Appendix 1

Ryanair submission on Draft Decision on an Interim Review of the 2019 Determination

(CP3/2022)

Dated, Friday 16th September 2022

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Submission on Draft Decision on an Interim Review of the 2019 Determination (CP3/2022)

I. Executive Summary

1. Ryanair's primary position is that it is premature of CAR to undertake a full 'building blocks' review at this time and there is no need to adjust the price caps for 2023 and 2024, as set in the 2019 Determination. Instead, a full building blocks review should be deferred until the 2025-2029 period.

2. This position was already made clear in Ryanair's response to the Issues Paper CP1/2022, and the arguments presented to CAR outlining why an interim review is premature remain true today. The ongoing uncertainties render any 'building blocks' based review likely to lead to inefficient outcomes, with an unfair transfer of risk from DAA to users at a time when the wider aviation sector is still subject to a high level of uncontrollable risk due to global political and economic events

3. It is premature to embark upon a full 'building blocks' review until the market has fully recovered from the impact of the Covid-19 pandemic. Whilst recovery is proceeding apace, full market recovery across all market segments at Dublin Airport is still a year or more away. Hence, there remain uncertainties that render judgements about the trajectory of several of the business blocks premature, not least the actual justification for much of the proposed capital expenditure within the period to 2026 as well as the trajectory for opex and commercial revenues. Given that CAR's decision to conduct a 'building blocks' review has come at the request of DAA, yet DAA have been unable to meet the timetable required for a meaningful consultation, it seems logical that the review should be deferred until the 2025-2029 period to give time for the current uncertainties to be resolved.

4. We disagree with CAR's statement at para. 4.5 of the Draft Decision that to retain the existing Determination would run contrary to CAR's objectives, particularly in the light of the proposed changes to these objectives under the Air Navigation and Transport Bill (ANTB), as discussed below.

5. In the previous two Interim Reviews, CAR has already transferred a considerable amount of DAA's pandemic related losses to users, stated at para. 3.20 of the Draft Decision to be in excess of the previously estimated value of €200-220 million. In 2020, CAR allowed DAA to earn €9.94 per passenger, well in excess of the permitted cap. In this context, it is unacceptable for CAR to place an undue further burden on users whilst the market recovery remains fragile, not least given the challenges of rising fuel costs and inflation driven by the Ukraine conflict. Increases in airport charges should not add to the burden unless they are fully justified, which in this case they are not for the reasons we go on to explain below.

6. We, nonetheless, welcome CAR's confirmation that it is not proceeding with DAA's proposed risk sharing approach and, in line with the principles set out in the Thessaloniki Forum paper 'Airport charges in times of crisis' of 27th January 2022, CAR will not transfer further amounts of DAA's pandemic related losses to users. It is clear that CAR has mechanisms for addressing exceptional risks, albeit we remain critical of the extent to which CAR's approach has greatly favoured the interests of DAA over that of airport users and passengers during a time of crisis for the aviation industry as a whole. Hence, we support CAR's decision not to introduce risk sharing mechanisms, as these would further favour DAA's interests over the interests of users.

7. Although strongly of the view that there should be no review, we do welcome CAR's clear signal that it will not allow users to be subject to the extortionate price increase proposed in DAA's Regulatory Proposition – a +82% increase by 2026 over the current 2022 price cap in real terms. However, we remain concerned that CAR's principal focus in the Draft Decision has remained on the financeability of an unreasonably large and unjustified

capital expenditure programme at Dublin Airport that is not required by current users and, in any event, is simply undeliverable within the timescale of this regulatory period.

8. Although the Base Price Cap proposed initially appears to represent a 9% increase for the period 2023-2026 over the average for the original Determination period 2020-2024 (in itself an unacceptable increase), the true like for like comparison is to the “without Reprofiling Triggers Cap” 2019 price cap. These reprofiling triggers added €1.33 to the price cap for 2024, meaning that the real increase in the price proposed is of the order of 20%. This is wholly unacceptable in any terms in the current circumstances and compounds the detrimental effects on users of CAR’s two previous Interim Reviews, contrary to CAR’s Statutory Objectives (under the Aviation Regulation Act, 2001 (the Act) or the revised objectives under the ANTB). When compounded by the anticipated high levels of inflation in the short term, the effective increase in prices will be substantial at a time when airlines cannot simply pass the increased costs on in full to passengers without adversely impacting on demand, leading to reductions in services at Dublin Airport rather than the desired reinstatement of Ireland’s international connectivity.

9. The current economic circumstances underline why prudence is required in terms of the individual building blocks. In the circumstances of high inflation, the application of an annual CPI adjustment will result in a large increase in charges even if the price cap remains unaltered. CAR should seriously consider the appropriateness of continuing to apply a CPI uplift to the cap in the current circumstances given the likelihood that the consequent very high increases in airport charges would substantially impact growth, further exacerbating the impact of premature capital investment and other inefficient expenditure. At the very least, the risk of large inflationary increases highlights the importance of taking a very cautious approach to setting the individual building blocks so as not to fuel further excessive increases in charges. In the current circumstances, where inflation is being largely driven by energy cost increases, it would not be reasonable to duplicate the impact this is already having on consumers through fuel prices directly. We would urge CAR to take this risk of double counting into account when considering the individual building blocks and also to consider a CPI- approach to the determination to mitigate the impact of this double counting on users and to incentivise a prudent approach to costs during a period of high inflation.

10. In putting forward a price cap predicated on delivering an unreasonably large capital programme (€2.9 billion overall notwithstanding the triggers), CAR is placing the interests of future users ahead of those of current (within period) users. This is unjust, unwarranted and not consistent with good regulatory practice. The Thessaloniki Forum, of which CAR is a leading member, made clear at para. 4.20 of its paper of 27th January 2022 *‘Airport Charges in times of crisis’* that:

    “If charges increase too much, the restoration of traffic will slow down, which in turn may further increase charges………. In other words, large increases in charges should be avoided where possible in order to not damage the restoration of passenger traffic. The ISA, for its part, should encourage that changes in the level of airport charges are made in agreement between the airport managing body and the airport users.”

11. A core principle of the recommendations of the Thessaloniki Forum (para. 4.25) was that: *“Therefore, each airport should be able to rework its investment-plan. Each investment project should be reviewed in accordance with the airports’ specific situation as well as the construction phase. Investments that are not necessary should be postponed.”* Regrettably, there is little evidence DAA even attempted to conduct such a review. On the contrary, DAA have proposed even greater levels of capital expenditure over a 4-year period than it previously proposed for the original 5-year determination period prior to the pandemic. Rather than seek to ensure that only those investments that are strictly necessary <u>now</u> are allowed and taken forward into the RAB, CAR has allowed the vast majority of the programme, with a consequential impact on inflating the charges to users, particularly if the triggers are implemented. This is simply unacceptable and contrary to the sound regulatory principles to which CAR has signed up at the Thessaloniki Forum.

12. This response should be read alongside our response to CP1/22 as many of the points raised therein regarding CAR's proposed approach remain valid in relation to the Draft Decision.

II. Regulatory and Policy Considerations

13. We note that CAR continues to expect that its Decision will be taken after the ANTB passes into law. As noted above, given that CAR has signalled that it would not be possible to extend the regulatory period if the ANTB is not enacted in time, this reinforces Ryanair's view that it would be strongly preferable not to amend the Determination in force for 2023 and 2024 at this time. To that end, we consider that Option 4) at para 5.4 should be adopted, regardless of whether the ANTB is enacted in time, but with no change to the existing Determination for 2023 and 2024 and a new review commenced in time to set a new price cap from 2025.

14. Options 1) – 3) at para 5.4 of the Draft Determination are undesirable for a number of reasons. We do not understand the concept of *"intended decisions"* in Option 1) that would be taken in 2022 to be followed by a *"limited in scope"* Interim Review to simply *"give legal effect"* to the *"intended decisions"*. *"Intended decisions"* have no basis under the Act or ANTB, and Interim Reviews can only take place under section 32(14)(a) of the Act where there are *"substantial grounds"* for reviewing a Determination (not an *"intended decision"*). It would also not be good regulatory practice to take an intended decision in 2022 regarding the 2025-26 price cap and then conduct a later review that does not take account of new developments since the intended decision and simply *"gives effect"* to the previous *"intended decision"*. Option 2) appears to contemplate the *"intended decision" / "intended regulatory settlement"* concept also, but at least contemplates a broader interim review extending the period by two years and encompassing new inputs from stakeholders. Regarding Option 3), our view remains that retrospective adjustments to a determination are not permitted under the Act / ANTB notwithstanding the previous decision by the Appeals Panel. More broadly, we do not think it would be good regulatory practice for CAR to repeat this retrospective adjustment task, which was commonly understood as a Covid-19-related exceptional circumstance in 2020.

15. If the ANTB is enacted, as we noted in our response to CP1/22, this would amend CAR's existing Statutory Objectives under section 33 of the Act. In previous Determinations, CAR has been required to balance three Statutory Objectives, including *"to enable daa to operate and develop Dublin Airport in a sustainable and financially viable manner"*. The revisions proposed in the ANTB will remove this Statutory Objective whilst promoting *"to protect and promote the reasonable interests of current and prospective users of Dublin Airport"* to the principal objective. Other objectives, including the requirements relating to the efficient and economic operation of the airport and the promotion of high-quality and cost-effective services are relegated to secondary / subsidiary objectives, which CAR is not obliged to deliver but must simply seek to deliver, but clearly not at the expense of its primary objective. This change should have profound implications for the balancing that CAR must carry out in reaching a Decision but this is not evident in CAR's reasoning within the Draft Decision.

16. We have concerns about how CAR has interpreted the change in its Statutory Objectives, in particular the interpretation that it places on promoting economic efficiency in the operation of Dublin Airport at para 5.9 of the Draft Decision. CAR appears to assume that airlines can fully recover from passengers the significant cost increases inherent in the Draft Decision. It is unclear how allowing cost increases due to excessive capex and opex equates to offering passengers *"increased value and choice"*.

17. The interpretation offered by CAR of what constitutes the reasonable interests of users seems rather to reinforce the idea that the monopoly airport can deliver services that users are not willing to pay for but still be rewarded with higher charges. This works to the detriment of users in a manner that simply would not be possible at an airport operating

competitively, which would only deliver services to a standard that it was confident that users' value and are willing to pay for. CAR's approach appears to be the antithesis of effective regulation and not consistent with the changes proposed under the ANTB, which explicitly seeks to elevate the primacy of user interests over other objectives.

18. Although CAR claims (at para 5.10 of the Draft Decision) to have engaged with current users to understand their requirements, we do not consider that this is fully reflected in the Draft Decision, particularly in relation to the proposed Capital Investment Programme (CIP). We consider that too much weight has been placed by CAR on the (speculative) interests of future users particularly in terms of the scale and timing of the proposed investment programme. This is addressed further later in this submission.

19. We do not agree with the interpretation placed by CAR on the new ANTB 'due regard' matters relating to securing increased competition at Dublin Airport in order to attract more routes and services from the airlines to improve Ireland's connectivity in accordance with the National Aviation Policy. Whilst having inadequate airport capacity would be a blockage to the achievement of these aims, having excess capacity and higher charges, as currently proposed in the Draft Decision, would result in the opposite effect as it would lead to the circumstance whereby initiating new services is made more risky for airlines, leading to less competition and consumer choice.

20. It is notable that the ANTB explicitly removes the objective *"to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner"*. Although CAR notes (para 5.12) of the Draft Determination that it would not be in the interests of users if there was a mismatch between the projects it allows within the period and DAA's ability to finance them, this presupposes that it has correctly identified the projects required and valued by users to be delivered within the timescale. Ultimately, the fundamental issue in terms of financeability is the overall scale of the capital programme and such concerns would be avoided if the CIP was appropriately sized to current demand and affordability.

21. Without prejudice to our overarching view that the proposed revision of the 2019 Determination is not warranted at this time, we now address the component Building Blocks individually, starting with the area of greatest concern, namely DAA's proposed capital investment programme, which is of a total inappropriate and unjustified scale.

III. Capex

22. CAR's proposal to reward DAA with a €2.9bn capital expenditure allowance is excessive, does not have support from airport users, and is a blind acceptance of DAA's proposal without adequate scrutiny.

23. There is no business justification for the scale of capital expenditure proposed by DAA, as shown below, and, in large part, accepted by CAR as allowable within the proposed 4 year regulatory period. This capex adds approximately €2.75 to the price cap and simply carries forward and increases the excessive capital expenditure from the last review with no sign of prudence in the current economic circumstances, as required by the principles agreed by the Thessaloniki Forum. The CIP is excessive and must be pared back to include only projects that are strictly necessary to meet short term demand otherwise the burden of meeting the needs of unknown future users will be passed to current users at a time when they can least afford to pay, yet this is not what CAR has done. We have highlighted the specific price cap effect of Capacity and Sustainability capex in the illustrative table below, as expenditure in these categories is simply not required at the current time and has not been robustly justified at the current time for the reasons identified below.

