taking account of post-COVID traffic forecasts and cost requirements. However, due to the range of factors at play, and adjustments made by the Commission to the IAA ANSP cost proposals, this has not led to a significant unit charge increase from 2021 to 2022. In fact, in nominal terms the increase in the price cap from 2021 to 2022 is higher than the year-on-year increase in En Route Unit Rates, and much higher than Terminal Unit Rates, which will reduce from 2021 to 2022.

5.27 We also note that the figures underpinning Dublin Airport's proposal, redacted in its public submission meaning that we cannot address them directly here, are not justified within the submission. For example, it is not explained why VSS costs would be recovered in full as set out over two years. Furthermore, the numbers underpinning the 2014 price cap, which Dublin Airport compares to 2022, differ significantly from current cost levels. In 2014, Opex was approximately €200m, far lower than what Dublin Airport is suggesting will be required for next year,[8] even though Dublin Airport will continue to benefit from significant wage supports in 2022. At a high level, and without having any detailed substantiation to consider, the suggested Opex figure does not appear reasonable in that context.

5.28 Regarding Dublin Airport's point in relation to market power, the scope of this Interim Review does not involve reassessing the market power held by Dublin Airport. The role of the Commission does not currently include such a reassessment, although this will change as part of the regulatory reform process which is currently ongoing. In the absence of such an assessment, we would not make changes to a Determination on the basis of speculation on potential changes in market power. However, we note that companies in competitive markets cannot typically respond to severe demand shocks by significantly increasing charges in the short term. For example, the US Bureau of Transportation Statistics reports that domestic airline ticket prices fell by approximately 19% between 2019 and 2020 and by a further 5% between 2020 and 2021[9]. Ryanair has reported flat scheduled revenues per passenger from the financial year to March 2020, compared to the financial year to March 2021.[10] IAG, the owner of Aer Lingus, has reported revenues per passenger (at the total level) which are 1.9% lower in 2020 than 2019.[11]

5.29 Dublin Airport has not provided evidence to demonstrate that the proposed price cap for 2022 would not enable the financial viability of Dublin Airport. Neither the Commission nor Dublin Airport has identified any near-term liquidity concern. Financial viability is a question which will be considered for the medium and longer term, as part of the full review. Furthermore, while there are certain projects which we expect to be progressed in 2022, we do not consider it appropriate for the major capacity projects to be progressed in advance of consultation with airport users on the continued requirement for and timing of these projects.

5.30 In response to Dublin Airport's comparison to the Air Navigation Services (ANS) Performance Plan developed by the Commission, we note the following:

- Unlike airport charges, many aspects of Performance Plans and the planning process are determined at EU level. In November 2020, emergency Regulation (EU) 2020/1627 was adopted, which provided for a re-set of the Union-Wide targets and required revised

[8] Dublin Airport has redacted these figures in its public submission.
[9] https://www.bts.gov/content/annual-us-domestic-average-itinerary-fare-current-and-constant-dollars
[10] https://investor.ryanair.com/wp-content/uploads/2021/05/Ryanair-FY21-Results.pdf
[11] https://www.iairgroup.com/~/media/Files/I/IAG/documents/IMS/interim-management-report-for-full-year-to-december-31-2020.pdf

plans to be developed.[12]

- It is the case that the emergency regulation requires that volume risk adjustments relating to 2020 and 2021 be recovered over 7 years from 2023. Ordinarily, volume risk adjustments are made on a year n+2 basis. Thus, the commitment to recovering this revenue over a seven year period is in fact a derogation of the regulatory model in favour of airspace users. One of the main reasons for the emergency regulation was to mitigate the impact of the pandemic on increasing Unit Rates for 2022 and 2023 which would ordinarily have occurred, due to the collapse in traffic in 2020 and 2021, with airspace users holding most of the volume risk.

5.31 Thus, the regulatory models are based on different current and historic risk allocation mechanisms. Under the ANS regulatory model established by EU Regulations, most of the risk is held by airspace users, whereas to date, Dublin Airport holds most of the risk of building block outturns deviating from forecasts. It has been compensated for holding this within-period risk in the allowed WACC. Risk allocation was a key driver of the real WACC of 3.5% set for the IAA ANSP by the Commission in 2021.

5.32 In relation to the comparator airports set out by Dublin Airport, our approach to regulation does not generally involve high level benchmarking. However, we note that the price cap increase for 2022 (year-on-year) is similar to or greater than many of the charges increases at the airports referenced by Dublin Airport. Thus, we are unclear on the point being made or why it is of relevance.

