Decision

on an

Interim Review of the 2019 Determination

in relation to

2020 and 2021

Commission Paper 12/2020

22 December 2020

Commission for Aviation Regulation

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1. Executive Summary

1.1 This paper sets out our Decision on an Interim Review of the 2019 Determination in relation to the regulatory settlements for 2020 and 2021. It follows consultation on our Draft Decision (CP9/2020) and our earlier consultation on the appropriate price regulation response to the COVID-19 pandemic (CP3/2020). In CP3/2020, we indicated our expectation that a narrow interim review would be required in 2020 to address immediate unintended consequences for the 2019 Determination that the pandemic has created, and our Draft Decision (CP9/2020) laid out our reasoning on why substantial grounds existed for such a review, the proposed scope of the review, and proposed amendments to the determination.

1.2 We received submissions to our consultation on the Draft Decision from six parties: Aer Lingus, Dublin Airport, IALPA, IATA, Joseph Ryan and Ryanair.

1.3 This Decision is broadly in line with our proposals set out in CP9/2020. In this review we have sought to address those immediate unintended consequences. The impact of COVID-19 clearly constitutes substantial grounds for carrying out such a review at this time.

1.4 For the reasons set out in this paper, we have removed all triggers and adjustments relating to the price caps for 2020 and 2021 as they are based on outdated targets, provide perverse incentives, or would otherwise have an impact which was not anticipated in 2019. We have also removed adjustments relating to 2020 and 2021 which would not impact the price cap in those years, but rather price caps from 2022 and beyond (for example the k factor in 2022 has been removed).

1.5 In the Draft Decision we laid out why we considered that it would be disproportionate to require Dublin Airport to rebate airport users in respect of an overcollection of aeronautical revenues per passenger in 2020. This overcollection has resulted from an unexpected change in the profile of the aeronautical revenue stream, due to the pandemic, with lower load factors on passenger flights and relatively more cargo flights than expected. Dublin Airport set out its airport charges for 2020 at the end of 2019, in the absence of any knowledge of the events which would transpire in 2020. The total revenue collected is substantially less than forecast with passenger traffic down approximately 80%. To give effect to this adjustment, we have replaced the 2020 per-passenger cap with a series of individual caps which reflect Dublin Airport's published menu of airport charges for 2020.

1.6 In 2021, the price cap is €7.50 per passenger. No adjustments will be made in future years in relation to 2020 or 2021, meaning that there will be no clawback of remuneration of unspent Capital Expenditure (Capex) allowances, or adjustments made relating to the Operating Expenditure (Opex) passthrough or Commercial Revenues rolling schemes mechanism.

1.7 We have introduced a consultation process for substantial Capex projects (projects over €4m) which Dublin Airport want to progress in 2021. This consultation will take place in the context of the changed circumstances arising from the pandemic. The process is intended to protect the interests of future users from the current potential for capacity overprovision, and associated diminished value in airport charges. Since the Draft Decision, we have made two changes to this process. First we have excluded projects which are already on site from the requirement to be included in this process, and second, the threshold of airline support/agreement is now 50% of passengers represented by airlines who make submissions in response to the consultation.

1.8 We expect that a further review of the 2019 Determination will be required as the situation develops over the coming years. We will provide further updates regarding our current thinking on the timeline and scope, and consult in advance of commencing any future review.

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

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

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

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

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

Regulatory Period 1 January 2020 to 31 December 2020

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

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

Table 2.1: 2020 Price Caps

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

Regulatory Period 1 January 2021 to 31 December 2021

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

$P_{2021} = € 7.50$

Regulatory Period 1 January 2022 to 31 December 2022

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

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

Where:

$Trigger_{2022} = M2 + M3 + RPT1 + RPT2 + RPT3 + RPT4 + RPT5 + RPT6$

Where:

