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**DAA Response to Commission for Aviation Regulation's
Consultation on Defining the Regulatory Till**

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Introduction

DAA welcomes the fact that the Commission has commenced consultation on the structure and definition of the regulatory till. DAA believes that this is a valuable opportunity to reassess the appropriateness of the current regulatory approach and to ensure that going forward the regulatory system is best equipped to deliver an economically efficient outcome in line with statutory requirements. DAA looks forward to active participation in this consultation process.

The Commission's initiative is consistent with wider international developments. A review of international precedent highlights the fact that there has been a shift away from the application of the pure single till in recent times, which is detailed below. This reinforces the case that the time is now right for a re-examination of the regulatory till at Dublin Airport.

DAA believes that the next step for the Commission should be to carefully assess each of the individual options for the composition of the regulatory till against the test of economic efficiency and the requirements of its statutory objectives prior to the implementation of any policy change.

DAA would like to emphasise that the manner in which a possible change to the regulatory till is effected and the methodology employed in relation to possible adjustments to the RAB and the implementation of cost allocations are all likely to significantly impact the outcome in terms of economic efficiency. Therefore it will be critically important that the Commission enters into proper dialogue with interested parties on the implementation of any policy change.

It is essential that the Commission ensures that its future policy will enable an efficient market outcome, which in turn will allow for the long-term sustainability of the industry. Subsidised airport charges may be of short term benefit to airlines, but if the resulting charges are insufficient to allow for adequate infrastructure to be provided, then they cannot be deemed efficient or sustainable.

DAA's response to Commission paper CP4/2010 is structured as follows

1. Single/Dual Till Debate - commentary on the theoretical debate on the merits of the single versus the dual till model and regulatory precedent in this area
2. Requirement for a Regulatory Test – recommendation for the establishment of a regulatory test to determine the scope of the regulatory till going forward
3. Requirements for Changing the Regulatory Till – the need for fair and equitable principles to be applied in respect of any policy change in relation to the regulatory till
4. Preliminary conclusions - DAA's initial conclusions

In preparing its submission, DAA has sought to address the Commission consultation questions in the body of its response.

1. The Single/Dual Till Debate

The Approach to the Regulatory Till

The scope and definition of the regulatory till is one of the key regulatory decisions which underpins the regulatory determination. It is accepted that there are two primary alternative approaches adopted in formulating the regulatory till, the use of a single or dual till mechanism.

The single till approach allows for the subsidisation of aeronautical revenues with net revenues from selected non aeronautical activities in deriving airport charges. The underlying premise is that revenues from certain commercial airport activities are being used to subsidise aeronautical costs. The corresponding single till RAB is comprised of a combination of aeronautical and non aeronautical assets. The single till approach is said to reflect the complementary relationship between aeronautical and non aeronautical airport activities.

Under the dual till approach, airport charges are derived on a stand alone basis where aeronautical revenues must cover all costs associated with aeronautical activities.

In practice there is a spectrum within which the regulatory till is determined and this allows for a hybrid till which can fall somewhere between the 'pure' single and dual till models depending on definition. This hybrid option is becoming increasingly common and examples of this are provided in Appendix 1.

The Single v. Dual Till Model

The theoretical merits of both alternative regulatory models have been extensively debated in recent years. In its consultation paper, the Commission has provided a summary of the key advantages associated with the single and dual till models.

However in response to the Commission question as to whether there are other arguments in favour of a single or dual till, DAA believes that there are a number of potential negative

implications arising from the use of the single till mechanism which the Commission should consider during its review.

- The single till mechanism weakens price signaling in the market for aeronautical services as airport charges are artificially low given that aeronautical revenues are supplemented by non aeronautical revenues. Therefore in certain circumstances the single till approach may give rise to under-priced aeronautical services.
- The single till approach may give rise to an aeronautical pricing structure, which introduces or accentuates allocative inefficiency in the case of certain airports. Allocative efficiency is achieved in the market for aeronautical services where the marginal cost of production for aeronautical services is equated to the market price. However at airport facilities where airport charges are suppressed under the single till approach and potentially fail to cover the marginal cost of production for aeronautical services this can result in allocative inefficiency.
- The single till mechanism can distort investment incentives in both aeronautical and non-aeronautical activities. Under the single till approach, the airport operator is not earning sufficient revenues to cover its stand-alone costs associated with aeronautical activities so incentives for investment in aeronautical infrastructure are weakened. Similarly, revenue streams generated from non-aeronautical activities are being used to subsidise aeronautical costs and this may act as a deterrent for investment in non-aeronautical activities. The single till approach therefore potentially weakens dynamic efficiency in the market for aeronautical services.
- The single till mechanism extends the remit of regulation beyond the confines of aeronautical charges into commercial non-aeronautical activities, which are subject to vigorous competition. Under the single till approach an airport's non aeronautical activities are also subject to regulatory scrutiny and the airport operator is only permitted to earn a net regulated rate of return on its non aeronautical assets included in the RAB.