Table 1: Capex by category and price cap effects

Appendix Category	Category	Airport 2022 cost estimate (€m)	Average Price Cap Impact
A,B,E,F & G	"Core" 2020-2024	518.96	
A,B,E,F & G	"Core" 2025-2026	220.08	
C	Capacity	1411.97	€0.61 Triggered basis – €0.97
D	Commercial	190.46	
H	Sustainability	394.58	€0.51
	TOTAL	**2736.05**	
	T1 & T2 HBS	231.0	
	TOTAL	**2967.05**	
Pace	Apron 5H	105.99	
	TOTAL	**3073.04**	

Source: Steer Report - Dublin Airport CIP2020+ Efficiency Assessment Review, with additional HBS costs noted

24. At the outset, the review undertaken by Steer, on which CAR's capex allowance is based, is wholly inadequate and fundamentally flawed as it only addresses the costs of projects as set out by DAA and not the justification either for the projects themselves, their scope or the scale of works proposed. Without such a root and branch review of whether the projects are actually needed to meet the reasonable requirements of users, the report is null and void. We comment further on the inadequacies of the Steer review below.

25. Whilst we welcome CAR's decision to replace the historical flawed approach to 'trigger projects', whereby the costs were allowed to enter the RAB and subsequently removed if the trigger dates were not met, and replace this by a number of positive triggers whereby DAA is only allowed to recover the costs of a number of projects if work actually commences in line with its plan, this does not go far enough to address the excess expenditure proposed. Hence, it is misleading for CAR to claim, at para. 11.1 of the Draft Decision that the capital allowances are lower on average than in the original Determination. This is only so if the triggers are not reached and by comparison to the fully triggered original programme.

26. DAA has sought CAR's approval for a capital programme for the period 2023-2026 of the same scale as originally approved by CAR for the period 2020-2024, which was itself already excessive and pared down by CAR. This represents an increase of 21% per annum in the amount of capital expenditure that DAA is seeking. In any circumstances, this is wholly unacceptable and inappropriate as DAA has made no real attempt to consider the current climate of recovery and the affordability to users of its investment aspirations. CAR's approval of the majority of this programme runs contrary to the clear recommendation of the Thessaloniki Forum that, in the current time of crisis in the industry, investments should be postponed wherever possible and that, at an airport wishing to push forward with investments, these should be justified in close consultation with users (para. 4.25 of its paper of 27th January 2022 *'Airport Charges in times of crisis'*). We address our concerns about the consultation process further below.

27. Furthermore, given that the annual expenditure proposed, as in the original 2019 Determination, exceeds the level of expenditure that DAA has ever delivered on an annual basis, there must be doubts about the ability or prudence of seeking to deliver this quantum of works whilst ensuring that the airport can continue to operate without undue disruption. It must be remembered that the previous peak of spending on T2 was undertaken within a self-contained site with manageable interfaces to the operational airport and at a time when the airport handled fewer passengers and aircraft. What is now proposed is an even greater quantum of work on a range of projects that will give rise to substantial detriment to operational conditions for existing users. This alone suggests

grounds for prudence in resequencing the work over a longer timeframe to minimise operational disruption.

28. CAR itself seems to have doubts about the realism of DAA delivering the entirety of the capital programme, noting at para. 11.53 of the Draft Decision that the programme is ambitious in terms of delivery, which makes it even more perverse and unreasonable to allow the majority of DAA's programme into the Determination, notwithstanding the proposal that some of the programme is subject to triggers. CAR seems willing to ignore the need for prudence by DAA and simply sees allowing the full programme now, at the cost of users, as some buffer against forward inflationary pressures.

29. It is notable that CAR has only disallowed one of DAA's proposed projects relating to the investment necessary to commence charging for pick-up and drop-off. This is not credible. It seems that CAR's sole motivation was the adverse public reaction to the project. If a regulator simply allows all projects proposed by an airport without rigorous review of the need and benefits of the investment, it does beg the question as to the purpose of regulation. CAR must use sound economic consideration of whether each proposed investment is necessary and economically efficient when deciding on capex.

i) <u>Failure of Consultation</u>

30. CAR, throughout the Draft Decision appears to take comfort from DAA's consultation on the CIP and claims, at para 11.44, that it has adjusted the programme in the light of user views. This is simply not true. Given the total inadequacy of DAA's consultation process on the original CIP in 2019, CAR is simply wrong when it states, at para. 5.22, that the CIP was originally formulated through consultation with users. DAA simply presented its proposals to users, who had had no prior input specifying the need for any of the projects. Then, DAA completely failed to take any account of the views of key users as a whole, either in 2019 or in the most recent consultation. There is no evidence that the CIP was modified at all in response to user views, which makes a mockery of the consultation process. Throughout the more recent CIP consultation, DAA have missed its own deadlines and those set by CAR for consultation, have been late in presenting information to users and then gave users no opportunity to meaningfully engage in specifying the requirements for any of the projects. The inadequate information provided on the underlying capex projects which make up the CIP brings into question whether DAA are fulfilling their transparency objectives, as per the Airport Charges Directive.

31. CAR set out clearly in its Issues Paper (CP1/2022) its expectations as to consultation with users. In particular, it set out (in Chart 9.2) a requirement for consultation with users on:
    - the need/merit of the project;
    - details on delivery of proposed project; and,
    - timelines for the delivery of the proposed project.

32. CAR clarified that proposed projects to deliver additional capacity must be underpinned by a capacity assessment showing that use of existing infrastructure is being maximised. CAR made clear that detailed business cases and cost information must be provided to users, with costs worked up comprehensively to allow an assessment by users of the costs and benefits to them of projects, including, where appropriate, the presentation of the costs and benefits of a number of options for addressing a need.

33. The CIP document presented by DAA for consultation did not comply with the requirements for consultation as set out clearly by CAR and so was wholly inadequate. Users were effectively presented with projects as *faits accomplis* and then given an inadequate amount of time to consider the projects, any information provided about scope and costs, and come to a decision on whether to support or oppose. Even on projects where we may, in principle, support the need for some investment, DAA's plans and information are too opaque as to the relationship between scope and costs. Although Steer has reviewed the costs against the scope of works set out, this does not address issues of over-scoping. We comment further on the Steer review below.

34. The whole consultation process was flawed and inadequate for this reason alone. Users were simply not able to judge whether any of the proposed projects were the most efficient and effective way of meeting a need or even if a project was required in the first place. Nor did the consultation presentations by DAA, held in late March, fill in the gaps with the required and relevant information. Users were left simply unable to assess the costs and benefits to them of most of the projects. Given CAR's clear expectations as to the information required for adequate consultation on the capital programme, Ryanair, and other users, would reasonably have expected clear and cogent business case explanations for each project (including consideration of the timing of the need for the project in the current Covid-19 recovery climate) along with the alternatives considered and individual justifications for why proceeding with the projects now is in the interests of users rather than deferral to the next regulatory period. No such information was presented and, hence, CAR can have no certainty that the projects within the CIP represent the most efficient means of addressing any need. The final CIP does not provide full and proper explanation as to why user views on individual projects were not taken into account, contrary to what is stated at para. 11.44 of the Draft Decision.

35. It is notable that in the last Interim Review, CAR set out a clear principle that projects of over €4m should not be taken forward unless there was clear support from users representing more than 50% of passengers. As we made clear in our response to CP1/2022, there can be no reason why this requirement for clear support from users representing the majority of passengers using the airport should not be carried forward to the substantive CIP for the 2023-2026 period and beyond. If the need for a project to be supported by users representing the majority of passengers was right in relation to even relatively small projects during the initial period of recovery from the pandemic, it is even more appropriate for the very large projects proposed in what remains a period of recovery through the forthcoming regulatory period. To the extent that CAR seeks to rely on the views of users expressed at the time of the original Determination, it is important to highlight that several of the users that argued for 'gold plated' schemes, which lead to a higher price cap, were airlines such as Hainan Airlines or Cathay Pacific, with small operations and which have not yet returned to serve Dublin. This highlights why it is important that greater weight is given to the views of larger users and those with a stable base at the airport as, ultimately, these are the users who will pay. Hence, the importance of making sure that the principle of support from users representing more than 50% of passengers is carried adopted in this Decision in terms of deciding whether to allow or disallow projects.

36. Examination of DAA's 'Formal Consultation Summary' in its CIP2020 Review makes clear that it consulted with a range of stakeholders, many of which do not count as 'users' as defined under the Airport Charges Directive as:

" 'airport user' means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air to or from the airport concerned;"

37. DAA's list of consultees, who are given equal weight in their reporting of comments at Table 5.3 of the CIP 2020 Review, included home-based carriers, airlines, fuellers, ground handlers, cargo, hangar operators, general aviation and trade organisations and other entities whose names have been redacted. It is recorded that comments were received from 13 organisations but it is not possible to identify which comments validly came from airport users and which were from other organisations, which must be afforded significantly less or no weight in considering whether the consultation complied with CAR's requirements. It is important to remember that this is a determination on airport charges, under the principles of the Airport Charges Directive and the definition of a user, as given above, is paramount. DAA and CAR are in breach of the requirements of the regulation in taking into account the views of organisations that are not users of the airport as so defined. To the extent that projects have been allowed that relate those commercial tenants at the airport – maintenance providers, transit shed operators, retail partners etc. – these must be ignored in considering whether such projects meet the needs of users.

38. Despite this, CAR seems to rely on this wider consultation feedback as the basis for its decisions as to which projects should be allowed, repeatedly using the phrase *"support from some airport users"* throughout Appendix 2 of the Draft Decision as a basis for justifying retention of the project within the capital programme. This suggests that CAR has adopted a very low threshold for inclusion of projects by taking into account comments beyond those from airport users, as defined, and failed to apply the reasonable threshold for support from users accounting for at least 50% of passengers, which it previously defined as relevant, especially during the period of recovery from Covid-19. CAR needs to make clear which projects were actually supported by users, as defined in the Airport Charges Directive, and omit projects that did not expressly receive support from users representing a majority of passengers using the Airport.

39. It is clear from the Draft Decision that airlines representing the majority of passengers using Dublin Airport (Ryanair and Aer Lingus) have expressed concerns about the totality of the capital programme. This alone should give CAR reason to pare back the programme considerably. Although CAR, at para 11.45, comments that individual users were generally supportive of projects from which they would benefit, this is not so. For example we opposed several projects related to T1 for which we would supposedly have been the main beneficiary. In any event, this does not legitimise the inclusion of all projects from which only some users (or non-users, under the Airport Charges Directive definition) would benefit given the general concern regarding scope of the whole programme. Unless CAR is clear that users representing a majority of passengers will benefit from the expenditure in aggregate then the cost should be disallowed. Projects which benefit only a single or limited number of users not representative of the bulk of passengers should be funded by them not the generality of airport users.

40. Expanding the scope of the StageGate process, as suggested by CAR at para. 11.89 of the Draft Decision, is not an adequate response to the concerns expressed as it deals only with the efficient cost of the projects as allowed rather than whether there is a need for the project at all in the current circumstances or whether it has been appropriately scoped.

41. CAR's approach to the CIP is totally different from that of the UK CAA in its recent proposals for the H7 price cap at Heathrow. In Section 2 of its Final Proposals, the CAA makes clear at para. 6.50 that it undertook a Structured Needs Assessment, including consideration of the strategic business case for each project. The CAA went through the programme project by project or category and determined whether the project met this test, considering user interests in aggregate alongside considerations of capex cost efficiency. On this basis, the CAA disallowed a proportion of capex that did not meet the tests in full. CAR has made no equivalent analysis, relying instead on DAA's flawed consultation exercise and the fact that some projects might benefit a single user or some unspecified potential future users. This is not good enough.

ii) ***<u>Opening RAB and Prefunding</u>***

42. Although CAR has stripped out from the opening RAB the unspent capex from 2020-2022, DAA has been allowed to retain the return of and return on the originally proposed capex for 2021 and 2022. Regardless of the amounts retained, this still leaves the issue of users having pay again for projects that were not commenced in 2021/2022, but are now assumed to commence in the period 2023 onwards. This is illogical as it means that not only have users being paying prematurely for facilities, they are now being asked to pay twice. A firm behaving competitively would simply not be able to pass on costs to users or double charge users in this way. CAR's approach in this regard is inconsistent with the decision to make a number of projects subject to triggers going forward such that users are not required to pay until projects are delivered.

43. Where projects have commenced, we understand that CAR proposes to carry forward existing allowances and to deal with any discrepancies at the start of the next regulatory

period. We broadly agree with this approach but it is still important that the reasons for any increased costs of such projects are rigorously scrutinised to ensure that they are not a direct consequence of DAA's inefficiency.

iii) <u>Prematurity</u>

44. In the light of the changes to CAR's objectives under the ANTB, development of capacity should not be seen as an end in itself but must be demonstrated to be in the interests of current and future users. It is not sufficient for a project to meet the needs of only a minority of users, particularly if they are not strictly users as defined in the Airport Charges Directive, or represent only a very small part of the overall passenger market, as recurrently stated by CAR in considering individual projects, or future users when it is clearly not required to meet the needs of current users. CAR is wrong to place the interests of future users over the key requirement of current users to ensure that airport costs are kept as low as reasonably possible so as to maintain the stimulus to recover connectivity lost through the pandemic to the ultimate benefit of passengers and businesses throughout Ireland. Fundamentally, we do not agree with CAR that the perceived risk of underinvestment has greater detrimental effects on users than the risk of over or premature investment leading to higher charges in the short term. Even if the capital programme was halved for the next four years, the rate of spending would hardly constitute underinvestment.