5.33 Finally, in relation to Dublin Airport's concerns regarding our statutory obligations, we note the following:

- We set out above that, in our view, the Commission should be guided by balancing the Statutory Objectives set out at Article 33 when considering amendments to a determination. However, when amending (rather than making) a determination, we are not required to re-establish that all aspects of that determination continue to represent an optimal balance of out statutory objectives and statutory factors. To date, our interim reviews have been limited in scope and have not reopened the full regulatory settlement. For example, in 2018, the 2014 Determination was amended to increase the Capex allowance. This did not require a reset of the traffic forecasts to take account of up-to-date figures, which would have lead to a significantly lower price cap for 2018/2019.
- The regulatory model has been designed and developed to give effect to the statutory objectives and factors. Specifically, the allocation of risk, and any decision to change this, relates directly to balancing the statutory objectives, as described in Section 3. Over 2015-2019, there were an additional 30m passengers compared the forecasts in the 2014 Determination. Dublin Airport has retained the benefits of this outperformance, equivalent to approximately €280m in additional aeronautical revenues alone, before the additional commercial revenues these passengers generated is considered. That is, had passenger numbers been perfectly forecast in the 2014 Determination, the regulatory settlements would have allowed for over €0.5bn less revenue for the regulated entity. Overlooking or reversing this approach due to a significant downside risk materialising, such that airport users lose out on volume risk in both good times and bad, would be a failure to protect the interests of airport users. On the other hand, the extent of Dublin Airport's risk exposure is limited to the next regulatory reset; overlooking this feature would not be conducive to enabling to daa to operate and develop Dublin Airport in the interests of airport users, as it would erode the regulatory

[12] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1627&from=EN

certainty which facilitates this. Therefore, rather than being an 'illegitimate consideration', the allocation of risk is key to fulfilling all of our statutory objectives.

5.34 As set out above, we took measures which we considered to be proportionate, having regard to the impact such measures would have on the airport users whose interests we are obliged to protect, and having regard to the risk assignment within the regulatory model. It is not the case that we can simply transfer the financial damage suffered by Dublin Airport to airport users, compounding the damage that users themselves have suffered and hampering the recovery of the industry. Likewise, we have not simply reduced the charges as requested by Ryanair. Doing so would similarly involve a transfer of financial damage to Dublin Airport. We have concluded that a full review of the 2019 Determination is required in the interests of current and future stakeholders, as set out in Section 8. A building blocks review, however, should be based on a detailed, consultative, and forward-looking business and investment planning exercise.

5.35 As set out in the Draft Decision, we expect that the current and future value of the amended 2022 regulatory settlement will be approximately €100m to €115m higher for Dublin Airport, relative to leaving the 2019 Determination unchanged in relation to 2022. Thus, combined with the impact of the review already undertaken in relation to 2020 and 2021, we forecast that the value of our regulatory interventions for Dublin Airport over 2020-2022 will be in the region of €200m to €220m.

Regulatory Mechanisms for 2022

5.36 The Draft Decision suggested that the adjustments to the regulatory mechanisms we put in place for 2021 remain appropriate for 2022. These are outlined below.

Capex clawbacks suspension

5.37 We considered that the suspension of the clawback of allowed capital costs associated with unspent Capex should continue for 2022, with a revised Capex programme expected to be in place from 2023. As per the decision in relation to 2021, there were two reasons for this:

- The removal of an undesirable incentive to progress and deliver a higher level of Capex, notwithstanding the impact of the pandemic. This overprovision of Capex may have negative implications for both airport users, in the form of higher future charges, and also weaken the cash position of Dublin Airport.
- The fact that, although a recovery is anticipated for next year, we still expect Dublin Airport to under-collect allowed capital costs, even before any clawback of unspent CIP2020-2024 Capex is implemented.

5.38 The impact of not clawing back capital costs for 2022 is cumulative across 2020 to 2022. In the Draft Decision, we estimated the value of the clawback suspension for 2020 and 2021. If Dublin Airport spends a further €100m in 2022 against the CIP2020-2024 allowance of €423m, we estimate that the further quantum of allowed remuneration not subject to clawback, as a result of extending this approach into 2022, to be c€77m. If, instead, Dublin Airport were to spend €150m on CIP2020-2024, the relevant amount would be c€66m. As was the case for 2020 and 2021, this applies to the capital allowances in 2022 only. We did not propose to add unspent Capex to the RAB for future remuneration in 2023 and beyond.

5.39 Unlike 2020/2021, we noted that some of this remuneration may now be collected in 2022, given the forecast recovery in passenger numbers. However, we considered that this remains a proportionate outcome, given the extent of the downside risk which has materialised in the period. The materialisation of downside risk also applies to new Capex that Dublin Airport does actually spend. For example, if Dublin Airport spends 50% of the forecast Capex allowances (including on the North Runway and Programme of Airport Campus Enhancement (PACE) projects) across 2020/2021/2022 and there is a recovery to 21m passengers in 2022 such that 34% of the forecast passenger traffic materialises over those years, it is unlikely that Dublin Airport would recover the full capital costs in 2022 even on the projects it has progressed. This would be before clawing back the unspent remainder of the CIP2020-2024 allowance, which it would not have recovered at all, is considered.