Similarly, DAA believes that the following potential advantages of a dual till model should be considered by the Commission when deciding on the future composition of the regulatory till

- The dual till approach offers a superior level of allocative efficiency in the case of congested airport facilities as it allows prices to properly reflect the marginal cost of provision of aeronautical services.
- The dual till approach provides enhanced price signalling in the airport market. It allows for airport charges to cover costs incurred directly by aeronautical activities and therefore offers a more cost transparent approach.
- A dual till methodology would offer potential benefits in terms of dynamic efficiency as it increases the incentive to invest in both the aeronautical and non-aeronautical sectors of the business.
- The dual till approach supports efficient pricing signals in the market regarding new investment in capacity. This will deliver necessary capacity and will enable the market for aeronautical services to clear.
- The dual-till approach focuses regulation exclusively on the regulated aeronautical elements of the airport business thereby reducing regulatory distortions in non aeronautical markets.

Regulatory Precedent

A review of international precedent illustrates that in practice there is somewhat divided opinion on the appropriate composition of the regulatory till. A summary of some of the key regulatory till precedents is set out below in Appendix 1. This indicates that a number of jurisdictions have either reviewed the need for or implemented changes in the till structure in recent years with evidence of a shift away from the pure single till model. This may be attributed to a regulatory desire to focus their activities in on the specific operational areas where market power actually exists.

The information presented in Appendix 1 also describes the nature of the consultation processes used to inform decisions about changes to till regimes. In most cases, there is extensive consultation. These include formal consultations regarding the choice of till regime (such as the processes in the UK and in Australia) and consultation with users at airports with dual tills (such as Schiphol) in relation to the allocation of activities to certain tills.

The Commission's consultation document states that it may find that there is no merit in undertaking work in the till at this point in time. This would be unfortunate in light of the importance of the issue, its implications for efficiency, and given the extensive consultation exercises in which international regulators have engaged in order to address the issues to which the topic gives rise.

The Commission's Approach to the Regulatory Till

Original Approach

The Commission first defined the Aer Rianta regulatory till in its 2001 draft determination where it adopted the single till principle by including all aeronautical (regulated) and non-aeronautical (commercial) activities within the regulatory till with the exception of the GSH hotels and Aer Rianta International which were excluded on the basis that they had insufficient nexus to the regulated activities¹. This approach was then adopted and used in the 2001 final Determination.

¹ In practice this resulted in the exclusion of some of Aer Rianta's property joint ventures from the single till.

However in its 2001 analysis, the Commission did acknowledge that that a single regulatory till could potentially have adverse incentive effects on operations at airports reaching the limits of physical capacity. The Commission recognised that in certain circumstances the net commercial revenues arising from the single till could have the effect of pushing down airport charges which in turn would give rise to allocative inefficiency and run contrary to the Commission's statutory objective to maximise economic welfare. The Commission highlighted the potentially adverse incentive effects of a single till in certain circumstances².

In its draft 2001 Determination, the Commission suggested the possibility of allowing a partial move away from the single till in the case of Dublin Airport where there were acknowledged capacity constraints. It suggested that going forward it could consider a partial dual till where income, capital and operating expenditure arising from new commercial investments at Dublin Airport could be excluded from the regulatory till.

In DAA's (then Aer Rianta) response to the draft Determination, DAA welcomed the possibility of a movement away from the single till principle but highlighted that there may be a number of practical difficulties associated with the implementation of such a proposal.

In its final 2001 Determination, the Commission did not pursue this proposal citing practical reasons based on the difficulties involved in identifying and separating new and old investment at Dublin Airport plus the need for additional accounting material.³

Recent Approach

In its 2009 regulatory review, while reiterating its support for the use of the single till model the Commission did indicate the possibility of a different approach to the single till concept going forward. This is evidenced in a series of decisions which initiated a departure from the traditional single –till approach in practice.

² CP8 2001 P.12

³ CP8/2001 P.12

For example in its treatment of the T1X project where the Commission determined in response to the lack of support for this project by airport users that the capital costs of the T1X project were to be excluded from the regulatory asset base and an assumption was to be made regarding the corresponding commercial revenues from this project which were to be excluded from the single till to cover the costs associated with this investment. Therefore due to practical difficulties, the Commission has been forced to depart from the application of a pure single till model and to acknowledge that there were possible instances where DAA could proceed with certain commercial projects which would be outside the single till and which would have no impact on airport charges. In addition, the Commission decided in its 2009 Determination to exclude a hangar maintenance project from its capital expenditure allowance and to remove any associated revenues from its forecasts for commercial revenues on the basis that there was an absence of user support for this project. Furthermore the Commission referenced the MSCP(/hotel) project and the possibility of car parking being removed from the regulatory till going forward.

In its final Determination, the Commission highlighted the support for a revision in the regulatory till by interested parties such as DAA and Ryanair and it confirmed that while it was retaining the single till approach for the period 2010-2014, it recognised the need for this consultation process in order to inform its likely approach for future regulatory determinations.