Triggers 2022	Description	Amount	Enters the formula if:
M2*	If North Runway fully operational by end of 2021	€0.40*25m/Pax_{2021}	Dublin Airport provides us with the evidence of accomplishment as set out in CP4/2017. [1]
M3*	North Runway: if house buyout complete by end of 2021	€0.02*25m/Pax_{2021}	
RPT1	Reprofiling Trigger CIP.20.03.013 Terminal 1 Departures Lounge	- €0.05	By Q1, 2023 Dublin Airport does not provide us with evidence that by Q4 2022 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT2	Reprofiling Trigger CIP.20.03.011A Terminal 1 Check in	- €0.05	By Q1, 2023 Dublin Airport does not provide us with evidence that by Q4 2022 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT3	Reprofiling Trigger CIP.20.03.051B West Underpass	- €0.13	By Q1, 2023 Dublin Airport does not provide us with evidence that by Q4 2022 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT4	Reprofiling Trigger CIP.20.03.029 Pier 5	- €0.28	By Q1, 2023 Dublin Airport does not provide us with evidence that by Q4 2022 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT5	Reprofiling Trigger CIP.20.03.030	- €0.06	By Q1, 2023 Dublin Airport does not provide us with

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

	US Preclearance Expansion		evidence that by Q4 2022 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT6	Reprofiling Trigger CIP.20.03.012 Terminal 1 Security	- €0.05	By Q1, 2023 Dublin Airport does not provide us with evidence that by Q4 2022 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.

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

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

$$QS_{2022} = Minimum\ ((A + B + C + D + E + F + G + H + I + J), €0.21) + Minimum\ ((K + L + M + N + O + P + Q + R), €0.07) + Minimum\ ((S + T + U), €0.04) + Minimum\ ((V + W + X), €0.04)$$

Where:

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

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

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

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

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

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

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

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

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

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

K = €0.01 in a year where Dublin Airport scores less than 9.0 in the 'satisfaction with assistance for mobility or sensory impairment' measure of the Customer Service Monitor survey of Dublin Airport in 2022

L = €0.01 * the number of quarters where Dublin Airport scores less than 8.5 in the 'courtesy and helpfulness of security staff' measure on the Customer Service Monitor survey of Dublin Airport in 2022 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

M = €0.01 * the number of quarters where Dublin Airport scores less than 8.5 in the 'courtesy and helpfulness of airport staff' measure on the Customer Service Monitor survey of Dublin Airport in 2022 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

N = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'overall cleanliness of airport terminal' measure of the Customer Service Monitor survey of Dublin Airport in 2022 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

O = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'overall satisfaction with the departure (arrival) experience' measure of the Customer Service Monitor survey of Dublin Airport in 2022 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

P = €0.01 * the number of quarters Dublin Airport scores less than 8.0 in the 'cleanliness of toilets' measure of the Customer Service Monitor survey of Dublin Airport in 2022 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

Q = €0.01 * the number of quarters Dublin Airport scores less than 8.0 in the 'satisfaction with the departure lounges (gates)' measure of the Customer Service Monitor survey of Dublin Airport in 2022 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

R = €0.01 * the number of quarters Dublin Airport scores less than 7.5 in the 'overall walking distances to departure gate (from the plane to baggage reclaim area)' measure of the Customer Service Monitor survey of Dublin Airport in 2022 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

S = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'finding your way around' ('ease of finding the baggage carrousel for your flight') measure of the Customer Service Monitor survey of Dublin Airport in 2022 for departing (arriving) passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

T = €0.01 * the number of quarters that Dublin Airport scores less than 8.5 in the 'flight information screens' measure in the Customer Service Monitor survey of Dublin Airport in 2022 for departing passengers or in a year for transfer passengers or departing passengers who used assistance for mobility or sensory impairment

U = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'satisfaction with ground transportation information on arrival' measure of new ground transport survey of Dublin Airport in 2022 for arriving passengers

V = €0.01 * the number of quarters Dublin airport scores less than 9.0 in the 'satisfaction with facilities for passengers with reduced mobility' measure in the Customer Service Monitor survey of Dublin Airport in 2022

W = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'availability of baggage trolleys' ('ease of finding a trolley') measure in the Customer Service Monitor survey of Dublin Airport in 2022 for departing (arriving) passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

X = €0.01 * the number of quarters Dublin Airport scores less than 8.5 in the 'satisfaction with Wi-Fi' measure in the Customer Service Monitor survey of Dublin Airport in 2022 for departing and arriving passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

Regulatory Period 1 January 2023 to 31 December 2023

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

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

Where:

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

Where:

Triggers 2023	Description	Amount	Enters the formula if:
M2*	If North Runway fully operational by end of 2022	€0.40*25m/Pax$_{2022}$	Dublin Airport provides us with the evidence of accomplishment as set out in CP4/2017. [2]
M3*	North Runway: if house buyout complete by end of 2022	€0.02*25m/Pax$_{2022}$	
RPT1	Reprofiling Trigger CIP.20.03.013 Terminal 1 Departures Lounge	- €0.06	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT2	Reprofiling Trigger CIP.20.03.011A Terminal 1 Check in	- €0.06	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT3	Reprofiling Trigger CIP.20.03.051B West Underpass	- €0.17	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT4	Reprofiling Trigger CIP.20.03.029 Pier 5	- €0.37	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT5	Reprofiling Trigger CIP.20.03.030 US Preclearance Expansion	- €0.08	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT6	Reprofiling Trigger CIP.20.03.012 Terminal 1 Security	- €0.06	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT7	Reprofiling Trigger CIP.20.03.036 Pier 1	- €0.20	By Q1 2024, Dublin Airport does not provide us with evidence that by Q4 2023 tendering is complete for the main construction

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

			contractor package and that contract is signed and work has commenced.

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

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

W_{2023} allows for a pass through of legislatively mandated Opex (LM OPEX) costs that comply with the conditions set out in Section 6 of the varied Determination published in July 2020. It is derived using the following formula:

$$w_{2023} = \frac{\left(LM\ OPEX_{CAR\ approved\ outturn2022} - LM\ OPEX_{CAR\ Forecast2022}\right)}{PAX_{2023f}}$$

Where:

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

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

PAX_{2022} is the outturn of total annual passengers at Dublin Airport in 2022

PAX_{2023f} is the latest available forecast of passenger numbers in 2023

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

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

Where

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

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

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

Regulatory Period 1 January 2024 to 31 December 2024

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

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

Where:

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

Where:

Triggers 2024	Description	Amount	Enters the formula if:
M2*	If North Runway fully operational by end of 2023	€0.40*25m/Pax_{2023}	Dublin Airport provides us with the evidence of accomplishment as set out in CP4/2017. [3]
M3*	North Runway: if house buyout complete by end of 2023	€0.02*25m/Pax_{2023}	
RPT1	Reprofiling Trigger CIP.20.03.013 Terminal 1 Departures Lounge	- €0.08	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT2	Reprofiling Trigger CIP.20.03.011A Terminal 1 Check in	- €0.07	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT3	Reprofiling Trigger CIP.20.03.051B West Underpass	- €0.21	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT4	Reprofiling Trigger CIP.20.03.029 Pier 5	- €0.45	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024

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

			tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT5	Reprofiling Trigger CIP.20.03.030 US Preclearance Expansion	- €0.09	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT6	Reprofiling Trigger CIP.20.03.012 Terminal 1 Security	- €0.07	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT7	Reprofiling Trigger CIP.20.03.036 Pier 1	- €0.24	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.
RPT8	Reprofiling Trigger CIP.20.03.54 Apron 5 M	- €0.12	By Q1 2025, Dublin Airport does not provide us with evidence that by Q4 2024 tendering is complete for the main construction contractor package and that contract is signed and work has commenced.