45. At para. 9.13 of the CP1/22 Issues Paper, CAR made clear that users should be protected from over provision of airport capacity during the pandemic due to the potential upward pressure on airport charges if projects progressed prematurely and inflated the RAB. This consideration should apply at all times and remains particularly relevant during the current ongoing period of recovery. Despite this clear statement earlier this year, allowing capital investment prematurely is precisely what CAR is now proposing to do in accepting the largest ever capex programme at Dublin Airport, with higher levels of spend than DAA has ever achieved, even during the building of T2, as acknowledged by CAR at para. 12.12 and illustrated in Chart 12.1 of the Draft Decision.

46. At para. 11.34, CAR appears to hide behind the assessment made in 2019 of the justification for individual capital projects. We did not agree with that assessment at the time and, given the need for prudence in the current economic and epidemiological climate, CAR should have done more than simply consider minor adjustments to timing as it does in Appendix 2. We note that the only project actually disallowed from DAA's proposals is the pick up/drop off project because of uncertainty, yet considerable uncertainty infects a high proportion of the rest of the programme over and above those projects to which triggers have been applied.

47. A key issue relates to the timing of the need for many of the capacity projects contained within the CIP. Whereas the requirement for projects delivering capacity for 40 mppa was expected by 2026 in the 2019 Determination, this requirement has now slipped to 2031, based on extrapolation of the latest demand forecast. Hence, even if CAR's assessment as to need in the original Determination was correct, the requirement to deliver these projects has slipped by 5 years. In the light of the latest forecasts, taking the original list of projects and slipping it two years within the revised Determination is simply not reflective of the real need for the enhancement of capacity within the timeframe to 2026. As a result, users are being asked to pay prematurely for projects for which there is not yet a need. CAR itself acknowledges that most of the trigger projects will not deliver enhanced capacity until 2029, further highlighting why any costs associated with these projects should not come into the price cap until the next regulatory period. The prematurity of these projects in large part drives any financeability concerns further increasing costs to current users for projects that are solely there to further the interests of future users, as CAR's project by project analysis in Appendix 2 repeatedly confirms.

48. The above analysis would be true even if the 2019 programme was correctly calibrated to deliver the capacity as actually required for 40 mppa. Indeed, CAR (at para. 11.vis)

continues to rely on the capacity analysis undertaken in 2019 by Helios as justification for the inclusion of these projects. As we pointed out at the time, this analysis did not set out to address the pertinent question of whether such projects as proposed were required to enable the airport to handle more than 35 mppa but simply whether they provided capacity to enable 40 mppa or more to be handled at an acceptable level of service. What the analysis actually showed, as we made clear in the York Aviation paper *"Response to the Draft Determination of Airport Charges at Dublin Airport 2020-2024"* that we submitted as our regulatory submission in July 2019 (paras. 6.6-6.9), was that many of the projects were overscoped and provided substantial excess capacity even at 40 mppa. Hence, to the extent that it continues to rely on this analysis, CAR needs to revisit the extent to which projects are premature or overscoped to meet the reasonable interests of users <u>both</u> current and future. Where projects deliver materially more capacity than required to enable 40 mppa to be handled at an acceptable level of service, the scope should be pared back.

49. DAA's own CIP document makes clear that many facilities will have excess capacity even over the medium to long term. This clearly represents premature investment. We would have expected to see more rigorous analysis of the alternatives to meet each of the defined capacity requirements to ensure that premature investment is not being brought forward ahead of need and that projects are appropriately scoped to deliver against the defined requirements. CAR should have demanded this and, to the extent that such justification has not been provided, projects should be rejected. Given that this was not within the brief provided to Steer, CAR needs to demonstrate how such an assessment has been undertaken.

50. In essence, as acknowledged at para. 12.2 of the Draft Decision, CAR has allowed DAA to prefund elements of its capital programme and transferred these costs to users. This would be unacceptable at any time and even more so during the recovery period from the effects of the pandemic. This is made clear at para. 4.24 of the Thessaloniki Forum Paper of 27th January 2022, which states clearly that:

    "Solving a cash flow shortage for the sole reason of financing future investments or assets under construction through increasing charges however would not be possible if an airport were to operate in a competitive market. The prefinancing of investments in a competitive market is the responsibility of shareholders. Therefore, according to fundamental static regulatory principles, charges should not be increased to facilitate prefinancing of investments. In a competitive market, undertakings are able to recoup their efficient investments, without prefinancing. According to regulatory economic principles an airport should be allowed to recoup these investments when in use and where possible according to their actual use."

51. CAR is in breach of the regulatory principles to which it has signed up as a member of the Thessaloniki Forum. Any prefunding of capital costs should be stripped out from the price cap and premature projects removed entirely from the requirement. We do not find CAR's argument at para. 11.92 convincing that DAA may not progress project such as the North and South Apron, that are wanted by users, if there is not some element of pre-funding because of financeability concerns. Such concerns only arise because of the overall excessive scale of capital programme proposed which, if pared back to reflect actual requirements over the period, would avoid any such concerns completely.

iv) <u>Ryanair's Views on Specific Projects</u>

52. Overall, including initial expenditure on the trigger projects, the capex entering the RAB is expected to be of the order of €1.8 billion in period in real terms (€2bn nominal), of which €1.563 billion would be allowed in full and not subject to any trigger mechanism. By any sensible analysis, this amount is excessive for a 4-year period and, especially, in the current circumstances.

53. Although CAR seeks to rely (para. 11.32) on a number of projects being cancelled as evidence that consideration had been given by DAA to the requirement for projects as part of the updating of the CIP, in practice these projects and their associated expenditure have not been cancelled and instead have simply been rolled into other projects resulting in no reduction, rather an increase, in the overall scale of the proposed CIP.

54. Our views on individual projects remains as submitted to DAA in response to its consultation in April 2022 and these views are largely unchanged from the detailed submission presented to CAR in response to the Draft Determination in 2019. Our views on individual projects are attached as Appendix A to this submission.

55. Ryanair (accounting for 49% of passengers at Dublin Airport) does not support a large number of projects, including projects from which it would nominally benefit, such as the T1 Immigration improvements (CIP.20.03.018) where DAA is proposing a complete reconfiguration in circumstances where there would be other cheaper solutions utilising spare space. In the circumstance of the imperative to ensure traffic recovery following Covid-19, it is vital that CAR does not allow projects to proceed unless there is a clear and compelling short term need and business case. The vague assertion that a project is in the interest of future users or that 'some users' supported the project is simply no justification for placing an undue burden of cost on the majority of current users.

West Apron Underpass

56. The most egregious of the projects is the West Apron Underpass (CIP.20.03.051B), which is also the most costly single project in the whole CIP, with a proposed allowance of €228.8 million. The fact that it has been made subject to the StageGate process only means the cost is subject to review, not the need or scope of the works. CAR itself acknowledges (para. 16.80) that the benefits to passenger airlines using the eastern campus will be limited and cites support only from those airlines using the West Apron regularly. Hence, this project does not meet CAR's own tests for the acceptability of the project as cargo operators are only a very small part of the airport's overall business and the extortionate costs for this project will be borne largely by passengers/airlines carrying little or no cargo.

57. Not only does CAR note the limited value of this project to the majority of airport users, for whom priority is on the North and South Apron developments, they state clearly that, at para 16.81, that *"there remains a risk of significant delay in delivering this project by 2026 as planned."* Despite this, CAR has made full allowance for this project so penalising the vast majority of users whereas projects actually required by users are subject to triggers. Our previous estimate was that this project alone would add €0.41 per passenger to the prices for the period 2023-2026 – a 5% increase on 2022 – yet not one passenger will benefit from the expenditure. As Ryanair has repeatedly made clear, we do not support this project on any terms, nor do we believe it is necessary (at any cost).

58. While the continued operation of Runway 16/34 is important for cross-wind/poor weather events, these events, while impactful, are relatively rare. For this reason, we support the retention of Runway 16/34 on a contingency basis and as a taxiway route to the North Runway, but the number of times in the year when it would be operational amounts to only a handful of occasions. It should be possible to allow Runway 16/34 to be closed when not in use such that a safe route can be implemented for the small number of road vehicles that need to transit between the east and west apron areas. Operational flexibility is the answer here rather than the construction of further expensive infrastructure.

59. In any event, without prejudice to our view that the project is simply not required, we note that DAA has now applied for planning permission for the tunnel and, hence, it is inconsistent not to place this project in the list of trigger projects given the potential for extended planning processes, which is a key criterion for whether a project should be triggered or not.

Other Cargo Related Facilities

60. Our remarks regarding funding facilities only required for cargo operations would apply equally to the new proposal to include the costs of replacement cargo facilities within the cost of Pier 5 (CIP.20.03.029) whereas previously the proposal was for such facilities to be funded by others. This is wholly unacceptable. We note that commercial revenues have actually been deducted in CAR's model related to the relocation of such facilities despite the costs for replacement facilities being included. This is unacceptable and penalises users by allowing the costs of replacement in circumstances where a reduction in revenue is assumed. This would appear to negate any effective business case for such developments.

Transfer Facilities

61. Another example of unnecessary developments are those aimed at the transfer passenger market, such as investment in the expansion of Pre-clearance facilities (CIP.20.03.030), enhanced facilities for transfer passengers (CIP.20.03.072), and T2 early bag transfer facilities (CIP.20.03.028). It is not clear that such projects remain warranted in the light of the development by Aer Lingus of direct transatlantic services from the UK. Around 1/3 of transfer passengers using Dublin in 2019 were transferring to transatlantic services to and from the UK and this number will inevitably reduce, meaning that enhanced transfer facilities are unlikely to be required in the near term. Furthermore, Dublin will shortly lose its unique advantage in having US pre-clearance facilities as this will shortly be available also at Brussels, further eroding the market for the Dublin facility, and other such facilities are in prospect in Europe. The business case for enhanced facilities is not proven, leaving aside the addition of another floor on the Pre-clearance building at an increase of over €30m. This cost increase cannot be justified and more detail is required of the specific forecasts of usage and the business case in terms of asserted additional commercial revenues.

Premium Services

62. There is no need for 'upgrading' premium services, lounges and platinum services (CIP.20.04.016/017) for the benefit of a small minority of passengers when the cost impact will affect all airport users, particularly where the upgrading of Pier 2 and Pier 3 has been deferred and will be of greater benefit to more passengers and users. The commercial revenue uplift does not justify a need for such expenditure to be borne by the generality of airport users.

63. The above are just some examples of projects that are not required yet other projects for which there is a need have been cancelled. Prime amongst these is the Airside GSE Charging Facilities project as these facilities are immediately needed (as opposed to many other projects within the CIP for which there are unclear timelines as to when they will be required). These facilities would support the sustainability objectives in terms of providing sufficient charging points for electric vehicles in a convenient location. This is yet another example of DAA ignoring user views.

Scope Creep

64. Over and above the projects that Ryanair does not support, of which some are highlighted above, a principal concern is with scope creep and unjustified cost increases.

- CIP.20.03.013 - Terminal 1 Departure Lounge (IDL) Reorientation and Rehabilitation - We note the following from the Steer report; *"In essence the scope is the same as the Previous CIP2020+, however the plans indicate that the main components have been moved around and functionalities more clearly defined."* This project has increased in cost by 66% and yet from the statement above it is not completely clear why. The proposed objectives of this project appear to almost solely be commercial in nature and do not in

fact appear to be an efficient investment in terms of retail revenue cited. It seems unlikely that this project is justified at the cost proposed.

- CIP.20.03.031 – South Apron Expansion (Remote Stands, Taxiway and Apron) – which has more than doubled in cost, despite the omission of the PBZ that had formed an integral part of the development originally. Such a cost increase is simply unjustified. It is inconceivable that the justifications given by DAA for the change in scope, namely diversion of Cuckoo Stream, attenuation control and storage, demolition of ancillary building and additional GSE parking could account for such a sizeable increase in cost.
- CIP.20.04.002 – Car Hire Consolidation Centre – We understand the scope of this project has increased with the number of spaces provided extended by around 33%. However, very little else of the scope appears to have changed. In itself, the proposal to increase spaces appears unusual as we are not aware of an increase in demand for car hire in the current climate. Overall project cost has risen by 142% and contingency has risen from 5% of the project total cost to 30%. DAA is now proposing a sum of €10.14m of contingency for a project that is already relatively simple in terms of design and construction and ought to be better detailed and understood.

Gold Plating

65. We are also concerned at the potential 'gold plating' of projects with the costs not challenged by Steer. One such example is the architectural treatment of the roof to conceal the plant on Pier 5 (CIP 20/03.029). Even where a project may be needed, it should not be automatic that the scope of works remains unchallenged in terms of the requirement and the overarching need for efficient investment.

Commercial Projects

66. A key principle is that commercial projects should have a demonstrable increase in commercial revenues. Such information was not provided by DAA in its consultation documents and CAR appears to have made only limited allowance for such incremental revenues.

67. We have commented on the commercial revenue uplifts earlier in this submission but it is notable that there are several commercial projects which do not flow through to beneficial revenue uplifts, such as Car Park Management System (CIP.20.04.001), Car Hire Consolidation Centre (CIP.20.04.002), Digital Advertising (CIP.20.04.004) where the revenue uplift is nullified by an assumed change in the contract terms, Commercial Property Refurbishment (CIP.20.04.025) Office Consolidation and Refurbishments (CIP.20.07.010) and OCTB Refurbishment (CIP.20.04.34) where a negative financial contribution is projected. This suggests strongly that there is no business case for these projects and they should be allowed as they are clearly not in the interests of users – increased cost with no revenue effect. In practice, we would expect to see a revenue uplift from those projects relating to car parking and advertising so we urge CAR to revisit the revenue assumptions in line with our comments above.