Practical Difficulties with the Application of the Single Till

It is a feature of regulatory environments with determination periods of 4 to 5 years, that there will be a considerable degree of uncertainty regarding the precise requirement for facilities and investments during the regulatory period and beyond. Indeed with consultation processes taking place up to a year prior to the commencement of the next regulatory period, the planning horizon is even longer. It may be argued that for planning of airport infrastructure and for the operational and manpower requirements of aeronautical services, such timelines pose a reasonable and acceptable level of challenge for the airport operator. Masterplanning timelines for infrastructure are longer and a degree of alignment between the

demands anticipated as a result of traffic forecasts and the stated requirements of users may be expected⁴.

In this context, however, commercial activities give rise to particular challenges. In the first instance the environment is significantly more fluid and greater flexibility in response is required. The airport operator for example needs to be able to respond to competition, changing trends in behaviour and buying patterns, or changes in the mix of commercial activities at other airports. Furthermore, little input can be expected from airlines or other users in planning for such activities. The users recognise and have stated in the past that they have little expertise in many commercial areas, such as car parking, which are not related to their core business. In certain other instances, direct competition between the parties may arise, such as airport retail and on-board retailing. These issues are particularly significant given that more than 50% of DAA's total revenues in the regulated business have consistently arisen from commercial activities, across business areas as diverse as car parking, concession retail, direct retailing and property rental.

Such issues have manifested themselves in consultations and regulatory treatments in the past. This was particularly evident in the Commission's recent approach to the T1X project and its treatment of the hangar maintenance project where it was decided that in the absence of user support for the projects concerned, the Commission would exclude this investment from the regulated asset base.

While, exercising caution in ensuring that users are not required to finance commercial investments that they do not envisage will give rise to future benefits, it is imperative that incentives operate to encourage innovation and growth in commercial returns. Any regulatory regime where the default position is to disallow expenditure unless the related returns some 4 or 5 years later can be predicted with perfect foresight, or where all investment decisions need to be made together for a 5 year horizon and with the agreement of all users, is designed to promote an excess of caution and dis-incentivises innovation.

⁴ The response by airport users following consultation on DAA's 2010-2014 capital investment programme demonstrates how difficult it is in practice to get users support for airport investment. In that instance the DACC appeared supportive of c.40% of the capital investment programme output and functionality but suggested that only 9% of the proposed capital expenditure should be allowed by the Commission as recoverable cost. In addition, it should be noted that in its review of this DAA capital investment programme, the DACC chose to unequivocally support only a single project to the value of €0.5m out of a total of 44 projects.

It can also be argued that the current structures encourage or facilitate regulatory gaming on behalf of users by withholding agreement for capital or operating costs associated with new or replenishment investments, on the basis of their lack of expertise, but arguing for high overall commercial revenue thresholds on the basis of other industry benchmarks or other stretch targets.

Certain investments may have direct linkages to the businesses of users, such as investments in fuel storage or distribution, where the returns may arise in the form of lower direct costs to airlines and handlers or in greater resilience and security of supply. In such cases no incentive to invest will arise unless the costs are appropriately remunerated in the RAB or operating cost base. However, such instances are not the norm.

The Commission has constructed and maintained a regulatory framework for the last 10 years which has incentivised DAA to maximise non-aeronautical revenues at Dublin Airport, indeed setting stretch targets for revenues in successive determinations. In this regard, the Commission has reviewed the operating costs associated with commercial activities separately from the related commercial revenues. Different external consultants have been engaged by the Commission and/or the reviews have been conducted separately. This runs the risk of applying inconsistent drivers such as demand forecasts or economic projections to the revenues and costs of the same activities. More fundamentally, this practice appears to illustrate that the purpose of any airport's commercial activities, which is to generate a positive return, taking into account the revenues, operating costs and capital investment requirements in the round, is not fully appreciated or recognised in the regulatory model. Separately considering each of these elements under the separate building blocks risks breaking the coherent basis of a business plan into mutually inconsistent elements.

Future Regulatory Policy.

DAA believes that a number of the Commission's recent policy decisions demonstrate a need for a reconsideration of the current composition of the regulatory till and the use of the single till principle. It is therefore entirely appropriate for the Commission to undertake this consultation in order to develop a clear policy going forward in order to eliminate unnecessary regulatory uncertainty. DAA believes that a clearly defined set of criteria for establishing regulatory scope would be preferable to the current approach where certain ad hoc decisions have led to a number of exclusions from the regulatory till and other exceptional accounting treatments (for example in the treatment of T1X). DAA believes that the Commission should continue this consultation process with a view to determining its

future approach to the regulatory till. However in doing so the pursuit of maximum economic welfare be it productive, dynamic or allocative must be the driving force behind its regulatory decision-making.

2. Development of A Regulatory Test

The Commission has outlined a number of possible approaches which could be used to define the regulatory till where it was decided to move away from the single till mechanism.

- Legalistic approach - where only the assets and costs relating to regulated aeronautical activities would be taken into account when defining the regulatory till
- Engineering approach - where the regulatory till would be defined on the basis of the particular activities that are necessary for airlines to operate at the airport and are part of the aeronautical business.
- Economic approach – where regulation is focused on seeking to identify the aspects of the airport business where there is market power and therefore to define the regulatory till on this basis.
- Accounting approach - the development of a set of accounting rules to allocate the various cost centres between the regulated and unregulated tills.