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

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

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

Where:

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

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

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

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

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

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

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

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

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

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

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

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

M = €0.01 * the number of quarters where Dublin Airport score less than 8.5 in the 'courtesy and helpfulness of airport staff' measure on the Customer Service Monitor survey of Dublin

Airport in 2024 for departing passengers or in a year for departing passengers who used assistance for mobility or sensory impairment

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

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

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

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

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

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

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

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

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

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

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

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

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

$$y_{2024} = \frac{\left(LM\ OPEX_{CAR\ approved\ outturn2022} - LM\ OPEX_{CAR\ Forecast2022}\right)}{PAX_{2024f}} - w_{2023} * \left(\frac{PAX_{2023}}{PAX_{2024f}}\right)$$

Where:

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

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

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

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

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

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

Where

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

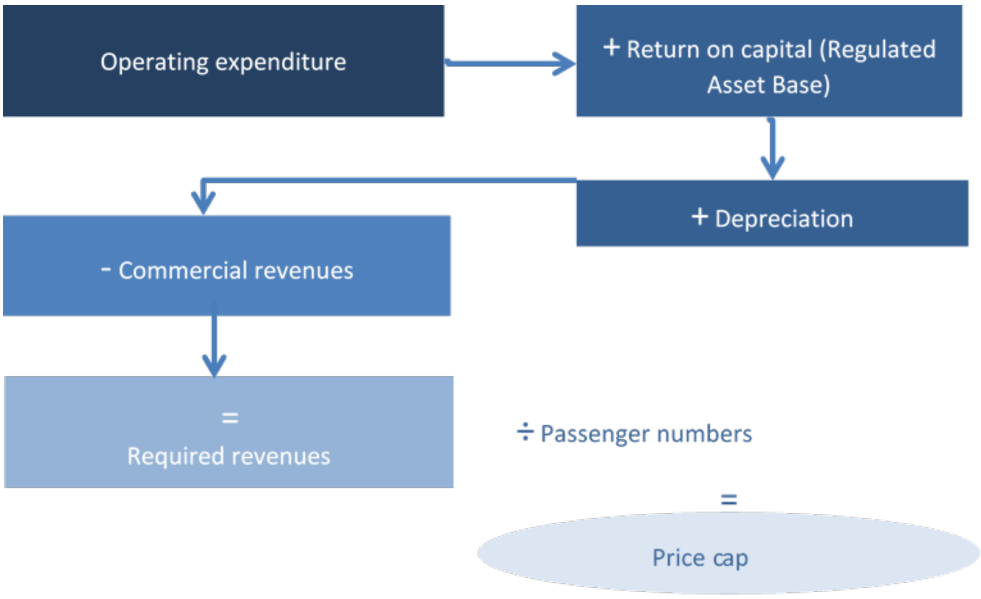
PAX_t is the outturn of total annual passengers at Dublin Airport in year t

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

3. Background

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

Chart 3.1: The building blocks approach



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

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

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

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

3.6 Table 3.1 sets out the base price caps per passenger originally determined in October 2019, as well as the final varied price caps set pursuant to the referrals from the appeals panel. These price caps were subject to change within the period due to a range of adjustments and triggers set out in the price cap formulae. Full details of the analysis and calculations underpinning the 2019 Determination are available on the Commission's website.[4]

Table 3.1: Base Price Caps

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

Source: 2019 Determination, Varied 2019 Determination

COVID- 19

3.7 Subsequent to the publication of the Determination in October 2019, in early 2020, it became clear that the COVID-19 pandemic would have a substantial impact on the assumptions and forecasts underpinning the determination. For the time being at least, these assumptions and forecasts would not be reflective of reality. In June 2020, we issued a high level, wide-ranging consultation paper (CP3/2020) seeking views on the appropriate response from the Commission and setting out our current thinking in relation to potential reviews of the 2019 Determination.[5]

3.8 We received six responses to that paper, from Aer Lingus, Airports Council International (ACI), Dublin Airport, IATA, the Commission for Regulation of Utilities (CRU), and Ryanair.[6] In line with the nature of the consultation paper, respondents provided views on many aspects of the 2019 Determination.

