Re: Draft Decision on Summer 2023 Coordination Parameters at Dublin Airport (Commission Paper 4/2022)

Dear Sirs,

We refer to the Draft Decision on Summer 2023 Coordination Parameters at Dublin Airport (Commission Paper 4/2022) which was published on 7 September 2022. We note the deadline for responses to the consultation is 21 September 2022 at 5pm.

Given the short time period in which consultation on the draft Decision is to occur and the significance of the issues which fall to be considered, daa sought an extension of time to provide a response, which was not granted. Accordingly daa proposes to make certain high level comments relating to the draft Decision.

In particular, it is necessary for daa to address the obligations which arise from the operation of Planning Permission PL 06F.217429 (the "**NR Planning Permission**"), including Condition 5 thereof.

1. CAR's role in the process

daa acknowledges CAR's role as Competent Authority under Council Regulation 95/93 ("**the Slot Regulation**"). We also acknowledge the view of CAR that its mandate is to tend towards a maximalist approach to capacity.

Planning permission was granted for the North Runway subject to certain conditions. daa acknowledges that the terms of the NR Planning Permission, and in particular Condition 5, gives rise to difficult questions of interpretation (as reflected in the discussion in the draft Decision and the analysis of the the Aircraft Noise Competent Authority's (ANCA) noise consultants (Noise Consultants Limited), referred to therein).

As a public body vested with certain statutory powers, CAR is required to take decisions which are consistent with the terms and conditions of the NR Planning Permission. Any decision by CAR on the coordination parameters which are to be implemented during Summer 2023 should be consistent with an approporiate interpretation of the terms of the NR Planning Permission and Condition 5.

2. Engagement with the Coordination Committee including Dublin Airport

With reference to the description of the engagement with the Coordination Committee contained in the draft Decision, we note that at the Coordination Committee meeting of 26 August 2022, the Dublin Airport representative noted CAR's position with regard to the night period, and took this position away for daa to consider its view. This letter represents daa's position in that regard and daa does not endorse any approach which does not take appropriate account of Condition 5.

3. Interpretation and Application of Condition 5

daa notes the analysis of the terms of Condition 5 and the review of the relevant planning documentation which has been undertaken by CAR. In particular, daa acknowledges the view of CAR that Condition 5 does not apply for Summer 22 and Winter 22, as the first entire 92 day modelling period referenced in Condition 5 falls

within Summer 23. daa agrees that this is a reasonable interpretation of the requirements of Condition 5, while also acknowledging as previously canvassed, that there are alternative possible constructions of the Condition, given its ambiguity and complexity.

daa notes the analysis contained in the draft Decision, of the background to the grant of the NR Planning Permission and the inclusion of Condition 5, which reflects the intention of An Bord Pleanála to prevent additional night time noise arising when the North Runway came into operation, beyond that which prevailed on one runway.

However, while it is useful to seek to understand the intention of An Bord Pleanála insofar as that can be derived from the supporting documentation, it is necessary in the first instance to focus on the terms used in the Condition itself. In this regard we note that the draft Decision does not address the 92 day modelling period in Summer 23.

4. Potential Requirement for Notice under 598/14/EC or 2002/30/EC

daa notes the suggestion that Condition 5 may be considered to be an Operating Restriction within the meaning of Regulation 598/14/EC or Directive 2002/30/EC with the consequence that it may not be relied upon absent compliance with the relevant notification requirements.

The Aircraft Noise Regulation (Dublin Airport) Act, 2019 appoints ANCA as the competent authority for the purposes of Regulation 598/14. It may be appropriate for CAR to obtain ANCA's views on this issue and in this regard we draw attention to the view expressed by Noise Consultants Limited, advisors to ANCA, in the document entitled "Advice Report: Aspects of a Potential Noise Problem associated with Planning Application F20A/06, February 2021", as follows:

> *"Condition 3(d) and 5 are noise related operating restrictions that were already introduced before 13 June 2016, when Regulation (EU) 598/2014 entered into force (the 'Aircraft Noise Regulation')."*

Finally, we can confirm that we are not aware of any notice having been provided under Directive 2002/30/EC.

Separately, in our view, it is important for CAR to consider the implications for Slot Coordination were Condition 5 to be interpreted by a competent authority in an alternative manner to that which is taken by CAR. We await your Decision.

Yours faithfully,

Simon Fagan
Head of Planning & Regulation – Dublin Airport