Sustainability Projects

68. At the outset, it is important to highlight that we support appropriate investment in sustainability projects (where required) but DAA has simply not demonstrated that these projects are those required or appropriate to deliver those aims. We note that DAA is already ranked as amongst the best performing of state-owned enterprises in terms of reaching energy and emissions reduction targets[1] and other national initiatives will deliver much of the additional reductions required to enable targets to be achieved.

69. Rather than actually requiring the investments proposed to enable it to meet its binding targets, DAA appears to have construed a number of projects as being under the Sustainability heading and added sustainability related costs to other projects for the sole

[1] https://psmr.seai.ie/Reports/PublicAnnualReportForPublic?customerId=196&query=undefined

purpose of inflating the overall size of the CIP. Before these projects or cost uplifts are allowed, DAA should be required to set out clearly the measurable benefit expected from each project or cost increase, including the potential reduction in opex costs related to energy saving initiatives. It is our understanding that, given initiatives being taken at a national level, the need for specific action by DAA to reach a 51% reduction target by 2030 would be minimal.

70. We remain of the view, as set out in our response to DAA's CIP consultation response, that the burden of paying for these projects should not fall on users as many of the projects would be eligible for State aid. There is no evidence in the Draft Decision that this possibility has been explored by DAA and / or CAR. As noted above, these projects alone add €0.51 to the price cap.

71. Included within the list of projects is investment by DAA in accommodating SAFs, yet such fuels can be blended with conventional aviation fuels and, indeed, that is how such fuels will be used. We cannot understand why there are costs to DAA arising from this. It is totally unclear why an airport should be investing in research into alternative fuels (CIP.20.09.002) as this is a matter for the industry more generally and, hence, is duplicative work that should not be remunerated through the price cap.

72. There are other projects which will generate revenue streams or cost savings but there does not appear to have been any allowance for this. Such projects would include:

- Airport charging (CIP.20.09.001) should have a revenue stream;
- FEGP (CIP.20.09.005) should have a revenue stream;
- Photovoltaics (CIP.20.09.006) should have either a revenue stream and/or a demonstrable reduction on energy costs but there is no evidence that this has been allowed for.

73. We urge CAR to re-examine the list of sustainability projects and ensure that users are not paying unnecessarily for the cost of initiatives that should be funded elsewhere or be self-funding.

Trigger Projects

74. We note that CAR has made a limited number of projects subject to triggers, i.e. the costs will not be allowed unless planning permission has been granted and work commenced. We note CAR's intention that 80% of the capital cost remuneration will apply from the point of planning permission and contracts being let with an additional 20% on operation.

75. We note that the list of trigger projects does include a number of projects which were previously included in the price cap but subject to negative triggers, including US Preclearance, Pier 1 related works to the North Apron, Pier 5 and related South Apron works. We welcome this change to ensure that users are not paying prematurely for these works.

76. However, we note that a number of projects that were previously the subject of triggers are now included within the core programme, namely works to the T1 Departure Lounge, Check-In and Security. It is not entirely clear why these projects should not remain subject to triggers, i.e., only be remunerated when there is certainty of delivery.

77. Given what was noted above regarding uncertainty in relation to the delivery of the West Apron Underpass, it is unclear why this has now been omitted from the list of trigger projects when previously it was subject to a trigger for delivery. We remain of the view that this project should be omitted entirely and its costs excluded. It should certainly not be allowed on a non-triggered basis. Hence, if the first option of exclusion is not taken by CAR, we consider that it should continue to be a trigger project.

78. We also consider that the sustainability projects should be made the subject of triggers as the need for these is unproven and the business case not justified. This accords with the view expressed by CAR at para. 11.79 that the environmental benefits of these projects and outputs have not yet crystallised so it would not be reasonable to include for these projects until the benefits and value are clear.

79. There could even be a case for all StageGate projects to be made subject to triggers in the light of the inherent project uncertainty as to scope and costs, not least, as CAR notes at para. 11.65, that the justification for increasing the number of StageGate projects is to reflect uncertainty around deliverability and project costs. These uncertainties would suggest strongly that there is a case for inclusion of such expenditure in the capital cost allowances to be subject to triggers.

v) <u>Efficient Costs</u>

80. At the outset, as pointed out above, the brief given to Steer was too narrow in considering only whether the costs were efficient against a defined scope rather than whether the projects are appropriately scoped to meet a defined need or even required at all. This is a significant failing and undermines the value of Steer's analysis.

81. In any event, Steer recommended only 2.8% in cost efficiency savings which appears a derisory amount within a capital programme of c.€2.9 billion in real terms. Previously, Steer had recommended substantial efficiency savings in the cost of the original CIP yet, this time, Steer appears simply to have accepted the costs put forward by DAA and even, in some cases, increased allowances. We question whether the brief given to Steer was robust in terms of challenging both the need for and cost of the proposed CIP and whether in aggregate this represented efficient investment. We highlight further below some specific cost anomalies relating to specific projects.

<u>StageGate</u>

82. We note the intention to make a greater number of projects subject to the StageGate process for projects to reflect deliverability and cost uncertainties. Ryanair supports this approach.

83. However, the overarching concern with the StageGate process is that it addresses only cost. In the light of the failures of DAA's consultation on the need for and scope of projects, the StageGate process should be enhanced to ensure that the need and business case for projects is properly interrogated having regard to the costs as they are refined. There may be projects that were acceptable at their original cost that cease to be justified as costs escalate. There are other projects where the consultation provided so little information that users simply could not form a view.

84. We fundamentally disagree with DAA's suggestion that the quantum of StageGate projects should be treated as a flexible allowance as this negates the whole purpose of consulting with users about the need for and value of specific projects.

85. We note the intention of CAR to issue a non-binding opinion in relation to StageGate projects, apparently to lessen the risk of a project being held up if there is a disagreement as to cost. We are unclear how this would work (and unclear as to its value and meaning) as it would suggest that CAR is setting itself up to overrule the views of users as to the need for a particular project as the costs are refined. This is not acceptable, particularly in the circumstances where CAR is not able to verify that the majority of users support individual projects given the inadequacies of DAA's initial consultation.

86. Whilst noting the intention for the StageGate process to revert to a quarterly process and for users to be informally consulted at the feasibility and detailed design phase, these changes would be welcomed but only if users could be satisfied that CAR's requirements for consultation and provision of full business case information will be met. Users must

retain the right to reject projects which cannot be demonstrated to be in the interests of the majority of users at the cost proposed.

Contingency

87. In 2019, we made clear that a CIP wide contingency of 21% for projects was excessive. In the latest regulatory proposition from DAA, the average project contingency percentage has risen from 21% in 2019 to 28% in 2022. We cannot understand how a more detailed understanding of project specifics can lead to this increase in contingency. We note that some projects have built-in contingency that represents up to 43% of the total project cost. This does not appear reasonable, yet Steer do not appear to have addressed this point.

88. Stripping out unnecessary and duplicative contingency costs would contribute substantially to ensuring that the totality of capex allowed for in the Decision is proportionate and reasonable.

Construction Cost Inflation

89. We note that CAR has confirmed that it has addressed the capital cost allowances in a manner which does not permit double counting of inflation. In principle, we support the decision to reconcile to outturn construction costs at the end of the period. However, the concern remains that the limited review of costs rather than scope still leaves open the potential for DAA to game the system with a view to justifying increased costs. The processes for reviewing this need to be made more robust and enhancements made to the StageGate process and user consultation on the core projects to mitigate these risks. In particular, we are concerned at Steer's use of the Society of Chartered Surveyors Ireland (SCSI) tender price indices as this is not an official recognised body and, in any event, the data is based on "sentiment" alone[2] rather than an objective analysis of the factors likely to lead to increases in cost. In particular, we note that these indices do not relate to specific airport type projects and so may not be directly applicable to the projects in question and effectively embed an assessment of risk into the cost estimation process which double counts the contingencies already included in DAA's cost estimates. Furthermore, slowing construction in China, which accounts for a substantial share of world demand for relevant commodities, and slowing construction output in Ireland (according to the CSO), should lead to lower not higher prices over the medium term. Use of sentiment based estimates drawing on an historic period is unlikely to be a robust indicator in the current economic circumstances.

90. The fact that we have not highlighted all projects with which we have a concern above should not be taken as Ryanair accepting the need for or cost of the projects. We have focussed on the capacity and commercial projects here but many of our concerns relate to the cost escalation in the core/maintenance allowances. Having reviewed the cost allowances in the light of our project by project comments set out in Appendix A and our comments above, we believe that the maximum sum that should be allowed for the period 2023-2026 should be no more than €800 million or around 50% of the amount that CAR proposes to allow excluding triggered amounts. We do not accept CAR's excuse, at para. 11.53, that delaying projects would simply offset in higher costs in future. Users have been consulted on the costs as they exist and, to the extent that any of the projects were supported, this was based on the cost as it existed This includes the exclusion of some projects such as the West Apron Underpass and reduced costs for other projects to reflect the stripping out of unnecessary contingency allowances. We would be happy to discuss our project by project concerns more fully with CAR.

91. In terms of the trigger projects, noted above, these too ought to be capable of being delivered at less than the proposed allowances (having regard to reduced inflation allowances), having regard to our comments above and in Appendix A. This would reduce the burden on current users from the initial Trigger A amounts.

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[2] https://scsi.ie/wp-content/uploads/2022/04/SCSI_TenderPriceIndex_2022_Apr.pdf

vi) Depreciation

92. We appreciate CAR's decision to treat depreciation on an annuity basis rather than normal basis, as this spreads cost evenly over the life of the asset but, as we noted in our response to CP1/22, unitisation would be more appropriate, as for T2, for those capital projects delivering long term capacity well above the capacity required during the period to 2026 (to the extent that CAR continues to allow such projects). In the light of our comments about financeability below, we do not consider that this provides a reason why a unitised approach should not be pursued as asserted by CAR at para. 11.110. Furthermore, we are concerned that CAR has allowed non-triggered capex to enter the RAB on an evenly spread basis over the 4-year regulatory period regardless of whether this the amounts will be spend evenly over the period. To the extent that this advances costs entering the RAB, it has the effect of penalising users in terms of increased charges in the early years. As capital expenditure is projected to be higher in later years (Chart 12.1), the timing over which the additional capex enters the RAB should reflect the expected expenditure profile.

93. Acceleration of depreciation to meet financial ratios is wholly unacceptable and contrary to Thessaloniki Forum principles. Rather than accelerating depreciation to meet financeability ratios, the Thessaloniki Forum suggested the exact opposite approach in its paper *'Airport Charges in times of crisis'* at para. 4.15 where it suggested that *"in exceptional situations like Covid-19 where the annual activity level has dropped dramatically, depreciation costs of these assets could be treated as a per unit cost instead of depreciating by for example a fixed amount independent of its actual use over a certain period of time. The allocation of the regulatory depreciation costs in the charges could also be postponed as a result of the fact that the actual use or degeneration of assets has been reduced during the crisis."* As we discuss below, we reject the need for any such financeability adjustments to depreciation as perverse in the current circumstances and not consistent with sound regulatory policy.

IV. Cost of Capital and Financeability

94. This section needs to be read in the context of the ANTB intention to remove the objective *"to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner"*, so relegating considerations of financeability to a subsidiary nature. We are unclear why, given the pending removal of the financial viability test by the legislator, CAR has taken upon itself to make arbitrary adjustments to the allowed depreciation simply in order to achieve unnecessary financial ratios for DAA. This is unacceptable.

95. These financeability adjustments in total add over €73 million over the period, which represents a transfer of value from current users to the DAA, as can be seen in Table 2 below.

Table 2: Transfer of Income from Passengers to DAA as a result of CAR's decision to apply financeability adjustments

	2023	2024	2025	2026	Total
Before Adjustment:					
Price Cap with expected triggers	€8.00	€8.38	€8.50	€9.29	
After CAR's adjustment:					
Price Cap with expected triggers	€8.68	€8.91	€9.02	€9.81	
Difference	€0.68	€0.53	€0.52	€0.52	
Passenger forecast	30.1	32.2	34.2	35.2	
Additional revenue for DAA	€20.5m	€17.1m	€17.8m	€18.3m	€ 73.6m

Source: Table 12.1, Draft Decision on Third Interim Review of the 2019 Determination, CAR

96. Note that we also object to CAR's other justifications for financeability adjustments. It is not for CAR to make financeability adjustments, paid for by current users, so that projects which CAR has *"assessed as being in their [future users'] interests"* can proceed. This is a breach of the Airport Charges Directive, which says investments decisions are between the airport and airport users. It is not for the ISA to separately determine that a project is acceptable as it might meet the need of some unnamed future users. This justification is wrong and we reject it.

97. Similarly, we reject the narrative that there must be financeability adjustments due to the "lumpy" nature of airport investments, as outlined in para. 12.13. The large capex during 2007-2009 was preceded by three years with annual capex of less than €30m. By contrast, the projected record-high capex in real terms from 2023-2026 will have been preceded by average annual capex of well over €100m, even reaching over €250m in 2020. CAR has drawn the wrong conclusion from DAA's capex over the past 20 years – the investment peak is behind us and a period of reduced capex now must begin while traffic recovers and grows into existing capacity.