3.9 In CP3/2020, we indicated an expectation that we would carry out at least one interim review of the 2019 Determination due to the impact of the pandemic on the assumptions and expectations underpinning it. We expected that the first interim review would take place in 2020, addressing immediate unintended pricing consequences arising from the pandemic in 2020 and/or 2021 in a balanced way. We did not envisage that this review would make any changes to the core aspects of the 2019 Determination building block allowances or the risk allocation.

3.10 In October 2020, we issued a Draft Decision on this first Interim Review, in which we set out adjustments relating to the regulatory settlements which we considered to be warranted in light of the impact of COVID-19 (CP9/2020).[7] We received six responses, which are published on our website: from Aer Lingus, Dublin Airport, IALPA, IATA, Joseph Ryan and Ryanair.

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

3.12 Section 2 sets out the amended Determination. Section 4 considers the responses received in relation to grounds for carrying out this review, the scope of the review, and the objective. Section 5 considers general responses we received in relation to the 2020 and 2021 price caps,

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

and sets out our decisions. Section 6 considers responses we received in relation to the individual adjustments to the base price cap, and sets out our decisions. Section 7 considers responses we received in relation to other proposed adjustments to the regulatory settlements currently in place for 2020 and 2021, which will not impact the price caps in those years but may do so in future years. Section 8 sets out how the decisions we make in this Interim Review align with our statutory objectives and relevant statutory factors under Section 33 of the 2001 Act, as amended. Section 9 considers responses we received relating to potential future reviews or other issues.

4. Substantial Grounds, Scope and Objective

4.1 Pursuant to Section 32(14) of the Aviation Regulation Act 2001, as amended by the State Airports Act, 2004, ('the 2001 Act') the Commission may carry out an interim review of the prevailing Determination if it considers that there are substantial grounds for doing so.[8] If it sees fit, it may amend the determination.

Substantial Grounds

4.2 The Commission has previously used the following test to establish whether substantial grounds exist for conducting an interim review:[9]

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

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

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

4.4 In our Draft Decision, we stated that the profound impact of the COVID-19 pandemic on aviation in Ireland to date in 2020, and the likelihood of this impact substantially continuing into 2021, clearly constitutes substantial grounds to review the 2019 Determination with respect to the regulatory settlements set out for 2020 and 2021. The circumstances arising from the COVID-19 pandemic are exceptional by any reasonable metric, and outside the control of Dublin Airport.

4.5 We did not receive any submission in response to the Draft Decision which challenged our view that the impact of the COVID-19 pandemic constitutes substantial grounds, within the meaning of Section 32, to review the 2019 Determination with respect to the regulatory settlements set out for 2020 and 2021.

Scope and Objective of the Review

4.6 In our Draft Decision, we stated that certain aspects of the regulatory settlements for 2020 and 2021 are no longer fit-for-purpose and, if not adjusted, are now likely to run contrary to our statutory objectives, thereby compromising the objectives of the original decision. Thus, the objective of this review was to consider how the 2019 Determination should best be

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

adjusted at this time, to fit the changed circumstances prevailing in 2020 and 2021.

4.7 This followed on from CP3, published in June 2020, which proposed this narrow-focused review to address immediate unintended pricing consequences, arising from the pandemic, in 2020 and/or 2021 in a balanced way.

4.8 We further stated that the scope of this review does not encompass changes to the regulatory building blocks used to derive the base price cap of €7.50, or the allocation of risk, for 2020 and 2021. Nor would it encompass the regulatory settlements for 2022 and beyond, except where adjustments to the price cap formulae are required to give effect to the changes we are proposing for 2020 and 2021. These topics may be considered in a future review or reviews.