DAA believes that if the Commission decides to redefine the existing regulatory till then this process must be underpinned by a clearly defined set of principles which can be applied as the determining criteria.

DAA sees the development of the appropriate criteria as an important prerequisite prior to effecting change to the existing regulatory model. Therefore establishing a suitable regulatory test is part of the specific work which the Commission must undertake in association with DAA and other interested parties going forward as part of any future work programme.

In assessing the various approaches put forward by the Commission, DAA's initial view is that

- the establishment of appropriate accounting rules for allocating costs between regulated and unregulated tills will be an essential element of the work programme going forward if any changes to the existing regulatory till are to be effected. However

this accounting approach would not in itself provide an adequate test to select possible exclusions from the regulatory till

- the legalistic approach may be potentially useful in establishing the core regulated activities which should be included in the regulatory till at a minimum
- the engineering approach may identify key links between the different airport activities but it will not necessarily provide an adequate test to select possible exclusions/inclusions from the regulatory till
- the economic approach provides a market power test which could be used as a basis for assessing whether individual activities should be included or excluded from the regulatory till. Given that it provides a legitimate basis which can be applied in considering the composition of the regulatory till, the economic approach should be used as the starting point in deriving the basis for any redefinition of the regulatory till.

Application of the Economic Approach

DAA believes that the use of an economic approach in assessing the regulatory till is appropriate given that this is reflective of the justification for economic regulation. The economic approach is based on a market power assessment where the scope of the regulatory till is limited to include only airport activities in which the airport is identified as holding considerable market power. DAA considers that this approach would identify certain business activities which are operating within competitive markets and therefore should be excluded from the regulatory till. Thus this would suggest the requirement for a revision of the current regulatory till composition going forward. This could deliver a superior economic outcome than the existing single till framework since under the current regulatory till certain airport activities are subject to both indirect regulation through the single till and the rigours of a competitive market environment.

This could be potentially very significant in the case of Dublin Airport, given that, as demonstrated by the Commission well more than 50% of total revenues in the regulated airport are derived from commercial activities. The Commission has constructed and maintained a regulatory framework for the last 10 years which has incentivised DAA to maximise non-aeronautical revenues at Dublin Airport, indeed setting stretch targets for revenues in successive determinations. If the Commission is of the view that there is no

need to impede DAA's ability to maximise profits in such areas (and indeed considers it important to actively incentivise it) then it is unlikely that DAA could have any corresponding material market power. DAA is not aware of evidence of adverse consequences of this upon any parties, including the travelling public, having been presented to the Commission or other regulatory bodies.

DAA recommends that in its assessment of the future scope for the regulatory till, the Commission should consider the development of a market power test. This test could be used to estimate the degree of market power held by DAA in relation to its individual businesses and to identify activities deemed to have limited market power which could be considered for possible exclusion from the regulatory till. This test would then provide the basis for the Commission to carry out a proper assessment of what revenues and costs should appropriately be included in the regulatory till going forward. It may be practical to begin this process by either looking at new activities or existing activities that are essentially separately maintained before having to implement significant cost/asset allocation policies.

In terms of establishing a market power test, it would be expected that this test would be based on the definition of the relevant market for an individual airport activity and an assessment of the degree of competition in that relevant market. The Commission would then have to consider the process it would use in defining a market and the market power tests which it would adopt. DAA would welcome an opportunity to work with the Commission to develop a suitable regulatory test.

3. Requirements for Changing the Regulatory Till

Assessment of Options for the Regulatory Till

A decision by the Commission to change the current formation of the regulatory till will have long term significance for the level of regulated charges and the financial viability of Dublin Airport. Therefore to answer the Commission's question, in terms of the specific work which it will need to undertake, DAA recommends that the Commission considers the collaborative development of a model which will allow it in conjunction with interested parties to assess the rationale for the different regulatory till options, the likely impact of each of these different options on the achievement of the Commission's statutory objectives and their potential contribution to the goal of economic efficiency.

Following this preliminary assessment of the different regulatory till options, the Commission will then be in a position to examine the likely requirements of each of these options in terms of their likely impact on future airport charges, the need for detailed cost allocations and the potential removal of assets from the existing regulated asset base. DAA believes that any decision by the Commission to adjust the composition of the existing regulatory till going forward or to depart from the current single till model in respect of future airport activities will require specific guidelines in relation to implementation and in particular the methodology employed in respect of cost allocation and removal of assets from the RAB. Therefore given the complexities of these matters and the further analysis which is required, DAA believes that it is not appropriate to decide on possible inclusions/exclusions of costs and revenues from a revised regulatory till at this stage in the consultation process.

In determining its future policy on the regulatory till and in carrying out specific work in this area, it is critical that the Commission adheres to principles of better regulation as a guiding structure in deciding on possible cost exclusions/inclusions from the regulatory till.

- Necessity – are the rules and structures of regulation necessary and valid?
- Effectiveness - regulation should be focused and minimise side effects.
- Proportionality – regulators should intervene only when necessary, with remedies appropriate to the risk posed.