Submissions received on the capex clawbacks

5.40 IATA states its concern at the possibility that the Commission will disallow the capex clawback mechanism for 2022, as it considers it disproportionate. It believes that eliminating the capex clawback mechanism would imply that the Commission is remunerating Dublin airport for capex that does not exist.

5.41 Ryanair believes the proposal to suspend Capex clawbacks to be unacceptable and irrational, as airport users will be paying for projects that have not commenced and may never commence.

5.42 Aer Lingus states its objection to the Commission's proposal to suspend Capex clawbacks as it believes that the airlines and their passengers will be paying for something that the airport has not delivered. Aer Lingus also express concern that not clawing back Capex will send an unhelpful and perverse signal to Dublin Airport – that the Commission will prioritise the financial health of daa's shareholders over sending proper market signals that forces Dublin Airport to behave as if it were a competitive business.

5.43 Dublin Airport welcomes the proposal to suspend the Capex clawbacks for 2022. However, it disputes the value of this proposed intervention, stating that theoretically the stated value may be correct, however in this instance the point is not valid. The Commission has calculated the impact of extending this approach into 2022, to be c€77m. However, Dublin Airport state that this calculation is based on it earning its full allowed revenue requirement, and as passenger volumes are expected to be lower than forecast for 2022, it is not likely to earn the full amount forecast in 2019.

Decision on Capex Clawbacks

5.44 We confirm that we will not be clawing back Capex allowances for 2022, consistent with the approach for 2020 and 2021. We believe that leaving this issue unaddressed would provide Dublin Airport with the perverse incentive to continue spending on projects to avoid clawback, which would have implications for future airport users in relation to the levels of airport charges.

5.45 We note the concerns of IATA, Ryanair, and Aer Lingus that users are paying for non-existing assets. It is important to note that this change only applies to the remuneration (depreciation and return on capital) of the allowances for new Capex in 2022. Unspent Capex allowances will not enter the RAB for ongoing future remuneration. Furthermore, as set out in the Draft Decision, Dublin Airport is likely to only receive remuneration for a portion of the actual new Capex spend over the first three years of the 2019 Determination, even if there is a significant recovery in 2022, before clawbacks are considered. Thus, we believe that this is a proportionate RAB adjustment with a value of approximately €150m over the three years, in view of the scale of downside risk which has materialised.

5.46 Therefore, in view of the two reasons stated above, namely that 1) keeping the clawback mechanism would provide a perverse incentive to spend in a non-efficient manner thus maintaining more Capex in the RAB and 2) Dublin Airport is unlikely cover a sizeable proportion of its capital costs in 2022; we have decided that unspent Capex allowances in 2022 will not be clawed back.

5.47 Regarding Dublin Airport's views on the value of this clawback suspension, we note that the figure we have calculated is, mathematically, the amount that would have actually been clawed back under the expenditure scenarios we outlined. This does not require any presumption regarding how much of the allowed revenue is actually collected in 2022. Dublin Airport holds the volume risk. For 2015-2019, the amounts clawed back for a non-delivered project such as the airfield pollution control project was similarly not the amount actually collected, which, in that case, worked to Dublin Airport's benefit.

5.48 This is also the case more broadly, i.e. as passenger numbers were 25% higher than forecast over 2015-2019, capital costs actually recovered were also 25% higher than if passenger numbers had been perfectly forecast in the 2014 Determination, with all else unchanged.

Further regulatory mechanisms

5.49 We also noted in the draft decision that the other adjustments to the regulatory mechanisms that were put in place for 2021 remain appropriate for 2022. These were:

- The Commercial Revenues rolling schemes should remain suspended, given the potential for unanticipated volatility in performance.
- The requirement to consult on the progression of further CIP2020-2024 projects (or components of projects) with an expected final cost of more than €4m should remain in place, until the Final Decision on the revised regulatory settlements from 2023 onwards has been published. As set out in the first Interim Review, this means that Dublin Airport must either demonstrate the safety/compliance criticality of the project or obtain support from users representing 50% of passenger traffic, in order to retain certainty of ongoing remuneration of the investment. This will incentivise Dublin Airport to only progress Capex in 2022 which is either essential or supported by airport users for immediate progression.

Submissions received on further Regulatory Mechanisms

5.50 IATA states its support for continuing the requirement for consultation on capital projects with an expected cost of €4m or more. It believes it is important to maintain oversight and the flexibility to ensure that Capex allowances remain relevant.

5.51 Dublin Airport notes that it currently has €1.29bn of projects included in the StageGate process, and so a consultation process with stakeholders on capex exists for 68% of CIP 2020. For other projects over €4m, it states that it requires flexibility to react to the needs of stakeholders during this uncertain period and that the requirement for a full consultation to get approval for such projects would be too great of an administrative burden. It requests that the threshold for additional consultation be increased to €8m.

