



**Consultation on Conducting an
Interim Review
of the
2014 Determination of the
Maximum Level of Airport Charges at Dublin Airport**

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1. Introduction

- 1.1 After making a determination of the maximum level of airport charges at Dublin Airport the Commission can review it and if it sees fit, amend the determination. This can be at its own initiative or at the request of a concerned party. Before doing so, the Commission needs to establish if there are substantial grounds for conducting a review.¹
- 1.2 On 6 November 2015 the Commission received such a request from Dublin Airport (daa). It has requested a review of the 2014 Determination of the Maximum Level of Airport Charges at Dublin Airport, and thereafter the removal of the 5% cap on the k factor in the price cap formula. The k factor allows under collections in one year to be carried forward to future years, but the amount which can be carried forward is currently capped at 5% of the price in the year of the under collection.
- 1.3 It is Dublin Airport's preference to have the ability to under collect by an amount larger than the 5% in 2016 and potentially subsequent years but to recoup this under collection in later years of the Determination period by charging more than the stated price cap.
- 1.4 Passenger growth at Dublin Airport has been stronger than expected. Should this growth continue the runway trigger set in the 2014 Determination could be met by the end of 2015 or early 2016.² This will increase the price cap in the following year by €0.59. Dublin Airport's stated desire is not to increase prices but at the same time not to lose out on revenue over the course of the determination.
- 1.5 As described above the Commission can review the 2014 Determination if it is decided that there are substantial grounds for the review. This paper seeks to consult with users on whether the operation and methodology of the K factor within the price cap formula set out in the prevailing determination constitutes substantial grounds for review.
- 1.6 A decision on substantial grounds differs from one on amending the Determination. If the decision is taken to proceed with a review of the 2014 Determination we will follow the procedure outlined in Section 3 to arrive at our decision on any amendments. Parties will separately have the opportunity to comment on the merits and scale of any such amendments.
- 1.7 In the next Section we discuss Dublin Airport's grounds, and the appropriate tests to establish if these grounds are substantial enough to merit a review. Section 3 discusses the legislative basis for a review and how the potential review might proceed. Section 4 provides details to parties on how to respond. The deadline for responses is **5pm, 20 November 2015**.

¹ Pursuant to Section 32(14) of the Aviation Regulation Act 2001, as amended by the State Airports Act, 2004.

² Remuneration of the building of a parallel runway commences the year after passenger numbers reach 25m.

2. Request for a Review and Establishing Substantial Grounds

Dublin Airport's Request for a Review

- 2.1 As outlined in 1.2, the Commission received a request from Dublin Airport to conduct a review of the 2014 Determination. Dublin Airport requested that the grounds for the review be limited to removing the cap on the k factor in the price cap formula. The application stated:

"The price cap for 2016 is uncertain, as it is possible that the runway trigger event will occur before end 2015, although this cannot yet be confirmed. In either case (though the amounts differ) an increase in the general level of airport charges will be necessary, in order not to exceed the 5% cap on under-recovery, as the 'k' term in the price cap is currently defined.

It is daa's preference not to increase the general price level in 2016, which preference we believe would be shared by our airline customers. However, we wish to do this in a manner which does not impact on our ability to earn the total allowed revenues over the regulatory period. Accordingly we hereby apply to you to remove the 5% ceiling on under-recovery in the 'k' term, which we understand is possible through a single issue Interim Review of the 2014 Determination. In our view, this will allow a customer-oriented flexibility with no impact on the substantive terms of the 2014 Determination."

The full letter of application is published alongside this paper.

K Factor in the 2014 Determination

- 2.2 As in previous determinations, the price cap formula for years 2016 to 2019 includes an adjustment to allow the airport operator to carry forward under collections in previous years. This under collection is capped at 5%. The k factor exists, so as not to unduly penalise daa if it is unable to hit the cap exactly. The rationale for the cap on the k factor, as currently defined and operating in the prevailing price cap, was first given in the 2009 Draft Determination on airport charges:

This is to protect prospective users from an unduly large increase in the price cap from that which was intended. At the same time, the deviation under the cap that is allowed is sufficiently large that the DAA should not normally have to raise charges within the season if it wants ultimately to collect all the revenues allowed by the determination.