- Transparency – regulators should be open, ensuring effective consultation takes place to take into account stakeholders’ views and expertise. The regulation should be clear to all.
- Accountability – regulators must be able to justify decisions with clear explanations of how and why decisions have been reached, and be subject to public scrutiny.
- Consistency – rules and standards must be joined up and implemented fairly.

In this context, DAA believes that incentivisation is a critical requirement for price cap regulation and that the Commission’s policies in relation to the regulated till could impact significantly on the incentive structure underlying the system of price cap regulation employed at Dublin Airport. It is therefore essential that any changes which the Commission applies to the existing regulatory structure are made in accordance with the test of economic efficiency and in line with the Commission’s statutory objectives in particular the requirement to ensure that the financial viability of DAA is maintained.

DAA recommends that in order to progress this consultation process, the Commission should set out a detailed work programme indicating to interested parties the timescale for the remainder of this process, the various stages that are envisaged, the matters to be concluded and the options for consideration.

Given the importance of this consultation process, DAA recommends that the Commission considers entering into more discursive consultation with interested parties with the possibility of meetings and/or seminars to openly debate the various critical issues in a more dynamic setting. We believe that in this context the Commission’s preferred regulatory option should be outlined at an early stage. In particular, DAA recommends that the Commission should include the following in its consultation process

- Meetings with interested parties to obtain their views/concerns following receipt of submissions
- Seminar and workshops with speakers and interested parties to discuss possible options for the future regulatory till and to test the likely impact of these relevant options on airport charges

- Further paper from the Commission outlining the initial proposals for implementation of any proposed change
- Meetings with respondents to discuss key issues relating to any proposed changes

4. Preliminary Conclusions

It is accepted that under the single till approach, airport charges can be artificially reduced by subsidisation from commercial revenues. As a consequence, the resulting airport charges often do not reflect opportunity costs by equating supply and demand or the full cost of providing aeronautical capacity. Furthermore persistent under-pricing at an airport can in turn lead to artificially high demand and distorted incentives for investment. The arguments presented by the Commission which reference economic efficiency would suggest that a move away from the single till towards a dual till model would deliver a more efficient outcome. This would be consistent with commonly accepted regulatory theory, and the principle that efficiency is most readily achieved when economic actors pay the market clearing price of the goods and services that they consume.

A review of international precedent demonstrates a notable regulatory shift away from the pure single till model toward a dual or hybrid till composition

While from a theoretical perspective the dual till has clear merit and there are strong economic arguments to support the introduction of a dual till approach at Dublin Airport, the manner in which a possible change to a dual till would be effected and the methodology employed in relation to possible adjustments to the RAB and the implementation of cost allocations will significantly impact the outcome in terms of economic efficiency.

DAA acknowledges that in practice, a complete transfer to a dual till would amount to a substantial change in regulatory policy by the Commission. Therefore DAA suggests in answer to the Commission's question that a pragmatic solution for the Commission to manage the transition from the current regulatory till may be to consider re-examining the scope of the regulatory till going forward with a view to allowing a transitional move away from the single till mechanism and a smooth transition in terms of the separation of Dublin Airport's aeronautical and commercial businesses.

DAA notes that in recent decisions the Commission has demonstrated the need to depart from the application of a pure single till model by allowing certain commercial projects to remain outside the single till and therefore to have no impact on airport charges.

It is therefore appropriate for the Commission to reconsider the composition of the regulatory till at this juncture and to develop a clear policy going forward in order to eliminate

unnecessary regulatory uncertainty. DAA recommends that the proposed 'economic approach' should be used to redefine the boundaries of the current regulatory till and that this would result in a clearer, leaner and more productive remit for the Commission with significantly more potential for a economically efficient outcome.

DAA believes that the Commission must now decide on the next course of action in relation this consultation process. If the Commission accepts the DAA's view that there is a need for regulatory change then it follows that a series of critical decisions will have to be made which will shape the direction of the consultation process and which will decide on the overall outcome in terms of a possible revised regulatory till composition. DAA believes that it would be beneficial if that the Commission were to outline its preferred regulatory option at an early stage. It recommends that following this, the Commission should then enter into more discursive dialogue with interested parties regarding the relevant matters. DAA would welcome the opportunity to play an active role in this process.