Decision on further Regulatory Mechanisms

5.52 We confirm that we are continuing the Capex consultation requirement, the focus of which is intended to be on the timeline for projects which Dublin Airport wants to progress in 2022. No changes have been made to this process. Given the financial position of both the airport and airport users following the impact of COVID-19, we believe it is crucial that mechanisms for ensuring capex efficiency are maintained.

5.53 Given the ongoing uncertainty over the trajectory of the recovery, there is a risk that proceeding with certain projects at this time will lead to a high degree of misalignment with the level of demand. This has potential negative implications for both Dublin Airport's financial position, and for future airport users in the context of value for money in airport charges in a more fragile market, with fewer passengers to pay the associated costs.

5.54 We also reaffirm the following key elements of this process as first established in the 2020 Decision on an Interim Review of the 2019 Determination in relation to 2020 and 2021. Unless continued progression of the project is either substantially supported by airport users or alternatively is required on the grounds of safety critical maintenance and/or required for regulatory compliance, Dublin Airport should not continue to spend Capex on these projects with the expectation of ongoing remuneration in future determinations. We will maintain the threshold for user support at airlines representing 50% of passenger traffic at Dublin Airport in 2019.

5.55 Given the ongoing uncertainty, and the need to ensure that major projects are progressed in line with demand, we have not been persuaded to increase the threshold beyond €4m. While we agree with Dublin Airport that regulatory requirements should be proportionate. However, there was just one project captured by this threshold in 2021, which was subject to a short consultation and received unanimous support. Thus, we believe that this mechanism did not lead to the administrative burden previously as suggested by Dublin Airport and passes the proportionality test as a holding measure until such time as the full review is completed.

5.56 We also confirm that the 2019 determination rolling schemes with respect to commercial revenues, will remain suspended for 2022, ahead of reconsideration as part of the full review.

Government Funding

5.57 Both Ryanair and Aer Lingus state that the Commission needs to ensure that government policy in relation to government funding for Ireland's State Airports is effected. Rather than funding for the sole benefit of Dublin Airport, the intention is that the money should be used to fund route incentives and rebates for the recovery of the aviation sector as a whole.[13] The airlines are concerned that without appropriate action from the Commission, the operation of the regulatory accounting framework may allow Dublin Airport to '*claim back'* the money through offsetting increases to airport charges list prices and/or through the underrecovery mechanism provided for by the K Factor term.

5.58 Ryanair and Aer Lingus are correct that, if the same aeronautical revenue per passenger (the price cap) is recovered from airport users regardless of whether or not such a support scheme is in place, then this funding will not have been used to fund incentive and rebate schemes. Dublin Airport's own incentive schemes do not cost Dublin Airport, as the Commission allows these sums to be netted off total aeronautical revenues for the purpose of price cap compliance.[14] We have engaged further with the Department of Transport, the purpose of the funding is clear: To provide '*State airports with flexibility to roll out discounts on airport charges, with a view to supporting the recovery and restoration of strategic connectivity, including on long-haul routes, for Ireland*.'[15]

5.59 We can give effect to this purpose in a clear manner by not netting off any incentive schemes

[14] For further discussion, see Section 12 of the 2019 Draft Determination: https://www.aviationreg.ie/_fileupload/2019/Draft%20Determination/2020-2024%20Draft%20Determination.pdf
[15] https://www.gov.ie/en/press-release/0dd30-minister-of-state-naughton-announces-108m-in-funding-for-irish-airports/

funded by the government funding, as opposed to schemes funded by Dublin Airport itself. Dublin Airport will report the amount paid out in government funded airport charges incentive schemes, which, together with the US Preclearance associated incentive scheme, should equal the Dublin Airport proportion of the government funding. This must be reported in the Regulated Entity accounts for 2021 and 2022. Any Dublin Airport funded incentive or rebate schemes will be netted off in the usual manner.

5.60 Thus, Dublin Airport can collect €8.11 per passenger from airport users in 2022, as would be the case in the absence of the state support but will rebate a significant proportion of this through the state funded incentive schemes.

5.61 It should be noted that the k-Factor term remains in place for both 2023 and 2024, in case of any undercollection which is eligible for recovery in 2021 or 2022. Provided that the state funded incentive rebates are reported separately and not subtracted from aeronautical revenues for the purposes of assessing price cap compliance, no adjustment will be necessary to the k Factor terms to give effect to Government policy. The term '$P_{t-2,\ outturn}$' in the price cap for year 't' will be calculated without subtracting the state funded rebate schemes, meaning that any 'underrecovery' arising from state funded rebate schemes will not be carried forward by the k Factor.

5.62 The overall effect of the government funding on Dublin Airport is that it is neither better or worse off, for a given level of passenger traffic, because of the funding. If the funding achieves its objective of incentivising connectivity and route development, it should result in additional passengers which will benefit Dublin Airport by way of additional revenue (although noting the above in relation to price cap compliance). We also confirm that as a result of a future regulatory settlement, Dublin Airport will be no worse off, as a result of the proposed exchequer funding.