Establishing Grounds for a Review

- 2.3 It is the Commission's stated and still held position that interim reviews are undesirable and should only be conducted in exceptional circumstances.
- 2.4 The Commission uses incentive-based regulation: once we have made the Determination, there are incentives for DAA to outperform the implicit

targets that have been set. If the determination is allowed run its course these incentives are strongest. If a determination is reopened in its entirety then all incentives are reset. Limiting the scope of any review can attempt to preserve incentives but there is a danger, that due to asymmetric information, the requester of the review may be “cherry picking”. That is, circumstances which have resulted in the request for a review may also affect other “building blocks” not part of the request.

- 2.5 A propensity for interim reviews would reduce certainty for the airport, users and providers of finance, and undermine the durability of a determination.
- 2.6 Due to the negative impacts of a review, and our statutory obligations, the Commission must establish that there are substantial grounds prior to conducting a review.
- 2.7 Establishing substantial grounds for review should be done in a manner consistent with the statutory objectives of the Commission. These are, as set out in Section 33 of the 2001 Act (as amended by the 2004 Act):
 - to facilitate the efficient and economic development and operation of Dublin Airport which meet the requirements of current and prospective users of Dublin Airport,
 - to protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport, and
 - to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner.

The Commission has previously concluded that the essence of its statutory mandate is the promotion of economic efficiency.³

- 2.8 When previously considering interim reviews the Commission outlined the test that should be used to establish if substantial grounds exists for conducting an interim review:⁴
 - Are the circumstances exceptional?
 - Are the circumstances generally outside the control of the regulated company?
 - Are the effects of those circumstances liable to be significant enough to compromise the objectives of the original decision without a review (taking into account the incentive and any other detriments that would in general also arise from a review)?

Parties are requested to respond to the consultation question set out below with these three questions in mind.

³ See CP9/2004: http://www.aviationreg.ie/_fileupload/Image/PR_Policy_PUB2_POL_CP9_2004_AVIATION_ACT.pdf

⁴ See CP6/2006: http://www.aviationreg.ie/_fileupload/Image/PR_AC2_PUB8_CP6_2006.pdf

3. Legislative Basis and Process

Conducting a Review

- 3.1 Pursuant to Section 32(14) of the Aviation Regulation Act 2001, as amended by the State Airports Act, 2004⁵:

The Commission may after the making of a determination— (i) at its own initiative, or (ii) at the request of an airport authority or user concerned in respect of the determination, if it considers that there are substantial grounds for so doing, review the determination and, if it sees fit, amend the determination.

Should a review result in an amendment to the original determination it shall be in force for the remainder of the period of the determination.

- 3.2 The process to be followed for conducting a review is the same as the process for making a determination:

Subsection (5)(b) and subsections (7) to (13) shall apply to an amendment made under paragraph (a).

- 3.3 Subsection (5)(b) referred to above states that a decision will become operational no later than 30 days its making. Subsections (7) to (13) detail the process by which the decision is made. These include the publication of notice of the intention to make a determination followed by a consultation period to last at least one month.

Timeline for a Review

- 3.4 If, after concluding this consultation, the Commission decides to proceed with a review, we would expect to publish a notice of the review incorporating some commentary on potential amendments by the end of November. A consultation period of one month would follow, after which we would publish our decision in early 2016.

4. Responding to the Consultation

- 4.1 The Commission requests the views of interested parties on this consultation. Respondents are asked to support any views expressed in submissions with relevant evidence where possible.
- 4.2 The consultation question is: Does an examination of the operation and methodology of the K factor as currently defined in the prevailing price cap constitute substantial grounds upon which to conduct an interim review of the prevailing determination on airport charges at Dublin Airport?
- 4.3 We may correspond with interested parties who make submissions, seeking clarification or explanation of their submissions. Such correspondence will not be an invitation to make further submissions.

⁵ The State Airports Act 2004 deleted the requirement for 2 years to have passed from the time of making the determination before a review can be conducted.

- 4.4 Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. Ordinarily we place all submissions received on our website. We may include the information contained in submissions in reports and elsewhere as required. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided.
- 4.5 We do not ordinarily edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.
- 4.6 While we endeavour to ensure that information on our website is up to date and accurate, we accept no responsibility in relation to the accuracy or completeness of our website and expressly exclude any warranty or representations as to its accuracy or completeness.
- 4.7 Responses should be titled "Response to Consultation on Conducting Interim Review" and sent:
- By email to: info@aviationreg.ie (Preferable); or
 - By post to: Commission for Aviation Regulation, 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin D02 W773
- 4.8 The closing date for receipt of submissions is **5pm, 20 November 2015**.