Appendix 1: A Review of International Precedent

Stansted, Heathrow and Gatwick (BAA)	Single	<p data-bbox="751 327 1339 481">As part of the Q4 (2003–08) price control review for Heathrow, Stansted and Gatwick, there was extensive discussion and consultation about changing from a single- to a dual-till regime.</p> <p data-bbox="751 510 1339 1288">In July 2000, in anticipation of Q4, the CAA published a consultation paper, 'Issues for the Airport Reviews', inviting comment on whether the price control review should address certain issues, including the merits and disadvantages of a single- versus dual-till regime. The CAA received more than 30 submissions to this consultation paper. In December 2000, it published a series of discussion papers on the key issues for the price review, one specifically on the single- versus dual-till approach, and received 18 submissions from airlines, airports, IATA and other groups and individuals.⁵ In these responses, airlines all objected strongly to the dual-till approach, claiming that higher charges and fares would result. The main benefits claimed by the CAA and BAA for the dual-till approach related to positive effects on investment incentives, efficient utilisation of scarce runway capacity and de-regulation of competitive/potentially competitive activities.</p> <p data-bbox="751 1317 1339 1758">In 2001, the CAA received a number of responses to its consultation paper on preliminary proposals for the price reviews.⁶ In March 2002, it finally published its advice, which included a change from a single-till to a dual-till regime, and made reference to the Competition Commission.⁷ The Commission considered the proposed dual-till approach, and accepted evidence from the CAA, BAA, airlines and other users. The Commission claimed that the CAA's proposal for a dual-till approach was one of the most controversial aspects of its recommendations.</p>
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⁵ CAA (2000), 'The 'Single Till' and the 'Dual Till' Approach to the Price Regulation of Airports', Consultation Paper, December.

Stansted, Heathrow and
Gatwick (BAA) (cont'd)

Single (cont'd)

The Commission ultimately decided that the single-till approach be retained.⁸

In response, the CAA held additional consultations and hearings, and eventually changed its position to align with that of the Competition Commission. In February 2003, the CAA published its decision document, which maintained the single-till regime for Q4 for Heathrow, Stansted and Gatwick. In its decision, the CAA explained that regulation is most effective when founded on credible incentives, and incentives are likely to be most effective where there is agreement between the CAA and the Competition Commission, and between users and the airports. Therefore, the CAA considered that the support of the Commission and airlines for the single till may undermine the desirable incentive properties that a change to a dual till could have provided, and decided that it would base the price cap on a single-till approach. The CAA also noted that the case for moving to a dual till would be substantially stronger in the future if airports were better able to demonstrate its potential benefits.

⁶ CAA (2001), 'Heathrow, Gatwick, Stansted and Manchester Airports' Price Caps 2003-2008', CAA Preliminary Proposals, Consultation paper, November.

⁷ CAA (2002), 'Heathrow, Gatwick and Stansted Airports' Price Caps, 2003-2008: CAA recommendations to the Competition Commission', March.

⁸ Competition Commission (2002), 'BAA plc: a report on the economic regulation of the London airports companies (Heathrow Airport Ltd, Gatwick Airport Ltd and Stansted Airport Ltd)', November.

Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney	Dual	<p>In 2001, the Australian Government Productivity Commission considered the issue of price regulation of airport services at privatised airports, including whether a single- or dual-till approach should be employed. In response to a consultation document, over the course of 2001, the Productivity Commission received 79 submissions from individuals and groups, including from the airports, the two major domestic airlines (Qantas and Virgin Blue), IATA, the Regional Aviation Association of Australia, Board of Airline Representatives of Australia (representing international airlines), the Australia Taxi Industry Association, and a number of government departments (although not all of these responses discussed the till issue). Public hearings were also conducted in Sydney and Melbourne at the start of the consultation process and in response to the draft report.</p> <p>In 2002, the Productivity Commission published its final decisions about the price regulation of aviation services.⁹ The government decided to replace single-till price capping with dual-till price monitoring at these seven airports.</p>
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⁹ Australian Government Productivity Commission (2002), 'Price Regulation of Airport Services', Inquiry Report, No. 19, January 23rd.

Adelaide, Brisbane,
Canberra, Darwin,
Melbourne, Perth and
Sydney (cont'd)

Dual (cont'd)

In 2006 the Productivity Commission set out to review the effectiveness of the light-handed regulatory regime for airport pricing and, if required, advise on changes to the regime.¹⁰ The government again consulted with key interest groups and affected parties. It advertised in the national press and sent a circular to individuals and organisations which were likely to have an interest in the inquiry. Informal discussions were held with all seven price-monitored airports, airlines, and many other stakeholders. The government released an issues paper to assist participants in preparing their submissions, and about 50 responses were received. It also sought advice from Professor Peter Forsyth and met with Dr Harry Bush of the CAA.

In September 2006, the Productivity Commission released a draft report in which it sought further comment via written submissions and/or participation at public hearings in Sydney or Melbourne. An additional 34 submissions were received.

The government ultimately suggested a continuation of the existing dual-till regime, and after consultation with airlines and airports, recommended that car parking charges be removed from the monitored till and be monitored separately.

¹⁰ Australian Government Productivity Commission (2006), 'Review of Price Regulation of Airports Services', Productivity Commission Inquiry Report, No. 40, December 14th.

Auckland, Wellington and Christchurch Dual

The Commerce Commission consulted on the till regime as part of its Information Disclosure and Input Methodologies papers in 2009/10.

For the Input Methodologies paper, the Commission engaged in extensive consultation with interested parties for two years preceding the publication of the final decision in December 2010. It also sought the views of a range of experts in economic regulation and other related matters.¹¹

The Information Disclosure paper dealt explicitly with the choice of till regime. The paper was published in three iterations, and in total the process ran for about two years with three major rounds of consultation.