North Runway Trigger

5.63 As the North Runway will not be operational before the end of this year, the M2 trigger will not activate for 2022. Consequently, though immaterial, it has not been reinstated for 2022.

6. Quality of Service for 2022

6.1 In the Draft Decision, we proposed to reintroduce a limited scope financial penalties system. We prioritised metrics based on their relative importance to the service quality experienced by airport users, the recent performance of Dublin Airport relative to the targets, and the practical ability to measure the performance. We thus proposed to reintroduce an element of aeronautical revenue adjustment for security queue times and wait times for passengers with reduced mobility (PRMs). We suggested that the overall price cap at risk be reduced by half, to €0.11, and to halve the revenue adjustment per incident for the security queue time metrics. The annual revenue adjustment associated with the targets for PRM was proposed for reinstatement as defined in the 2019 Determination. However, we proposed to alter the targets to align with the targets defined in Dublin Airport's service level agreement for the services related to passengers with reduced mobility.

6.2 For all other targets, we proposed to continue monitoring and reporting performance for all measures where the collection of data is feasible. We also proposed the introduction of a new COVID-19 specific measure, 'Sense of Safety for my Health', as well as the combination the 'finding your way around' and 'walking distance' measures into one measure, 'Ease of Movement'. Finally, we highlighted that if Dublin Airport is unable to collect data in a suitable format, the targets may be waived or an alternative measure for the target implemented.

Submissions Received

6.3 IATA agrees with the proposal to reinstate quality of service rebates. However, it does not believe that the penalties should be reduced as maintaining the rebates is important to ensure that Dublin Airport performs in line with airline and customer expectations.

6.4 Ryanair also expresses disappointment with the proposal to reintroduce only a limited financial penalty system, stating that Dublin Airport has had enough time to adapt the quality of service to current circumstances. As such, Ryanair believes that the full financial penalty system should be reinstated as defined in the 2019 Determination. It further states that the reintroduction of reduced penalties and continued monitoring of other quality of service measures will not provide an appropriate incentive for Dublin Airport to improve performance in these areas.

6.5 Aer Lingus also disagrees with the proposal to re-implement only a limited financial penalty system for quality of service. In particular, it does not believe that management of security queues has become any more challenging for Dublin Airport, and that halving the incentive to comply with the targets for security queues and passengers requiring additional assistance is out of line with the Commission's acknowledgement that security queue metrics should be re-introduced. Aer Lingus also questions the proposal to not re-implement any financial penalties in relation to baggage handling, IT systems and availability of airport assets, stating "*essentially the Commission's argument is that because the presence of the rebate has meant that the service level has not been breached, it can remove the rebate*".

6.6 Aer Lingus further states that the removal of financial penalties in these areas incentivises Dublin Airport to remove resources from these areas to focus on the areas where penalties will apply. Aer Lingus asks for further details on the proposal to combine the 'finding your way around' and 'walking distance' measures into one measure. It also requests details of how the likelihood of the target for the new measure being breached compares to the two individual measures.

6.7 Dublin Airport states that the proposal to reintroduce financial penalties for the quality of service metrics is "*inappropriate and disproportionate particularly given the likely negative* *impact on the company's finances at a time when the airport is struggling to regain financial stability and return its business to growth*". Regarding the penalties associated with passengers requiring additional assistance, Dublin Airport points out that these operations have faced significant difficulty in adapting quickly to the fluctuating passenger demand due to COVID-19. Staffing levels have been reduced in 2020 and 2021, and now there are lead-time constraints associated with recruitment that make it difficult to quickly increase staff numbers. Dublin Airport also highlights that the presentation of PRMs as a percentage of total passengers has changed in the past year, with a much greater level of variance than was seen in the past. Additionally, it states that passenger behaviour is changing as a result of COVID-19, noting in particular that passengers are requesting assistance earlier than usual, sometimes before check-in is open.

6.8 Dublin Airport is also opposed to the proposed reinstatement of the penalties associated with security queue targets. It states that this may reduce the ability to comply with safety regulations as the focus will be shifted to queue times. It also points out that the passenger profile has changed, and passengers are no longer as prepared for screening as prior to the pandemic which creates delays as additional checks are required for a larger proportion of passengers. Further, it explains that the actual process of conducting checks has changed due to social distancing requirements and related measures. While Dublin Airport is currently recruiting security staff, it highlights that the labour market is particularly competitive at present.

Decision

6.9 We confirm that a limited scope financial penalties system will be implemented for 2022, with continued monitoring of all other measures. The maximum price cap at risk for breaching the targets remains at €0.11. For 2022, the measures that will be subject to an element of aeronautical revenue adjustment are:

- Security queue times
- Wait times for Passengers with Reduced Mobility (PRMs)

6.10 In reviewing the responses on our proposals for the quality of service regime for 2022, we have not been persuaded to change the underlying logic of the approach, i.e.: prioritising metrics based on their relative importance to the service quality experienced by airport users, the recent performance of Dublin Airport relative to the targets, and the practical ability to measure the performance. We consider that, in advance of the full review next year, this approach remains a proportionate balance of our objectives, protecting the interests of users while taking account of the practical impact the pandemic has had on the ability of Dublin Airport to deliver and measure its services.