98. Although CAR addresses the cost of capital and financeability separately, we address them together, as there are linkages.

i) ***Cost of Capital***

99. Overall, we welcome Swiss Economics' recommendation to consider long term cost of debt and adjustments to reflect lower cost of debt achieved in DAA's refinancing/borrowing since the 2019 Determination. However, we recommend a number of further adjustments to ensure that the cost of capital is reflective of DAA's true market position, not least as CAR acknowledges (para. 10.72) that its actions in the past two Interim Reviews have, to a large extent, cushioned DAA from at least some of the effects of the pandemic. Whilst some of these changes may appear small, their impact is substantial in the light of a proposed €2bn addition to the RAB.

Gearing

100. Our stance again on gearing remains the same as before, where we believe that the gearing assumption should be higher than 50%. As we noted in our response to CP1/22, the significant amounts of debt already raised by Dublin Airport, in the context where there has been no injection of equity from the shareholder, has clearly altered the capital structure to a more debt heavy structure. Hence, this means that a blanket 50:50 assumption as to gearing may no longer be realistic, accepting that excessive gearing can lead to a higher cost of debt. However, the current 50:50 assumption leads to users unreasonably bearing the higher costs associated with equity returns which is unfair and unreasonable. However, 50:50 no longer seems a prudent gearing assumption.

101. Given the trend for the cost of debt to be lower in recent times, it has been a common practice for many firms to increase the amount of debt financing in comparison to equity. This is because the fixed interest and principal payback to lenders has, in recent years, been far less than the expected returns to equity holders in the form of dividend and capital appreciation. This makes debt a far more attractive source of capital, both from the debt holders' point of view (i.e. lower cash outflows) and from the shareholders' point of view (increased output and sales through increased capacity funded by the debt, leading to a bigger pool of accessible cash for dividend distribution). It is, therefore, reasonable to increase the gearing to above 50% to reflect the extent to which borrowing has already occurred, so reducing the contribution of equity finance.

102. We note that Swiss Economics did consider this but recommended no change, justifying this on the basis that the impact of increasing the gearing makes little difference to the cost of capital and in fact, would marginally raise the figure. However, this is because Swiss Economics have estimated a significantly higher equity beta of 1.05, which increases the cost of equity, leading to an overinflated cost of capital overriding any impact

of a change in the assumed gearing. As we go onto to set out, with a more appropriate beta, we believe that there would be a considerable difference in the cost of capital as a result of increasing the gearing assumption.

Risk-Free Rate (RFR)

103. We note that Swiss Economics has proposed changes to the RFR to reflect that the European and Irish Government bond yields have significantly dropped since 2019. This change is robust and a proper reflection of market conditions but the estimated range for the RFR is likely to have been overstated due to the use of German inflation rates to discount the nominal yields for Irish bonds to real terms as Irish inflation has been higher. It is important to continue to use a backward looking average, as well as ensuring robust inflation measurements, to reflect negative real rates even with higher nominal yields.

Beta

104. In the first instance, we do not understand how CAR can consider it appropriate to adopt an equity beta of 1.05 for Dublin Airport that is 5% higher than that for the Irish economy as a whole at 1 (para.10.71 of the Draft Determination) and higher than the ceiling of 1 recommended for state owned or regulated airports as recommended by the Thessaloniki Forum. We will now outline evidence below on why CAR need to amend the chosen beta value.

- <u>National vs European Index</u>

105. We noted from the documents supporting the original Determination that Swiss Economics analysis confirmed that using a European Index (STOXX Europe 600) as a basis for determining the value beta tended to overstate the beta by 10% compared to using the appropriate national index. We continue to believe that this is not the correct approach, a point we made in 2019, and that this difference is not *"negligible"* as Swiss Economics sought to claim. Swiss Economics have continued to use the same flawed approach, leading to an overstatement of the beta value, which should be adjusted downwards accordingly.

- <u>Post Pandemic Evidence</u>

106. Furthermore, Swiss Economics have assumed calendar year 2021 to be the post pandemic period (as part of non-pandemic time period analysis), despite the fact that the year 2021 still had a lot of uncertainty. The air travel market has still not fully recovered, as CAR accepts in terms of the expected recovery at Dublin Airport in 2024/5. Hence, the inclusion by Swiss Economics of data related to 2021 leads to greater uncertainty in terms of stock volatility, leading to an overstated beta and should be excluded like 2020, given markets had not priced in all Covid-19 effects by 2021, as evidenced by the spikes in market volatility in April 2021 and November 2021, times at which new variants had begun to spread (Delta and Omicron respectively). Airport and travel stocks were disproportionally affected by this Covid-19 volatility, which is not persisting in 2023-2026, as evidenced by the fall of betas for airports this year. We, therefore, believe that data from 2021 cannot be treated as a post-pandemic period and should not be included in the beta estimate.

- <u>Comparator Airport Betas</u>

107. Swiss Economics have also continued to follow the same methodology as previously to derive comparative airport betas. As we have consistently pointed out some of the airport comparators used are not relevant to Dublin Airport and this is even more so when pandemic related data for 2021 is used. For example, Australia finally opened its borders to international travel in July 2022 and New Zealand in August 2022, which renders the inclusion of Auckland and Sydney Airports completely unreliable in this analysis not least

as these airports account for 20% of the beta weight. The calculation should be based solely on comparator European airports.

108. It is also important to note that many of the other airports in the sample are not state-owned and/or have nearby competitors which will increase the perceived risk and the value of beta. This needs to be taken into account in considering the appropriate beta for a state-owned monopoly airport such as Dublin.

- Alternative Beta Estimate

109. Using the same data, excluding Auckland and Sydney Airports, we estimate the new beta to range between 0.46 and 0.57, with a midpoint estimate of 0.51, which yields an equity beta of 0.97, still greater than the equity beta of 0.94 used in the 2019 Determination but substantially lower than that proposed by Swiss Economics of 1.05.

110. Our estimate of a lower beta would be entirely consistent with the Thessaloniki Forum 2016 paper on the Weighted Average Cost of Capital, which explained that the risk to regulated airports, particularly those that are state owned, should be lower than the market as a whole, with a beta parameter less than 1:

*"As a consequence, in normal economic conditions, the **levered** beta of airport managing bodies which are regulated or state-owned should generally be low. As a general rule, when dealing with a regulated airport managing body, the risk should be lower than the market (value of beta parameter lower than 1)."*

111. On this basis, it is clear that the equity beta recommended by Swiss Economics in unreasonably high and that our estimate of 0.97 is more appropriate for Dublin Airport at the current time.

Cost of New Debt

112. We welcome the changes made to CAR's assumptions regarding the cost of embedded debt but do not agree with the estimates made for the cost of new debt. In particular, whilst DAA has extended the period for bond maturity during the pandemic, it has done so to avail of the lower cost of debt and to manage repayment cycles during the pandemic recovery phase. This does not mean that new debt will necessarily always be raised over a longer time period. We do not accept the change in bond maturity period proposed by Swiss Economics, compared to the assumptions used in the 2019 Determination, is robust, as DAA will necessarily seek to strike a balance between the best rate achievable (which is lower for shorter term debt) vs. longer maturity period on bonds. Hence, the assumption as to cost of debt proposed by Swiss Economics is overstated.

Aiming Up

113. We reject the need for any 'Aiming Up' allowance. In particular, in the light of our comments above regarding the excessive capital programme, we fundamentally disagree with CAR (para 10.44 of the Draft Determination) stating that the negative impact of underinvestment is likely to have asymmetric effects relative to overinvestment. Although CAR asserts, at para 10.82, that the economic effects of underinvestment have a greater negative effect on welfare, no cogent explanation is provided as to why this is so. This is particularly the case as, for the reasons which we have identified, much of the proposed investment is premature and not required by users. Securing the ability of the regulated entity to fund inefficient and uneconomic investment would be a fundamental breach of sound regulatory principles and a breach of CAR's statutory objectives. We are not aware of any other regulator that approaches the risks of under or over-investment in this way. CAR appears to be manipulating the regulatory framework in order to allow DAA to deliver a completely unaffordable and unnecessary capital programme.

114. Nor is an adjustment necessary because single point estimates are used for the parameters of the WACC as these reflect the mid-point of a range. Aiming up would mean that the cost of capital is effectively being set at the top end of the assessed range rather than a reasonable mid-point.

ii) __Financeability__

115. We note CAR's view, at para. 10.3 of the Draft Decision, that a higher WACC would lead, in its view, to a lower requirement for financeability adjustments and so the effect would largely be net neutral on the price cap. However, the fundamental issue remains that accelerating depreciation leads to the prefunding of capital investment, as CAR acknowledges, which is contrary to sound regulatory principles and benefits future users at the expense of current users (para. 12.36). Such considerations should not be used to justify either upward distortions to the WACC as identified above or arbitrary financeability adjustments, amounting to accelerating €60.9 million of depreciation from future periods, which constitute pre-funding. As the Thessaloniki Forum made clear in its February 2022 paper *"Airport Charges in times of crisis"* (para. 4.24), referred to above, prefinancing of investment and solely to manage the financeability of a regulated airport is not an acceptable regulatory solution.

116. On top of the currently overstated cost of capital, CAR has added financeability adjustments to the price cap by allowing for a significant degree of pre-funding of the allowable projects, with 80% of the capital costs being allowed to enter the price cap upon receipt of the full planning permission. Given the high level of uncertainty, which CAR acknowledges at para. 12.35, this is favouring the interests of future users over current users and goes against the advice of Centrus that the best way of addressing this uncertainty would be to make adjustments should the projects be triggered and implemented, following any necessary agreement with users. There is no justification for seeking to achieve the financial ratios required to ensure financeability of 80% of the triggered projects within the base price cap, as CAR has done and, at the very least, the effects should be omitted and only included as project expenditure is triggered.

117. CAR's Draft Decision is directly contrary to user interests as it means that users are being asked to pay upfront for any uncertainty in the timing and deliverability of the capital programme. This is grossly unfair and contrary to CAR's statutory objectives. Indeed, CAR itself reports that Centrus made clear that the approach that it intends to adopt is not consistent with ensuring that *"passengers do not overpay if the out-turn performance due to factors beyond Dublin Airport's control does not warrant the allowances made."*

Financial Ratios

118. Furthermore, in assessing the requirement for any such adjustment, we believe that CAR has adopted too narrow a view of the required financial ratios in a dynamic post-Covid world. As Centrus makes clear, the demand for airport debt is still strong and airports have successfully been able to access the public markets to raise debt:

"We note that there have been a range of airport operators who have successfully issued in the public bond markets throughout the pandemic and into 2022 which demonstrates that access to these markets is good for investment grade rated borrowers issuing senior, unsecured corporate debt in the sector."

119. Centrus observe that there are a number of airport operators which have successfully raised debt with financial ratios lower than proposed by CAR and where ratings agencies have taken a more holistic view in understanding that certain airports may incur unfavourable financial ratios so long as the fundamentals are sound and issues are short term:

"It is noteworthy that issuances by airports had been achieved when metrics fell below threshold levels such as those published by S&P. However, it could be interpreted that funders, like S&P, may be of the opinion that results published during the pandemic were

not reflective of the long-term equilibrium of the industry. Funder's internal assessment of ratios may have also taken a forward-looking approach, similar to those assessed by S&P. Therefore, in evaluating successful issuers ratios, we have assessed those issuances which pre-date the pandemic. We note, although it could be interpreted that ratios falling below threshold levels during a time of crisis for essential transportation infrastructure such as airports may not limit financeability in its entirety, this is generally when the consensus believes those entities will return to their pre-crisis levels.

As noted in our previous report, prior to the onset of Covid, we saw that there were a number of airports within the category of privately owned airports that have issued longer dated bonds (10 to 30 years) when their financial ratios were at levels lower than 13% on a FFO / Net Debt and higher than 6 times Debt / EBITDA, whereas the government owned issuers have typically issued in tenors of 7 to 10 years and generally have FFO / Net Debt levels exceeding 13% and Debt / EBITDA ratios of less than 5 in the year of issuance."

120. Centrus also go on to credit Ireland's favourable sovereign rating as a factor positively influencing the appetite for lending to Dublin Airport:

"Given its sovereign ownership, Dublin Airport is also likely to be attractive to debt funders who are looking for opportunities to invest in the Irish market and therefore we also assessed issuance amongst its public sector peers to assess market demand for those types of credits."

121. Given Ireland's recent upgrade in credit rating and the positive expectations over the nation's economic resilience to the pandemic and the Russia-Ukraine crisis, demand for investing in an Irish Government owned asset, or in other words, Ireland, is now substantially higher than its peer nations:

"This meant that the pandemic did not set back the process of reducing debt ratios and improving the resilience of the government's balance sheet.
It added that it expects a further fiscal improvement, with a smaller fiscal deficit this year and a return to surplus in 2023 as temporary pandemic support measures are withdrawn and strong economic activity boosts tax receipts."

122. Indeed, Centrus has suggested that in practice, DAA is likely to have an effective credit rating of A- regardless of the effective financial ratios in the light of its Government support.

123. By way of comparator, Amsterdam Schiphol Airport's recent ratings report, issued in July 2022 by S&P gave a rating of A-, despite having a forecasted FFO/Total Debt of under 8% over the coming years and notwithstanding the ongoing challenges and significant amount of capital expenditure required. It is clear that the actual financial ratios and challenges have not prevented Schiphol Airport from raising substantial amounts of debt. S&P's overall analysis on Schiphol concludes with an excellent business risk rating comprised of a very low country risk in the Netherlands, a low industry risk and an excellent competitive position. These three measures have more than outweighed the aggressive financial risk in the form of Schiphol's aggressive cash flow/leverage risks.