The first discussion paper was published on July 29th 2009 and invited interested parties to respond.¹² All submissions were to be supported by documentation and evidence. To assist interested parties in making submissions, the Commission identified a number of questions (164) throughout the paper, on which it invited comment. It published the submissions on its website, which were received from the three relevant airports as well as the board representing airlines (BARNZ). However, the till regime was not a significant issue in responses to the consultation.

¹¹ Commerce Commission (2010), 'Input Methodologies (Airport Services)', Reasons Paper, December.

¹² Commerce Commission (2009), 'Information Disclosure Discussion Paper', July 29th.

Auckland, Wellington and Christchurch (cont'd) Dual (cont'd)

In the Information Disclosure paper, the Commission provided its preliminary view; namely, that the purpose for which it may require the disclosure of consolidated information in respect of unregulated services implied that the Commission was restricted to taking a dual-till approach to information disclosure regulation for suppliers of specified airport services.

The draft determination was published in May 2010 and submissions were invited and workshops were held.

After the publication of the final draft determination, submissions were accepted on technical drafting before the final determination came into effect. The final determination, published in December 2010,¹³ maintained the dual-till regime proposed in the discussion paper.

¹³ Commerce Commission (2010), 'Commerce Act (Specified Airport Services Information Disclosure) Determination 2010', December 22nd.

Amsterdam (Schiphol)

Dual—not including
the activities of
Schiphol
International

In 2006, the approval of Airport Charges Regulation was completed under the Aviation Act. As required by the Aviation Act, Schiphol set up a cost and revenue allocation system for aviation activities and submitted this system for approval to the Board of Directors of the Dutch Competition Authority (NMa). There were then discussions and consultations between Schiphol and the NMa on areas where the two parties disagreed about the allocation of costs and revenues to aviation activities.

The Aviation Act also requires that the Board provides users and or (other) interested parties with the opportunity to present their opinions on the draft decision. Partly on the basis of these opinions, the Board takes a decision on the application.

In line with this requirement, after meetings between the NMa and Schiphol, the Board drew up a draft decision in relation to the approval of the allocation system, and this was made available for inspection by means of publication in the Netherlands Government Gazette and announcement on the NMa's website.¹⁴

KLM, IATA, the Board of Airline Representatives in the Netherlands (BARIN) and the Schiphol Airport Operating Committee (SAOC) presented their opinions on the draft decision in 2007. Schiphol was then given the opportunity to respond to each of the opinions submitted.

The users' opinions were set out in an addendum to the decision and the opinion of the Board was given in respect to each point submitted. In many cases users believed that revenues from aviation activities were not properly allocated to these activities in Schiphol's allocation system. The Board assessed the merit of these statements by users, and requested additional clarification from Schiphol. In some cases, the final decision was then amended in accordance with users' views.

¹⁴ Netherlands Competition Authority, 'Decision', No. 200057/76.BT37, Case: N.V. Luchthaven Schiphol.

Copenhagen	Dual—although there is a provision for transfer of additional return from the commercial area: minimum transfer of 10% and maximum of 50%	There is consultation with users about allocating activities to different tills. The airport drafts schedules of charges to be submitted to the Danish Civil Aviation Administration, which undertake consultation among all 'regular users' of the airport and subsequently approves the charges. ¹⁵
Rome (ADR)	Semi-single till (Hybrid)	A semi-single till framework received Government approval in December 2008. ¹⁶ Under a semi-single-till regime, only ADR's aviation activities are regulated, but (at least) 50% of the extra commercial margin, or landside unregulated profits, enter into the formula determining the airside regulated fares.

¹⁵ Danish Civil Aviation Administration (2008), 'Regulations on payment for use of airports (airport charges)', BL 9-15, Edition 2, December 19th. Regular users are: those based at the airport; those who, over a period of more than eight months, contribute either more than 20% of the airport's annual revenues in terms of aeronautical facilities and services, or more than 20% of the airport's total annual operations; and those airlines that either operate 5% of the airport's total take-offs or carry 5% of its passengers

¹⁶ Gemina (2010), 'ADR: Managing Traffic Slowdown and Looking Ahead'

USA

Airports employ residual cost approaches (single till), hybrid regimes and compensatory approaches (dual till)¹⁷, although they have tended to move away from residual towards compensatory and hybrid approaches

Federal law does not require any single approach to airline rate-setting, but it does require that the methodology used be applied consistently to similarly situated aeronautical users and that it conforms with the US Department of Transport's (DOT) policy on airport rates and charges.

Overall, the setting of residual versus compensatory rates is a process of negotiation of 'Agreements' between airports and airlines. Agreements are contracts between an airport operator and its tenant airlines that establish the rights, privileges and obligations for each party, and define how the airport is to be used by the airlines. This agreement also establishes the business arrangement and rate-setting methodology with the airlines—ie, compensatory, hybrid or residual.

The establishment of the business arrangement between the airlines and the airport operator without an Agreement is referred to as the ordinance approach. Under this approach, airports must adhere to rate-setting policies as laid out by the US DOT's 1996 'Policy Regarding Airport Rates and Charges', and thus it must set aeronautical fees and charges under a compensatory approach. The airlines can file a complaint to the DOT if the rate-setting approach does not adhere to this policy.¹⁸

¹⁷ For example, Chicago O'Hare (ORD), Dallas/Forth Worth (DFW), and Miami International Airport (MIA) apply the residual approach, while Boston Logan International Airport (BOS) and Los Angeles International Airport (LAX) apply the compensatory approach.