6.11 We note that the airlines and IATA do not support the limited scope of measures proposed, but we do not find that either party provided compelling evidence for a broader set of measures to be re-introduced.

6.12 Financial penalties have not been in place since March 2020. Thus, it is not the case, as suggested by Aer Lingus, that where Dublin Airport has met the targets, the presence of a rebate has led to this level of performance. Dublin Airport has performed in line with those targets in the absence of the penalties. As set out in the Draft Decision, we do not consider these measures a high priority metric for which we need to enhance the incentive for Dublin Airport to improve performance in 2022, ahead of the full review from 2023.

6.13 Secondly, on the concern that '*a natural reaction would be for daa to remove resources from* *meeting these standards to focus on meeting ones where rebates apply*', we do not believe that this is a significant concern in the short term. Services such as baggage and self-service kiosks are not managed by the same business units as those that would manage the metrics for passengers with reduced mobility or security queue times. These employees are not likely to be readily interchangeable with the search officers, while the services for passengers with reduced mobility are contracted to and delivered by OCS. Therefore, any resource reallocation is likely to be a medium/longer term consideration. We do agree that, as part of the full review, it will be important to consider the balance of metrics across different airport processors and areas of service delivery.

6.14 We understand that Dublin Airport is facing difficulties in dealing with fluctuating passenger demands and changing behaviours and have reflected this in the reduced revenue adjustment per incident which will apply in 2022. This implies a reduced level of culpability, relative to 2019 circumstances, reasonably attributable to Dublin Airport in the case of any one incident of queueing underperformance. We disagree with Aer Lingus that security queue management has not become more challenging due to COVID-19. The increased uncertainty surrounding short term passenger forecasts, which is expected to last into 2022, makes rostering the appropriate number of staff more challenging.

6.15 On the other hand, we consider that performance in relation to security queue times and PRM services are key drivers of passenger satisfaction. We note the measures Dublin Airport has put in place to address these issues in 2022. We have now allowed almost two years where the revenue adjustments are suspended. We remain of the view that reintroducing the revenue adjustments associated with these metrics for 2022 is a proportionate step in protecting the interests of airport users, by ensuring that either performance will improve, or airport users will be compensated for continued underperformance in the form of reduced airport charges.

6.16 We note that Dublin Airport should prioritise security compliance over queue times. The focus of security staff themselves should not be on the queue performance, either the metrics set out by the Commission or Dublin Airport's own internal KPIs. This point was comprehensively considered by the Commission and Dublin Airport ahead of the making of the 2019 Determination, and this has not changed due to COVID-19.

6.17 It is also important to note that the 2019 Determination has always allowed for the waiving of individual incidents of apparent non-compliance when Dublin Airport could demonstrate extenuating circumstances, such as measurement error. This was applied on blanket basis in 2020 as a result of the impact of the pandemic. We expect that the likelihood of force majeure type circumstances is likely to remain higher during 2022 than was the case before the onset of the pandemic, particularly early in 2022 as the new uncertainty associated with the Omicron wave may again impact short term traffic forecasts and the levels of staff absences.

6.18 At present, there are several metrics for which the airport does not currently have the full measurement systems in place. While it was intended for these systems to be operational by 2022, certain elements were understandably deprioritised in the face of addressing the more pressing challenge posed by the pandemic. Similarly, the subjective measures remain difficult to accurately measure due to low sample sizes. Given the uncertainty regarding potential distancing measures in the future, it is not clear whether Dublin Airport will be able to consistently carry out surveys during 2022. We will work with Dublin Airport in relation to the ongoing rollout of these systems, particularly ahead of the full review taking effect from 2023.

6.19 Lastly, we are confirming the decision to combine the 'finding your way around' and 'walking distance' measures into a singular 'ease of movement' measure, for 2022. A new measure, 'sense of safety for my health', is also being introduced, which means that the number of survey-based metrics remains unchanged overall.

6.20 As we stated in the Draft Decision, this change was proposed by Dublin Airport for 2022. The new measure ‘ease of movement’ captures a broader picture of moving through the airport than the previous measures, and, in the view of Dublin Airport based on its survey data, better reflects factors such as social distancing which are of high importance to passengers at present. The introduction of ‘sense of safety for my health’ is clearly related to passenger comfort in the context of COVID-19. Again, we note that these metrics will be measured for the purposes of reporting only during 2022. They can be reconsidered as part of the full review.

6.21 We consider that the change is appropriate to better measure passenger satisfaction in the current circumstances. The new measure ‘ease of movement’ captures a broader picture of moving through the airport than the previous measures, and better reflects factors such as social distancing which are of high importance to passengers at present. Likewise, the introduction of ‘sense of safety for my health’ will capture a key driver of passenger satisfaction.