124. We believe that Schiphol Airport, which we understand has a CIP of a similar scale to Dublin, has no need for financial adjustments to underpin its credit rating and future borrowings to enable it to fund its future capex needs.

125. We also note that CAR, in considering financeability, has continued to allow for dividends in base case (para. 12.20) at 30% of estimated post-tax profits. This represents a transfer from users to the State that is excessive. It would be entirely reasonable to assume no dividends payable during the ongoing Covid recovery period. Dividends should remain suspended until the market recovery assured and the allowance made by CAR excluded.

V. Opex

126. Ryanair objects to CAR's excessive and inefficient opex allowance of €1.3B across 2023-2026. CAR is proposing to allow DAA to increase its opex allowance by +7% in real terms by 2026, with even higher levels of per passenger inefficiencies across 2023-2026 than 2019 levels (see Table 1 below).

Table 3: CAR opex allowance

	2019	2022	2023	2024	2025	2026
Opex allowance (m)	€303.70	€263.40	€295.70	€311.60	€322.00	€327.60
v. 2019		-25%	-3%	+3%	+6%	+7%
Per passenger	€9.23	€10.41	€9.82	€9.65	€9.42	€9.31
v. 2019		+6%	+6%	+4%	+2%	+1%

127. Whilst in principle, we welcome the approach adopted by CAR and CEPA/TA to review opex from first principles on a 'bottom up' basis, we have serious concerns about the robustness of several of the assumptions adopted. During the 2019 Determination process, we supported the adoption of CEPA/TA opex estimates, including the setting of an appropriately short glidepath to efficient opex, and we note that, following the Appeal Panel in 2020, CAR was required to adopt a glidepath to achieve an efficient level of opex in 2022. However, as signalled in 2020, we cannot accept that the level of opex at Dublin Airport in 2019 was efficient as a start point. The fact that DAA has had to incur costs of €70m in a voluntary redundancy scheme provides ample evidence of the extent to which historic staff costs were inefficient.

128. We also note that Aer Lingus (para. 8.29) does not support a glidepath approach this time but believes that an efficient level of opex should be set year by year and DAA required to achieve this efficient level. We agree with the importance of setting efficient opex from the outset given the savings that DAA has belatedly started to realise during the pandemic, demonstrating the extent to which the past costs paid by users were inefficient.

129. Hence, we do not believe that CAR's decision (para. 8.6) to trend opex per passenger back to 2019 levels by 2026 represents an efficient outcome as it effectively embeds the historic inefficiency, particularly in staff costs. Indeed, CAR itself notes, at para 8.12, that: *"The efficient 2019 cost baseline established by CEPA/Taylor Airey was materially below the actual costs which we knew would be incurred by Dublin Airport in 2019".*

130. Although it is claimed that CEPA/TA started from its estimate of efficient opex in 2019, rather than the 2019 actual opex, to derive its assessment of 2022 opex, we consider that the start point for opex in 2022 has been set too high and at an inefficient level, even allowing for the current diseconomies of scale. As a result, this leads to excessive and inefficient opex allowances in the early years. Hence, CAR's start and end point for the allowed opex are both excessive and inefficient. There is clear scope for further downward adjustments to opex forecast for the period. We outline below our comments on the various proposed opex elements, starting with the wage inflation assumptions.

i) <u>Wage Inflation</u>

131. Our overarching area of concern in relation to opex costs relates to the treatment of inflation and the numerous errors that have been committed by CEPA/TA in their inflation methodology.

Outdated assumptions

132. At the time when the estimates of real wage growth, upon which CEPA/TA rely, were prepared in April 2022 the full impact on overall inflation rates could not be predicted. It is doubtful whether the sources used by CEPA/TA could have factored into their projections the impact of the now higher levels of inflation. Given the very high expected

rates of inflation, at least in the short to medium term, it would be unreasonable to assume that real wage growth could happen across the economy as it would simply be unaffordable to employers – employers cannot pay high energy prices and inflation-matching or inflation-exceeding wage increases. Indeed, the Central Bank of Ireland, in a recent paper[3], found that residents in Ireland no longer expect wage growth to keep pace with inflation.

Incorrect forecasting

133. In addition to being out of date, CEPA/TA have used an accelerated real wage growth forecast that exaggerated the expected increase for 2023 and 2024 by erroneously averaging two projections of wage recovery following the pandemic period. CEPA/TA rely on two forecasts: the European Commission's Spring Economic Forecast and The Central Bank of Ireland's Quarterly Bulletin. Both forecast a fall in real wages this year, followed by a recovery to 2021 levels in real terms. The Commission front load real wage growth (4.7% in 2023), whereas the Central Bank forecast slower recovery (1.9% in 2023 and 3% in 2024). Given the limited data (the Commission forecast only until 2023, whereas the Central Bank forecast until 2024), CEPA/TA use an average for 2022 and 2023, but solely use the Central Bank forecast for 2024. The net result is that CEPA/TA assume over 6% real wage growth from 2023 to the end of 2024 - even though neither the Commission nor the Central bank forecast 6% real growth over the period. This is wholly inappropriate use of the data designed to overstate real wage growth.

Historical evidence of long term real wage growth

134. Beyond 2024, we would query the assumption of 1.5% p.a. real wage growth in the long run. Historic data from the CSO contradicts this assumption. In the past 5 years, cumulative real growth has been 1.7% in the Transport sector and 4.6% in the Public Administration sector [4] compared with CEPA's 5-year assumption of 7.6% (i.e. 1.5% p.a.). While the overall real wage growth in the economy may be higher, this is driven predominantly by strong real wage growth in finance and IT, which will account for very few positions in the DAA.

135. Regulatory precedent suggests that wages grow even below inflation in regulated sectors. In a separate report for the Commission for the Regulation of Utilities, [5]CEPA acknowledged that labour costs for the ESB and EirGrid workers grew at a marginally lower rate than HICP from 2011 to 2018. It is unclear why CEPA have therefore departed from the historical evidence when setting an assumption of 1.5% real wage growth per annum and suggests that a 'special' allowance is being made for DAA to build inefficiency into its future wage costs in a way that other regulated sectors are not permitted.

136. This strongly suggests that the expectations as to real growth in earnings need to be substantially removed from the opex calculations and replaced by an expectation that wage growth will lag inflation whilst inflation remains relatively high. When real wage growth returns, it must be at a lower rate than estimated by CEPA/TA.

ii) <u>2022 Costs</u>

137. It is inconceivable how CEPA/TA have concluded (page 5) that an efficient level of opex for 2022 should be in excess of what DAA claims it will need to spend. At the very least, the excess needs to be excluded from the start point of the opex projections. We note,

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[3] https://www.centralbank.ie/docs/default-source/publications/economic-letters/snapshot-into-inflation-and-earnings-expectations-by-irish-residents.pdf?sfvrsn=5.

[4] Ryanair own calculations using data on real average earnings per week on a quarterly basis by sector, obtained from https://www.cso.ie/en/index.html.

[5] CEPA (2020): *Real price effects and ongoing productivity improvements for PR5*, *Report for the Commission for Regulation of Utilities* https://www.cru.ie/wp-content/uploads/2020/07/CRU20080-Real-price-effects-and-ongoing-productivity-improvements-for-PR5.pdf.

with concern, from para. 2.3.2 of the CEPA/TA report that there are categories of cost where they have simply adopted DAA's estimates of expenditure in 2022 as reasonable without challenge.

138. The outcome seems to be the worst of all worlds, on the one hand CEPA/TA have inexplicably adjusted upwards some cost categories, such as the costs of airside operational staff, and, on the other, accepted unchallenged other estimates table by DAA. This inevitably results in an inflated estimate of baseline opex for 2022, which cannot be considered as an efficient start point.

139. We disagree with the adjustments made to the 2022 baseline costs to reflect CAR's higher passenger forecasts. At this point in the year, it is highly unlikely that DAA would be recruiting additional staff as the peak of traffic will have passed. Hence, any such adjustment is unwarranted.

Individual Costs

140. We now highlight some specific areas of concern with CEPA/TA's cost estimates below, with key areas of concern relating to the starting opex in 2023 highlighted in Table 2. These savings alone, without other considerations, would be highly material to the price cap.

Table 4: Illustrative potential for OPEX Cost savings

Cost Category	CAR's Cost per pax allowance (2023)	Ryanair's Efficient cost per pax estimate (2023)	Total Cost Difference in 2023 (€ millions)
Campus	€0.67	€0.65	-€0.4m
Facilities & Cleaning (Excl. CIP)	€0.90	€0.60	-€9m
IT (Excl. CIP)	€0.62	€0.57	-€1.5m
PRM	€0.31	€0.28	-€1m
Total			-€11.9m

a. Security

141. We are very concerned that these costs are noted as being subject to high levels of uncertainty and a likelihood for change as they are the largest single category of opex cost, accounting for 15-16% of the total opex.

142. We support the CEPA/TA assessment that C3 Security systems should lead to a substantial reduction in security costs going forwards. Other airports are projecting substantial increases in throughput per lane attainable with such equipment, up to 450 passengers per hour per lane, and this does not appear to have been fully reflected in the estimates. On this basis, CEPA/TA's assumption of 400 and 375 trays per hour for T1 and T2 respectively would represent inefficient operations, particularly when the number of trays per passenger is factored in. We consider that the estimate for efficient future security staffing should be re-evaluated taking into account the efficient processing rates being anticipated elsewhere.

143. We understand from Section 4.3 that CEPA/TA has included the additional costs associated with DAA's proposed restructuring of the security functions pending more detailed review of these costs given that the information was provided late in the process, destabilising the consultation process and giving rise to further uncertainty. We assume that there would not be further upward adjustments and we encourage CEPA/TA to rigorously scrutinise these proposed additional costs, given, prima facie, they appear to be highly inefficient and unjustified. We would be concerned that CAR has left the door open for DAA to come back with a request for further cost allowances in this area.

144. We also have concerns about the inclusion of the additional security costs being added for 2022 for reasons which have been heavily redacted. We do not consider these costs to be efficient as they arise from failings and inefficiencies due to mismanagement of the security process by DAA. DAA should not be rewarded for such mismanagement or simply as a knee jerk reaction to the adverse publicity. Users should be protected from these short-term cost increases and any extrapolation forward of these costs for future years needs to be stripped out from opex.

145. We do not consider these adjustments would place the level of service at risk for future years as they arise from mismanagement, as reflected in DAA's proposed changes to the security management structure, not a fundamental need for increased staffing over the longer term. We ask CAR to avoid drawing conclusions on industry-wide trends based on a handful of poor performing airports which featured prominently in the media this summer. Allowing upward adjustments for actions to overcome these issues would be rewarding poor performance and imbedded inefficiencies and bad management.

b. Maintenance

146. We note CEPA/TA's view that there is scope for efficiency improvements in relation to maintenance costs. It is important that these efficiency improvements are reflected in the total opex costs.

147. The one area which appears to be inefficient is the proposal for an increase in staff for noise and environmental compliance from 0 to 4. It is not clear what has changed since to justify this step increase in staff as DAA is already reporting on its environmental compliance within existing staffing levels. The requirements for noise and compliance have not fundamentally changed and this seems an excessive number of staff for this function even in the context of sustainability considerations.

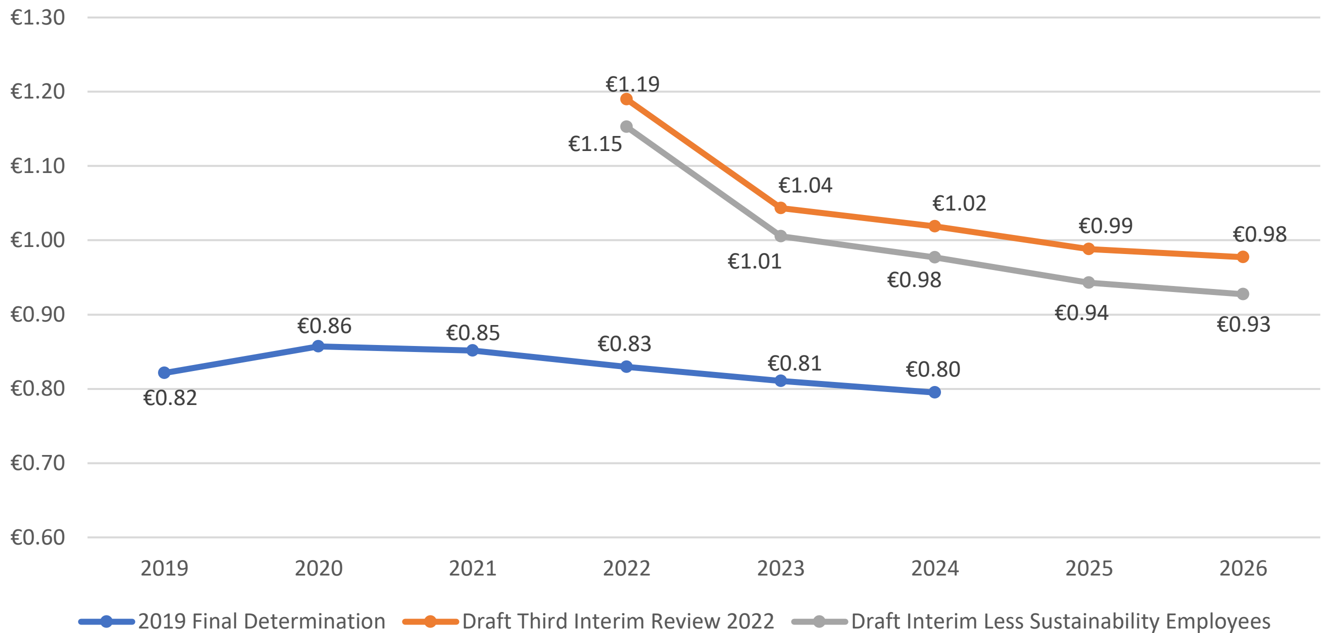
c. Central Functions

148. We support the conclusion reached by CEPA/TA that DAA should not be allowed to reverse the efficiency savings made within the policy and strategy area by seeking to reinstate cost levels that were previously assessed by CEPA/TA as being inefficient. We support their view that there should be further headcount reductions in this area.