Submissions Received

4.9 Aer Lingus notes that the longstanding regulatory model at Dublin Airport allocates volume risk to Dublin Airport, and in any industry there is a risk of a catastrophic falloff in demand. This risk is compensated for when setting the Weighted Average Cost of Capital (WACC). Aer Lingus states that if we consider the current circumstances to be beyond the bounds of 'normal' risk, this would need to be defined, and Aer Lingus would then expect the cost of capital to be revised down in any future building blocks review.

4.10 Dublin Airport is supportive of the general approach to this interim review.

4.11 Ryanair states that our Draft Decision is irrational, as we have not had regard to the achievement of a 'balanced' approach in which the interests of both users and the airport are taken into consideration, which is contrary to the stated purpose of the review. It considers that the Draft Decision prioritises the interests of Dublin Airport over that of its users, contrary to our statutory objective to protect the reasonable interests of current and prospective users of Dublin Airport.

4.12 Ryanair states that we are seeking to protect Dublin Airport from normal commercial pressures that act upon airports operating competitively, whereas at a time when there is an urgent need to support recovery in the sector, users have a reasonable expectation that the impact of any interim review of the price cap would reduce the charges in order to replicate the conditions of competition. For these reasons, Ryanair rejects the Draft Decision and considers that the current 2019 Determination should remain in force for the time being.

4.13 IATA considers that while some of the proposals appear to be aligned with the philosophy of making no changes to the regulatory building blocks used to derive the €7.50 base price cap or the risk allocation, as stated in the Draft Decision, others may imply direct changes for either the building blocks or the allocation of risk. It references the proposed adjustments to the 2020 price cap compliance requirement, and the proposed suspension of the Capex clawbacks mechanism.

Decision

4.14 We have not made changes to the overall purpose or scope of this review.

4.15 In relation to risk allocation, we should clarify that we intended this statement to reference the regulatory building blocks used to derive the base price caps in relation to which charges for 2020 were set and charges for 2021 will be set. For example, the base price cap for 2020 was set on the basis of a forecast 34m passengers, whereas actual throughput will be between 7m-8m passengers. Most of the risk allocated to Dublin Airport sits within the volume risk, and we are not revising these forecasts, or other forecasts, to set revised pricing levels for 2020 and 2021. We do agree with IATA in relation to risk allocation being within the scope of this review to a certain extent. Conceptually, most potential changes to the regulatory settlement from an Interim Review would change the risk allocation as it was set out in the 2019 Determination, to a greater or lesser extent.

4.16 We also agree with Aer Lingus that the longstanding regulatory approach largely assigns volume risk to Dublin Airport, in any industry there is a risk of a catastrophic falloff in demand, and furthermore that this risk allocation is considered when setting the WACC.[10] Regulatory responses, such as this interim review, are of relevance when considering the WACC. However, as we stated in CP3/2020, the longstanding regulatory model used in the 2019 Determination was intended to allow for a reasonable degree of deviation (whether up or down) from *ex-ante* forecasts over the five-year period, without a requirement for an Interim Review. Whether a given deviation should be considered as coming under this definition needs to be considered on a case-by-case basis. The implications of such a deviation for the prevailing Determination also need to be considered when deciding whether to carry out an interim review, and any adjustments to the Determination which might result from such a review. We consider that any reasonable definition of within a 'reasonable degree of deviation' would not encompass what has occurred in 2020 and what is likely to occur in 2021, and furthermore that this adversely impacts on certain aspects of the 2019 Determination to a degree which warrants a review of those items.