7. Compliance with Statutory Requirements, Directions and Policy

7.1 As set out in Section 4, the Commission's statutory objectives when making a determination under are:

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

7.2 There are also nine statutory factors to which we must have regard:

- The restructuring including the modified functions of Dublin Airport Authority (daa).
- The level of investment in airport facilities at Dublin Airport, in line with safety requirements and commercial operations in order to meet the needs of current and prospective users of Dublin Airport.
- The level of operational income of Dublin Airport Authority (daa) from Dublin Airport, and the level of income of Dublin Airport Authority from any arrangements entered into by it for the purposes of the restructuring under the State Airports Act 2004.
- Costs or liabilities for which Dublin Airport Authority (daa) is responsible.
- The level and quality of services offered at Dublin Airport by Dublin Airport Authority (daa) and the reasonable interests of the current and prospective users of these services.
- Policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission by the Minister, in relation to the economic and social development of the State.
- The cost competitiveness of airport services at Dublin Airport.
- Imposing the minimum restrictions on Dublin Airport Authority (daa) consistent with the functions of the Commission.
- Such national and international obligations as are relevant to the functions of the Commission and Dublin Airport Authority (daa).

7.3 The Commission is also required to comply with ministerial policy directions issued under Section 10 of the Aviation Regulation Act, 2001. We have not received a ministerial policy direction relating to the 2019 Determination.

7.4 Section 13 of the 2019 Determination sets out how it complied with each of our statutory objectives, had regard to the statutory factors, and continued to comply with policy directions issued ahead of previous determinations, in light of our statutory objectives.

7.5 The scope of this review does not encompass a full review of the building blocks. Thus, we do not reconsider the aspects of the Determination which are out of scope (notably, the derivation of the base price caps) in relation to our statutory requirements.

7.6 As set out above, the purpose of this review is to address immediate unintended pricing consequences, arising from the pandemic in a balanced way. In the current circumstances, this involves balancing the reasonable interests of current and prospective airport users, with facilitating the efficient and economic development and enabling the financial viability of

Dublin Airport. As set out in Section 5, this approach has informed all of the within-scope amendments we have made to the 2019 Determination.

8. Future Review(s)/General comments

8.1 This section considers other general submissions we have received, as well as submissions in relation to future reviews. In the Draft Decision, we set out our intention to undertake a full review of the 2019 Determination during 2022, to take effect from 2023.

8.2 The Draft Decision concluded that a full and thorough review of the regulatory settlements, which will re-consider all building blocks and realign them with the post-COVID-19 situation, is required. This review will take place in 2022 and will provide for revised regulatory settlements from 2023, which will realign required aeronautical revenues with efficient allowed capital and operating costs.

Submissions received

8.3 Dublin Airport states that a full Interim Review of the current 2019 Final Determination, involving a reappraisal of the regulatory building blocks, is now necessary to account for the impact of COVID-19. It believes that the price cap needs to increase by a minimum of €2.00 to ensure charging levels are high enough to meet the required investment in sustainability, growth, passenger experience and new technology.

8.4 Dublin Airport also states that the next review would be an opportune time to re-evaluate the current regulatory determination process to improve flexibility in reacting to shocks and to ensure, among other things, that it becomes less prescriptive, and focussed more on principles and outcomes.

8.5 Dublin Airport's white paper from the 5th of March 2021 outlines their views in detail. These include:

- A request that the commission considers the potential use of a volume risk adjustment mechanism, given the high level of traffic uncertainty that currently exists.
- A request that the Commission consider allowing future charges to include the recovery of the exceptional portion of the 2020-2022 EBITDA shortfall. This could potentially take the form of a RAB adjustment.
- Regarding the regulatory till, it wishes to see a move towards using a hybrid till, based on a revenue-sharing arrangement where a certain proportion of commercial revenue is netted off from charges each year.
- Finally, it wishes to see a movement away from a '*penal*' application of service quality metrics towards one based rebates and bonuses.

8.6 Ryanair disagrees with the Commission's intention to conduct a building blocks review in 2022, due to the ongoing uncertainty over passenger demand and the possible reintroductions of border restrictions. It believes that this uncertainty will lead to future Interim Reviews and that the least disruptive outcome is to continue with the 2019 Determination until 2024.

8.7 Aer Lingus states it supports the Commission's decision to undertake a fundamental review of the building blocks in principle but disagrees with the timing. It believes that the Commission should defer the full review until 2023. However, should the Commission proceed as planned, then it should ensure that its review contains sufficiently robust scenarios to cover all reasonable outcomes. It also states that it would not be appropriate for the regulator to undertake a financeability 'lookback' assessment for 2020 and 2021 in the course of the full review, given the level of support it has already provided to Dublin Airport.