149. The fact (CEPA/TA Report Section 6.1) that expenditure in central functions at Dublin Airport increased by 50% between 2019 is ample demonstration that DAA has not been behaving efficiently. A staffing level of 41 people in these new areas, at a cost of €3.7m, seems extraordinary and cannot possibly be justified. Central functions are the area where an airport should be able to gain maximum economies of scale as it grows. This provides further evidence as to why 2019 actual costs should not be taken as a baseline for any forward-looking estimate of efficient costs.

150. We note also that there is a proposal here to add 10 (rising to 17) FTEs for sustainability related initiatives. The need for these staff has not been justified and would, at least in part, duplicate the proposed compliance staff allowed for in the maintenance function. Any double counting of additional staff in sustainability related functions needs to be stripped out as it, alone, accounts for €0.05 on the price cap by 2026. We are, in any event, unclear why this category of expenditure is treated as new as the environmental obligations deriving from the Paris Treaty in relation to climate change and the need to comply with noise controls arising from the North Runway would have been known at the time of the 2019 Determination. Hence, it is reasonable to assume that such activities were already embedded in existing staffing and there is no requirement for an increment of this scale, which should be pared back.

Figure 1: Central Functions Opex per pax in 2019 determination and Third Interim 2019 Determination



151. Having regard to the above considerations, we consider that the staffing levels and costs proposed for central functions are excessive and inefficient and should be reduced to be more reflective of what they considered to be efficient in the 2019 Determination. These staff costs represent the second largest cost category after security at c.10.5% of total opex and this deviates substantially from the norm. In particular, the sustainability related element of these costs should be excluded and other efficiencies realised. Furthermore, CEPA/TA suggest only a very marginal reduction in the share of opex made up by central functions as the airport grows. This strongly suggests that the additions in this area are not efficient, and not reflective of the high level of fixed costs in this functional area that would not be expected to increase as an airport grows.

d. Facilities and Cleaning

152. We are concerned that CEPA/TA have simply accepted DAA's estimate of the cost of the external cleaning contract in 2022 and assumed that it was efficient. There can be no guarantee that this is the case and the value offered by the contract should have been properly scrutinised.

153. It is unclear, in Section 7.2.1, whether CEPA/TA have applied an elasticity of 0.4 to increased terminal area or increased passenger number. If the former, we consider that this should be reduced pro-rata to the infrastructure investments that we make clear below are not justified. If the latter, there should be no direct relationship between cleaning costs and passenger growth so the application of an elasticity to passenger growth is unjustified.

154. Using the unit cleaning cost benchmark provided by CEPA/TA in Figure 7.4, we can infer that the 2019 unit cost per passenger was roughly 1.33 times higher than the highest comparator, whilst the unit cost per square metre was over 1.75 times higher. Given that CEPA/TA stated that the unit cost per square metre was the more relevant cost, and given the discrepancies to the nearest comparator airports we estimate that the efficient cost would be €0.6 per passenger, which yields to a saving of €9 million in 2023.

e. Campus Services

155. We do not understand why the number of fire service employees should grow by an elasticity to passenger growth as the number of fire service employees is related to the fire category of the airport, determined by the maximum size of aircraft regularly operated.

This is not projected to change so there should be no elasticity applied. We understand that there will be an increase in fire service staffing to enable response times to the North Runway to be met and 14 additional staff seems reasonable in this context.

156. We have estimated the efficient cost of Campus Services in Table 2 by adjusting the elasticity to 0. This means that the staff levels remain static during the determination period. We then apply the staff count on the appropriate cost per FTE for the given year to adjust the forecast down from €0.67 per passenger to €0.65 per passenger, generating savings of over €0.4 million.

f. IT

157. It is unacceptable that CEPA/TA has accepted DAA's estimate for increased IT staff when it concedes in Section 9.1.2 that DAA did not provide an adequate explanation as to why an increase above 2019 levels of staff is required. CAR cannot be expected to foot the bill for costs DAA provide inadequate justification for.

158. We consider that IT costs should continue to be based on the historic ratio of IT costs to revenues in Figure 19 of the CEPA/TA report at 2.9%, which CEPA/TA deemed as efficient and applied this ratio to the annual building block revenue, retrieved from the CAR's financial model. This generated a saving of roughly €1.5 million.

g. Capital Projects

159. In the light of our comments above on the excessive nature of the €2.9bn CIP and the need for this to be curtailed to ensure affordability for users, we consider that the opex costs associated with the CIP should be materially reduced.

h. Car Parking

160. We are concerned at the proposed increase in car parking costs, related to the transition to EVs, in the light of CAR's assumptions as to the scope for growth in car parking income. The two assumptions appear out of alignment.

i. Rent and Rates

161. We support the decision by CEPA/TA to disallow the increase in rent that DAA incurred in 2020 and 2021 through vacating offices owned directly by the airport and relocating to those within Airport City for which rent was payable. In the circumstances where there is no evident uplift in commercial property rents, made worse by proposed high capex costs for office refurbishment, this transfer is unacceptable and clear indication of DAA seeking to game the system by seeking to add cost to the regulatory till whilst retaining the income elsewhere.

j. Consultancy Services

162. We do not understand why CEPA/TA have assumed a consultancy services budget of €7.1m for 2022 and the following years to 2026 higher than DAA's estimated spend for the year at €5.4m. This makes no sense and strongly suggests that CEPA/TA has failed to identify the efficient level of opex as they appear to have accepted DAA's pre-pandemic level as being efficient without investigation. As well as the excessive allowance, there is inadequate transparency on the underlying cost detail. We therefore request CAR provide a downward adjustment of opex for consultancy services.

k. Marketing and Related Costs

163. We are unclear why airport marketing costs should grow at 0.4 times passenger growth as it is the airlines' responsibility to market services and, if anything, the need for the airport to incur marketing costs should reduce as the volume of passengers grows.

l. PRM Expenditure

164. We disagree with CEPA/TA (page 82) that PRM costs are efficient and comparable with other airports. Dublin Airport's PRM cost is €0.69 per passenger in 2022 compared to €0.49 in Arlanda and €0.36 in Helsinki; both countries with similar wage costs and airport operations of a similar scale.

165. We do not agree that PRM costs should be estimated based on an assumption of usage increasing to 1.1% when historically Dublin Airport has never reached that level of usage. Irrespective of the long run trend, this is not reasonable for the period 2023-2026 and we have adopted a more appropriate propensity assumption of 1% and adjusting this to the PRM contracting bands in Table 17.1 of the CEPA/TA report, yields a saving of over €0.9 million.

m. Utilities

166. We would have expected to see further reductions in utilities expenditure in the later years reflecting the investment in a proposed solar farm that CAR intends to allow as well as potential savings from other sustainability investments.

n. Insurances

167. We are concerned at the proposed rate of growth in insurance costs which seems to be more reflective of increases during 2019/20 than the forward indications of trends received from Swiss Re in Table 19.1. We would expect costs to reduce as a result of the Government review of the insurance sector.

o. VSS

168. We note that DAA claims to have already recovered the costs associated with the VSS by 2023 in terms of efficiency savings and that, in the circumstances, no further adjustments will be necessary.

p. Cost Past Through

169. CAR intends to retain the cost pass through mechanism for defined costs outside of DAA's control. We have concerns that this potentially allows DAA to game the system and claim additional costs that may not be efficient, including security costs. However, we welcome the proposal to pass back to users certain categories of cost saving within period.

170. We support CAR's decision not to otherwise adopt rolling schemes in relation to opex savings as an early return of such savings at the end of each regulatory period are only fair given that users have been overpaying for DAA's inefficiencies over the previous quinquennia. DAA should not be allowed to retain the benefit of further efficiency savings beyond the end of the regulatory period.

VI. Passenger Forecasts

171. Ryanair notes that CAR is suggesting that the number of passengers using Dublin Airport would return to above 2019 levels during 2025 and that CAR consider this view is broadly consistent with industry commentators. Thereafter, CAR expects growth to be in line with GDP and CAR has adopted its traditional GDP based approach. However, premature increases in airport charges could place this recovery in jeopardy.

172. CAR notes, at para. 7.66, that in the 5 months to May 2022, the number of passengers using Dublin Airport was 74% of 2019 levels. However, DAA is now reporting that the number of passengers handled in the 7 months to July was 80% of 2019 levels. Recovery is, thus, more advanced than other airports in Europe and is accelerating, driven in part by the Government funded incentives available in 2022 as well as large pent up demand.

This highlights the importance of ensuring that the tariff structure at Dublin Airport provides the right incentives for airlines to grow. As CAR recognises at para. 7.93, pricing incentives encourage traffic growth, which is all the more important at present given the ongoing effects of Covid-19 globally and the other economic challenges that need to be counterbalanced.

173. Crucially, the performance of Dublin Airport to July 2022 strongly suggests that CAR's projections for 2023 and 2024 are likely to be too pessimistic. CAR's assumption that once recovery has been achieved, growth thereafter will be related to general economic trends is reasonable as airlines should, from 2024, be able to meet underlying demand not limited by specific Covid-19 related restrictions and other deterrents to travel. We consider that the forecasts are significantly too pessimistic in the short term and should be reviewed upwards. We consider that a reasonable outlook for 2022 should be no less than 80% of 2019 traffic, i.e., 26.3 mppa as a minimum, with consequent upward adjustments to future years and an underlying assumption that the 2019 passenger level 32.9 mppa would be reached in 2024 rather than 2025. CAR's projections for 2025 and 2026 look more reasonable and represent a reasonable balance between current faster recovery and potential economic headwinds in the short term. There is no need to review these projections downwards. DAA's own projections are unrealistically low and appear to be an obvious attempt to 'game' the regulatory system.

174. It is significant that CAR's current projections show passenger traffic at Dublin reaching 35.2 mppa by 2026, which was the passenger throughput projected for 2021 in the original Determination. Notwithstanding our comments above about upgrading the short-term forecasts, it is clear that there will be a delay of approximately 5 years in the achievement of the forecasts originally used to justify the scale and timing of the excessively large 2020 CIP. This must have implications for timescale over which the plans to increase capacity need to be realised.

175. Despite this, CAR's decision to include virtually all of the capital expenditure requested by DAA suggests a slippage of only 2 years. This is effectively bringing forward capital expenditure when market conditions make clear that it should be deferred, although we recognise that some of the expenditure will only impact the price cap if it actually proceeds within the timescale due to some projects being subject to positive triggers. The Draft Decision still effectively provides for such expenditure to be incurred earlier than strictly necessary and this is contrary to all sound regulatory principles. In the original 2019 Determination, the only major capacity enhancing works triggered before the 2021 passenger threshold were the legacy triggers relating to the North Runway and legacy costs related to T2. Hence, Ryanair considers that all other major capacity projects that were originally subject to triggers should be deferred to the regulatory period beyond 2026. We address the prematurity argument further later in this submission.

VII. Commercial Revenues

176. At the outset, we do not understand why CAR appears to be starting from a lower base of commercial revenues in 2022 through 2024 than estimated by DAA. This appears perverse, particularly as there are likely to be more passengers using the airport in 2022 than DAA has estimated. In the first instance, the commercial revenue estimates should be adjusted in line with updated passenger forecasts.

177. Furthermore, some of the structural changes that have led to higher commercial revenues on a per passenger basis during the pandemic seem likely to persist over the next few years, in particular leisure passenger growth leading recovery and a shift from public to private transport, not least as some bus services to the airport, such as Dublin Bus no longer operating the 747 or 757 bus routes that both operated at high frequency to the main rail stations and city centre locations, have not yet recommenced[6]. Both of these trends will tend to increase the scope for commercial revenue growth over and above the

[6] https://www.dublinbus.ie/Your-Journey1/Timetables/Airport-Services/

assumptions made by CAR, particularly given the higher share that leisure passengers are expected to make up of overall demand at Dublin Airport pending the recovery of business travel.

178. In particular, the approach adopted by CAR (para. 9.8 of the Draft Decision) of deriving a 2023 start point for its projections of revenue by taking the 2019 revenue per passenger by category and applying this to the 2023 passenger forecast will fail to accurately capture these structural changes meaning that the baseline and future commercial revenues will be understated, leaving aside whether appropriate adjustments have been made for the impact of duty free sales for UK passengers, changes in car parking demand or the impact of new capital projects. We address these factors category by category below.