4.17 We disagree with Ryanair's claim that we did not have regard to the stated purpose of the review and therefore that our proposals were irrational. The stated purpose of the review was to address immediate unintended pricing consequences, arising from the pandemic, in 2020 and/or 2021, in a balanced way. In broad terms, in the Draft Decision we proposed to do this by:

- Making changes to the price cap formula for 2020 and 2021 to address issues arising from a fall in passenger numbers of circa 80% in 2020 due to the pandemic, and the likelihood that passenger numbers will also be far below the 2021 forecast. We did not propose to make changes which would be likely to lead to increases in Dublin Airport's current charges for 2020 or 2021 (with effective charges more likely to fall somewhat in 2021). [11]
- Removing all triggers or adjustments to the price cap based on targets which are now outdated due to the pandemic, and could result in significant variations in the price cap, provide perverse incentives, or might otherwise have an impact which was not anticipated in 2019. We saw merit in removing all of these mechanisms regardless of whether they would be likely to increase or decrease the price cap, meaning that charges would be set with reference to the base price caps and thus the regulatory building blocks only.
- Avoiding disproportionate or unjustified transfer of financial impact, generated by circumstances arising from the pandemic, between Dublin Airport and airport users.
- Establishing a consultation process to address the potential for the timing of Capex to become substantially misaligned with the level of passenger traffic, thereby protecting the interests of future users from the potential for the 2021 regulatory settlement to incentivise a quantum of Capex which would have been appropriate pre-COVID but is

[10] See for example Section 5.2 of our cost of capital report for the 2019 Determination: https://www.aviationreg.ie/_fileupload/2019%20Determination/Final%20Determination/Cost%20of%20Capital%20for%202019%20Determination%20Final%20Report.pdf

[11] We note that, in its response to CP3/2020, Ryanair's opening comment was that it would be opposed to any review which would lead to airport charges at Dublin Airport rising in the short to medium term whilst recovery from the COVID-19 downturn in traffic is ongoing.

not warranted in 2021.

4.18 These adjustments relate to the stated purpose of the review in that they address immediate unintended pricing consequences, arising from the pandemic, in 2020 and/or 2021. It is also our view, as set out in the Draft Decision, that these adjustments strike an appropriate balance between our statutory objectives: To protect the reasonable interests of current and future users, and to facilitate the efficient and economic development and operation, and enable the financial viability of, Dublin Airport. Clearly, different stakeholders will have different views on whether they are appropriately balanced. In that context, we have considered submissions below as they relate to each specific proposal, before reaching a final decision on whether the proposal is appropriately balanced.

4.19 We also disagree with Ryanair that our proposals were motivated by a desire to protect Dublin Airport from normal commercial pressures that act upon airports operating competitively. Like other aviation stakeholders, Dublin Airport has been and will be exposed to a significant decline in demand and revenue as a result of the pandemic. As discussed below, the amendments are variously driven by protecting the reasonable interests of Dublin Airport, current or future users, or in some cases both, in the current circumstances.

5. Price cap for 2020 and 2021

5.1 In this section, we consider general submissions received in relation to the proposed price caps for 2020 and 2021, while submissions in relation to specific triggers and adjustments are considered in subsequent sections.

Price Caps for 2020

5.2 In the Draft Decision, we noted that despite aeronautical revenue being far lower than was expected for 2020, there was a likelihood that Dublin Airport would over-collect at a per-passenger level based on current pricing levels. We proposed to replace the 2020 per-passenger price cap with individual date-specific caps on each individual airport charge for 2020. Each limit would be set equal to the charge specified in Dublin Airport's menu of charges applicable during 2020, as consulted on by Dublin Airport and published in 2019.

5.3 The implication of this approach is that whatever level of aeronautical charges are recovered by Dublin Airport in 2020 will be compliant with the 2019 Determination, provided that Dublin Airport does not recover aeronautical revenues per unit in excess of those set out in the menu of charges. Provided that is the case, there would be no refunds payable to airport users arising from any overcollection of accrued aeronautical revenues in 2020, nor could there be any undercollection carried forward to 2022 through the 2022 k factor.

Submissions Received

5.4 Aer Lingus is opposed to the proposal to remove all triggers and adjustments from the 2020 price cap, stating that a dangerous precedent would be set for the remainder of the current period and future periods if retrospective changes to the price cap (other than those known as possible by all parties at the outset such as service quality penalties) were to be allowed. It considers the underlying principle of certainty provided by *ex-ante* setting of price caps to be too important, to all parties, to be set aside. Aer Lingus notes that airlines cannot retrospectively increase fares to passengers once tickets are sold and flights taken.