8.8 IATA notes that it previously expressed a view that a decision on a full review should not be made until 2022, taking into consideration the traffic evolution. IATA also opposes any “lookback” to allow recovery of losses. It considers this inappropriate as the Commission has already determined that Dublin Airport’s financial viability is not under threat.

8.9 IATA states that the decision by the Commission to undertake a Full Interim Review from 2023 means that the existing regulatory period has been cut short by two years, which implies a significant transfer of risk from the airport to the consumer. It believes that any transfer of risk needs to be reflected in a lower cost of capital in the next regulatory period.

8.10 Aer Lingus similarly states that the actions taken by the Commission to date will reduce the risk faced by Dublin airport and that this should result in a lower cost of capital. It believes that the Commission must reject any claim from Dublin Airport that COVID-19 has made it a riskier business

8.11 IALPA supports the decision by the Commission to undertake that a full review of the 2019 Determination, given the impact of COVID-19.

8.12 IALPA notes it’s concern in relation to the service road which crosses Runway 16/34. It argues that there is no International or European Aviation legislation which permits a service road to cross an operational runway and that it is unclear if this crossing has been approved by the Irish Aviation Authority Safety Regulation Division (IAA SRD). It states that when the Northern Runway is operational, an underpass must be considered a regulatory and Safety requirement.

8.13 IALPA also notes its concerns in relation to two PACE projects that have received FCC “exempt development”, namely the “Critical Taxiway Review” and “South Apron Widening”. It states that it is important that the review of these projects by SRD be communicated to all stakeholders.

8.14 Liam O’Gradaigh proposes that the Commission consider the local communities around Dublin Airport. He suggests imposing a levy on each passenger in line with the polluter pays principle. The monies collected can be ring fenced for insulation schemes, voluntary purchase schemes, relocation schemes, health studies and health supports. The costs for mitigation are factored into the daa's costs and form part of the inputs to this determination. The scheme could be managed by the CAR or an independent body with no links to the airport or local communities.

8.15 Liam O’Gradaigh notes that in 2019 Dublin Airport handled 32.9m passengers, which exceeded the 32m passenger cap imposed by An Bord Pleanála. He further argues that for this reason, Dublin Airport should not be allowed to keep the passenger charges from the additional 0.9m passengers, and that this should be ring fenced for local communities.

8.16 Regarding Dublin Airport’s application for planning permission to facilitate a drop-off charge for passengers being dropped off at the airport, Liam O’Gradaigh notes that if it is successful, then these charges should be considered as part of the Commission’s decision on passenger charges. He argues that no service is being provided in return for this charge and that it is therefore a tax/levy being imposed on the travelling public.

CAR Response

8.17 In response to Dublin Airport, we note that the airport charges determined in the full review will be based on a thorough assessment of the building blocks and will be sufficient to enable Dublin Airports financial viability. We will consider new methods of evaluating the building blocks during the determination process. We will also examine proposed changes to the risk allocation mechanism, the service quality metrics and other aspects of the determination during the full review. Regarding Dublin Airport's request for a further RAB adjustment, this can be considered as art of the full review; we note that we have already committed to a RAB adjustment of approximately €150m in the form of suspending the clawback mechanism for 2020-2022. We similarly note the contrasting views of IATA and Aer Lingus regarding the appropriateness of such an adjustment.

8.18 Concerning the points made on the cost of capital, this will be reviewed in 2022 and a fair and appropriate rate will be determined for the next regulatory period. This review will consider all relevant information.

8.19 In response to Ryanair, we believe that a full review of the 2019 Determination is needed in 2022. Due to the impact of COVID-19 on Dublin Airport and the aviation industry the pre-existing business plans and investment programme no longer fit the current circumstances. We believe that a longer-term review is now possible as the landscape has changed significantly since we conducted the first interim review of the 2019 Determination in 2020; the economic and aviation recovery has begun, and there is now some alignment between different industry forecasts. However, a high degree of uncertainty is likely to remain; this will need to be considered as part of the full review.

8.20 We note Aer Lingus's concerns surrounding future uncertainty and the robustness of the Commission's regulatory model in the current circumstances. This will be considered in the issues paper where we will examine different approaches to determining the building blocks, including how to deal with uncertainty.

8.21 We note IALPA's support for the underpass beneath Runway 16/34. Dublin Airport is currently reviewing the CIP and this and other projects will be considered as part of that review.

8.22 In response to Liam O Gradaigh's passenger levy suggestion, we note that our role in this context is to set a price cap on the maximum level of airport charges. Our role does not encompass levying a fee as suggested. Regarding the point on passenger levels above 32m, this is a planning issue within the remit of planning authorities, rather than an issue for the Commission to address. On the final point, possible drop off charges will be relevant for the full review, if progressed by Dublin Airport. It would form part of our analysis of Dublin Airport's revised Capital Investment Plan, Commercial Revenue forecasts (as any income would fall within this Building Block), and potentially within our Opex analysis also (if any ongoing expenditure was required).