179. We note that the elasticities used by CAR have been adjusted to reflect the strong retail performance exhibited at Dublin Airport in 2018/9. We support this change as it was evident that DAA had been outperforming the estimates of commercial revenues for some time, meaning that charges were being set at a higher level than warranted allowing DAA to retain the excess revenue during a quinquennium. Hence, the changes proposed to the elasticities provide a more robust basis for estimation so protecting user interests. However, we note IATA's comment, at para. 9.45, that the use of historic elasticities implies that DAA has historically been efficient in generating commercial revenues. We would concur with IATA that it is important that CAR take into account structural changes that are likely to lead to changes in revenue streams and that some element of bottom up analysis is required. On this basis, we do still have a number of concerns particularly regarding adjustments that have or have not been made to the future commercial revenue estimates.

i) Retail and Catering

180. We recognise that, in general, CAR has adopted a realistic elasticity for retail and catering spend reflecting both growth in passengers and in higher incomes leading to increased spending. Also, CAR has allowed substantial amounts of capex to fund improved retail and catering provision and it is entirely appropriate that this is significant capex is reflected in additional revenue allowances as, absent a positive uplift in revenue to be earned, there is no case for this capex and should not be approved. Hence, if the capex expenditure is allowed, the revenue uplift proposed must be retained at the level proposed.

181. We do have concerns in relation to the level of uplift proposed relative to UK Duty Free income. It is worth noting that around 30% of departing passengers from Dublin Airport fly to the UK, which makes a considerable difference in relation to the expiry of the Brexit Withdrawal Agreement on 31 December 2020 and resulting duty free shopping opened to outbound passengers flying to the UK. We note that CAR has not taken this into account whilst estimating and applying the elasticity factor into the forecasting model. However, we have understood from the financial model that CAR has added an uplift of €3.1 million uplift each year to Duty Free revenues from 2023 onwards.

182. We believe that this €3.1 million in annual uplift is substantially understated. This implies an uplift of only €0.62 per departing passenger. DAA has already been flagging an uplift in spending as a consequence of the reintroduction of duty free for passengers travelling to the UK:

"In Ireland, ARI operates our retail business, The Loop, at Dublin and Cork airports and manages several retail concessions at the two airports. Total sales from these operations increased by 47% to €69 million. This was significantly ahead of the passenger recovery as spend by passengers grew strongly for a second year in 2021, helped by the return of duty free for UK destined passengers."[7]

183. Given DAA's statements it seems likely that the uplift used by CAR is substantially too low. The duty free sector's estimates for the potential uplift per departing passenger

[7] Para 6, pg 20, daa annual report 2021

indicates an uplift more of the order of €0.9 per departing passenger, meaning that the potential uplift is potentially 50% understated. The value of this uplift should also increase over the period in line with growth in the Ireland-UK travel market.

ii) Car Parking

184. In the light of the change in passenger mix, with a greater focus on leisure passenger recovery in the short term and the tendency for them to park for longer, Ryanair does not believe that CAR has correctly assessed the scope for growth in car parking revenue during the 2023-2026 period. In part, this relates to the starting assumption that car parking revenue per passenger in 2023 will be held at the 2019 level and then with an elasticity of 1 applied, meaning that there would be no real growth in car parking revenue in per passenger terms.

185. In the first instance, CAR is incorrect to assume that revenue per passenger in 2023 will be the same as 2019. We note that CAR actually calculated a car parking revenue elasticity, based on historic data of 1.55 but has decided not to apply this elasticity in the light of the asserted constraints on car parking capacity. These points are both incorrect because:

- The different mix of passengers will create opportunities for increased car parking revenue, particularly for long stay leisure related parking;
- Post-Covid, it is clear that there has been a shift from public transport to private transport creating opportunities for car park revenue growth;
- Ongoing shortage of capacity in taxi.
- To the extent that capacity constraints are claimed to have impacted on car parking revenues in 2019, these constraints would not exist, at least to the same extent, in 2023 as passenger volumes are not expected to have recovered on CAR's projections;
- The CIP includes investment in car park management systems which, it is reasonable to assume, will deliver improved revenues otherwise there would be no case for the investment;
- To the extent that capacity constraints exist, it would be expected that the airport would need to price off an element of demand through yield management. This would allow revenues to rise even though there is no increase in the number of vehicles being parked;
- There is an opportunity to develop new car parking products, such as 'Meet and Greet' or block parking to increase capacity and generate new revenue streams.

186. In any event, we understand that at least one of the main off-airport sites has closed, with no plan to re-open the 3,500 spaces, meaning that there will be further opportunities for DAA to boost revenues.

187. In the circumstances, we consider that it would be appropriate to maintain an elasticity greater than 1 for the period as well as expressly allowing for an uplift when the new car parks come on stream.

iii) Commercial Concessions

188. We believe that CAR's use of an elasticity of 0.7, derived in large part based on a regression covering the period 2001 to 2019, is not appropriate as this period covered a time when there was a shift from use of cash (currency exchange) and telephony to virtual and mobile technologies. Hence, this period of structural change will have impacted revenues substantially during this period. It is unreasonable to assume an elasticity of less than 1 for the future for such income. The uplift of €800,000 in 2026 from the substantial investment in car hire facilities appears derisory in the context of the proposed expenditure in excess of €30 million and should be revisited or the project deleted from the CIP as lacking a cogent business case.

iv) Commercial Property

189. Given that DAA is proposing expenditure to replace facilities displaced due to the South Apron works, it is not acceptable that these revenues are deleted.

190. We also have concerns at the level of expenditure on refurbishing office accommodation without there being an obvious and substantial revenue benefit. CAR projects no real net revenue growth in this category over the period which strongly suggests that there is no business case for the property related investment. Either these schemes should be omitted from the CIP or a substantial and proportionate revenue uplift included.

v) ATI Fees

191. The justification for the proposed increase in ATI fees is not apparent. These fees are intended to be cost related and CAR provides no justification for the proposed 27% increase on a per passenger basis over the period. The increase is not justified or acceptable.

vi) Lounges, Fast Track and Platinum Services

192. We note CAR's adoption of an elasticity of 1 to passenger growth and consider this to be broadly reasonable pending the uplifts arising from the CIP projects. Again, the level of revenue uplift appears low relative to the estimated €30m capex costs of the enhancements. This would, once again, raise questions as to the business case for this investment and whether this is appropriate at this time given that the revenue uplift is only assumed to reach €2.7m in 2026.

vii) US Preclearance

193. As noted below, we are concerned at the proposed expenditure on upgrading the US preclearance facilities at this time. The revenue uplift from the enhanced facilities does not appear to be of a level that would justify expenditure of €75.4m, particularly as no additional retail and catering income appears to have been assumed despite part of the cost being to provide such additional space.

194. Furthermore, DAA has set charges at zero for this facility in 2022 so long as airlines achieve 50% of 2019 passengers using the facility. Given the high cost to all users of investment on the US Pre-clearance facilities, any price cap effects relating to shorfalls in revenue from this activity should not be passed to other users, who are already subsidising the much smaller number of users that are availing of the facility. DAA's actions have increased the extent to which other users are being effectively asked to cross subsidise this facility which delivers no benefit to them and any shortfalls in revenue should fall to users of this facility alone in terms of remunerating the capital costs.

viii) Advertising

195. We note that not only has CAR used an elasticity of less than 1 for advertising income per passenger but has also further reduced this for a potential re-valuation of the advertising contract. This would appear to be double counting the effect and it is reasonable to assume that the inelasticity already assumed would cover the impact of any prospective re-valuation. The adjustment should be deleted.

196. We also note that CAR has allowed €7.9m for digital advertising to be written off over 5 years but only allowed a revenue uplift of €0.8m in years 3 and 4 (less in the first two years). This suggests that the investment is uneconomic and lacks a business case and so should be disallowed or the revenue substantially increased to at least €1.65m a year to justify the inclusion of the project.

ix) Other Commercial Revenue

197. It is unacceptable that no income allowance has been made for any of the sustainability projects given the sizeable amount of capital expenditure that CAR proposes to allow. As we note further below, several of these have the potential to be substantially revenue generating and it is unfair to users to include the costs but make no allowance for revenue. To the extent that these projects are allowed, the revenue potential must be reflected in the income allowances.

x) Rolling Schemes

198. We have always opposed the use of rolling schemes for commercial revenues. We do not consider such incentives necessary to encourage DAA to invest in revenue enhancing activities in later years of any quinquennium as there is still revenue to be earned from any operational improvements and any capex expended will remain in the RAB, so earning a return, over the appropriate period. As any shortfall in performance is passed back to users at the end of a regulatory period, it is perverse that any commercial upside is not treated consistently. This breaches the principle of symmetry as recommended by the Thessaloniki Forum in its *'Airport charges in times of crisis'* paper of 27th January 2022 paper (para. 4.14).

199. We note that DAA's suggestion that some further commercial revenue streams should be carved out of the regulatory till has been deferred for consideration in a future regulatory period. We are vehemently opposed to a proposal to take revenue out of the the single till.

VIII. Quality of Service (QoS)

200. CAR's proposal (in response to DAA's request) to reward QoS out-performance through the introduction of a series of bonuses payable to DAA for delivering higher than required standards of service is unacceptable.

201. CAR chose to suspend QoS rebates in 2020 and 2021 and only partially re-introduced them for 2022, yet users have experienced unacceptable security queues as a consequence of DAA's mismanagement meaning passengers have not received appropriate compensation despite the disruption, inconvenience and cost this has caused. Even a full rebate of the €0.36 per passenger potentially due under the quality of service scheme would be insufficient to compensate for the disruptive effects of such service failings. Thousands of passengers have missed flights as a result of DAA's mismanagement and excessive security lines. In this context, it is baffling that CAR are now proposing to reward DAA for the overprovision of basic services

202. Whilst CAR appears to agree, at para 13.18, that bonus payments could result in inefficient outcomes in terms of balancing cost and quality, a system of bonuses is nonetheless proposed symmetric to the quality of service penalties. DAA has consistently claimed that its opex and capex demands are required to ensure that quality of service is maintained. The fact that the circumstances of rewarding over-delivery, as DAA has requested, strongly suggests that is has built in an assumption of over-delivery and that its claimed opex and capex requirements are excessive.

203. As noted earlier in this submission, there appears to be some assumption from CAR that airlines will be able to recover the costs (bonus payments) from passengers who will value the over delivery of service. Of course, this will not be evident to the passenger at the point of ticket purchase and there is no evidence that passengers in general will pay more for a higher quality of airport experience (especially in a situation where the airport in question, like Dublin, is a monopoly and passengers have no real alternative). Hence, it is particularly egregious that CAR suggests that airlines will be charged more simply because passengers perceive, through the surveys, that they have received a better than expected experience at the airport. Airlines will not be able to capture that value and will

be paying for a service over and above that required. Whereas service failures, e.g. at security, in the baggage system or with PRM services can cost airlines money if they lead to delays or lost baggage, over-delivery on QoS has no value.

204. Hence, we reject any suggestion of bonuses being applied for out-performance. If the QoS scheme is properly specified in the first place to reflect the service standards actually required by users, DAA should not be rewarded for outperforming these standards as then it would be delivering a level of service that is not actually required and users should not be expected to pay for this outperformance. The penalties should be set at an appropriate level to act as sufficient incentive for delivering the required level of service.

205. A QoS bonus is akin to rewarding an airport for over-design, according to the principles contained within the IATA Level of Service concept for airport development, which addresses processing and waiting times as well as space standards. This is referred to in the Helios Report for CAR in 2019. IATA makes clear in its Airport Development Reference Manual that over-design or over-provision in terms of service delivery are not something that users should be expected to pay for and this principle holds for Dublin Airport.

206. To that end, it is vitally important, as CAR proposes, not to build under-delivery into the targets in the first place. These targets are set for a reason at the level required to ensure an acceptable user experience for all passengers and without risk of giving rise to flight delays. It is also vitally important that CAR actually penalises DAA when targets are not reached. Recent failure to carry through on penalties due to DAA's 2022 security queue failures has resulted in users (airlines and passengers) losing confidence in CAR's QoS regime, which can be restored through an effective regime for 2023-26.

IX. Inflation

207. In general terms, we are concerned that, for this regulatory period at least, CPI in the preceding year may not be the appropriate indicator for costs relating to the operation of Dublin Airport in a predictive sense. High current energy costs are likely to abate in the medium term and a downward trajectory would be expected. In setting the cap for following year, there is a real danger that adopting the historic CPI value could overstate forward looking costs. It is important that the regulatory settlement is robust and does not over-inflate individual components and we encourage CAR to take this into account in determining the cap.

208. We are concerned that CAR is facilitating DAA in abusing its monopoly position by insulating it from the risks inherent in the current unpredictable inflation environment. DAA cannot be allowed to use its monopoly position to pass all its inflation costs on to airport users. Everyone in the aviation supply chain must take some of the pain of inflation, and cut costs where they can. It is inconceivable that CAR would remove DAA's incentive to address increasing costs by allowing a full pass-on of inflation to users.

209. CAR's duty is to exercise its discretion to set the level of airport charges on the basis of an analysis of CAR's statutory duties under section 33 of the Aviation Regulation Act 2001. The duty of CAR is to adopt a determination which will best reflect its statutory objectives. CAR cannot simply consider itself bound to one particular approach on inflation. Rather, CAR must assess whether such an approach, or an alternative approach, best achieves its statutory objectives.

210. In this statutory context, DAA could not reasonably entertain any expectation that CAR will apply an approach on inflation that runs counter to its statutory objectives.

211. The above considerations are even more pertinent in the context of the revised primary statutory objective in the ANTB, which provides for user interests as the primary objective.