¹⁸ Airport Cooperative Research Program (2010), 'Airport/Airline Agreements – Practices and Characteristics', ACRP Report 36.

Singapore (Changi)

Hybrid

As part of corporatisation, which also set the till regime, the regulator, CAAS, used consultants and visited airports and government regulators in Europe, Australia, New Zealand, North America and Asia. CAAS says that it consulted widely with various stakeholders in the aviation industry.

In choosing the regime, CAAS argued that there are incentives for the airport operator to innovate in non-aeronautical activities, such as retail sales. Therefore, part of the revenues from these activities should help keep aeronautical charges, such as aircraft and landing fees, competitive.

It is our understanding that Changi allocates costs and assets to one of four tills: aeronautical, non-aeronautical, security and out-of till. The revenue yield cap (RYC) is then set to cover Changi Airport Group's (CAG) aeronautical costs and cost of capital less CAG's contribution from a portion of its profits earned from non-aeronautical revenue activities. Thus, a portion of CAG's profit from its non-aeronautical business goes toward subsidising the company's aeronautical expenses.

In each financial year, Changi must also provide CAAS with an explanation of the allocation of costs to aeronautical services and facilities, non-aeronautical facilities, and security services and facilities, including the details of the methodology of allocating such costs.

Paris (CDG and Orly)

Adjusted till

As part of the price control review process for the 2011–15 period, there was a reduction in the non-aeronautical contribution to the regulated scope as the regime was changed from a single till to an adjusted till. As of January 1st 2011, retail and diversification estate activities can be excluded from the regulated scope of activities.¹⁹ This refers to property and real estate activities outside of terminals, other than those that provide land, floor space, real estate or premises for aircraft-related activities, car parks, public transportation and ground-handling activities. Car parks, industrial services, air terminal domain and airport real estate are non-aeronautical activities which will remain in the regulated till.

This new regime is intended to optimise performance of the airport companies. It is also considered that this change would motivate companies and their employees to continue with efforts undertaken with regard to retail activities, therefore promoting customer satisfaction.

The process involved in negotiating the 2011–15 Economic Regulation Agreement (ERA II) lasted about one year. There was an initial phase of consultation with the clients of ADP—in particular, the Paris-CDG and Paris-Orly economic consultative commission from October 2009 to January 2010. In February 2010, ADP published its proposals for agreement. A public consultation was then held over the following three months and there were informal consultations with the airport steering committee and bilateral meetings with airline companies. There were also formal consultations with stakeholders after the public presentation of proposals. After the referral to the airport consultative commission, there was negotiation of the contract with state regulatory authorities, following which ERA II was signed.

¹⁹ 'Economic Regulation Agreement (ERA) Between the State and Aeroports de Paris 2011-2015' Unofficial Translation from French.

NATS (NERL) – National Single
Air Traffic Services

As part of the price control review for period CP3 (2011–14), in 2010 the CAA undertook a consultation on four main issues concerning the scope of NERL’s price controls, one of which was the regulatory till to be used.

The CAA assessed the responses to its February 2010 consultation, including submissions by airlines that supported the single-till approach. The CAA recognised the widespread support for the continuation of the single-till approach during CP3, and therefore chose to maintain the single till.

India (except Delhi and
Mumbai)

Single

In 2008, the Parliament of India passed The Airports Economic Regulatory Authority of India Act 2008 establishing the Airports Economic Regulatory Authority (AERA) to determine airport charges and monitor airports' performance.

In December 2009, AERA published a White Paper on regulatory objectives and philosophy in regulating airports and air navigation services, including the choice of till regime.²⁰ This paper did not reveal the regulator's views on its preferred choice of till. AERA welcomed written evidence-based feedback, comments and suggestions from stakeholders on the issues raised. This was followed by a consultation paper in which AERA presented its support for a single till and invited further responses from stakeholders.

Private operators argued that dual till was the better option. Other airports, such as Fraport, also responded to the consultation. Airlines advocated a single-till approach, while ACI commented on the White Paper and advocated a dual-till approach.

After narrowing down the approaches to a hybrid- and a single-till regime, in January 2011 AERA decided a single till regime would apply at all major airports²¹ although a different approach had to be applied at New Delhi and Mumbai due to pre-existing contracts at these airports.²²

AERA initiated a separate process to look at the regimes of Mumbai and Delhi Airports based on the state support agreements.

²⁰ AERA (2009), 'Regulatory Objectives and Philosophy in Economic Regulation of Airports and Air Navigation Services', White Paper No.01/2009-10, December 22nd.

²¹ AERA (2011), 'Order No. 13/2010-1 in the matter of Regulatory Philosophy and Approach in Economic Regulation of Airport Operators' para 5.137

²² <http://www.mydigitalfc.com/news/single-till-pricing-fixing-airport-tariff-553>