5.5 Aer Lingus thus opposes the proposal that Dublin Airport not be required to issue rebates to airport users for overcollection at a per-passenger level during 2020, unless it can be demonstrated that the pay-out would cause serious financial damage to daa (such that it could not continue to operate) and all avenues to raise further financing have been exhausted. It states that investors, not customers, need to be the first recourse to ameliorate its financial position, as is the case across the airline industry.

5.6 Dublin Airport is supportive of the proposed approach for 2020, which it considers to be a pragmatic and practical approach in the wake of the circumstances arising from the impact of COVID-19. It believes that the alternative, whereby the per-passenger global price cap would be maintained, would unduly penalise Dublin Airport due to the distortion in this yield for 2020 arising from unexpected higher ratio of aircraft movements relative to passenger numbers. It notes that the total revenue yield generated by Dublin Airport in 2020 is likely to be substantially below that envisaged under the Commission's price cap calculation and this will result in a substantial loss in aeronautical revenue.

5.7 IATA asks us to reconsider our proposed approach for 2020, which it considers to be a change in the allocation of risk for 2020. It considers that compliance with the per-passenger price cap should be enforced unless there is proven evidence that, after taking all possible steps to avoid it, the airport would be in financial distress from issuing the rebates. IATA also states that when the 2020 charges were set, these were higher than necessary in order to fund incentive schemes that turned out to be very difficult for airlines to reach in 2020, meaning that Dublin

Airport did not need to fund the expected costs associated with these schemes.

5.8 Joseph Ryan states that the fact that Dublin Airport might be required to refund money under the system, in a situation where it is losing money heavily, is the result of a system confused by its own complexity. He further states that the current regulatory building block approach is not fit for purpose in the current environment.

5.9 Ryanair sees no legitimate reason for Dublin Airport to not be required to issue rebates for 2020. It states that it is unclear whether the Dublin Airport estimate of 15% overcollection (which dates from August 2020) has been calculated against the base price cap or the adjusted price cap, the latter being lower, and notes that this translates to €1.125 per passenger. Ryanair comments that given the ongoing effect of travel restrictions, it is likely that this over-recovery will now be substantially higher. It states that rebating this amount would go some way to compensating users for the losses incurred in operating flights at far below normal load factors and at a loss in many cases.

Decision

5.10 Given the submissions received we have considered the 2020 price cap compliance issue from a number of perspectives.

5.11 We agree with Aer Lingus in relation to the general benefit of not adjusting an *ex-ante* price cap after it is been set. However, in the current circumstances, it is appropriate that we consider whether enforcing price cap compliance with the *ex-ante* global cap for 2020 would be best aligned with our statutory objectives and the relevant principles we set out for this review. We note that the appeals mechanism already provides a framework through which the *ex-ante* price cap might change within the year in a way which would not be known by all parties at the outset. We would also note that we are not proposing any change for 2020 which would lead to changes in the published airport charging strategy, on the basis of which air carriers operated and are now operating at Dublin Airport in 2020. On the contrary, our proposal was to precisely accept these charges as equivalent to price cap compliance for 2020.

5.12 The precedent which we would be setting is that, in exceptional circumstances such as those arising from the pandemic, adjustments can be made to the *ex-ante* price cap for the same year as part of an interim review, if we conclude that adjustments are warranted. We do not see that this precedent is undesirable or problematic for the regulatory model.

5.13 Then, in assessing in further detail whether our specific proposal is warranted and appropriately balanced in light of the submissions we have received, we have first considered the nature of the overcollection, the detailed factors which have driven it, and how it applies across various airport users. We then consider whether enforcing compliance with the *ex-ante* price cap would be better aligned with our statutory objectives and the purpose of this review.

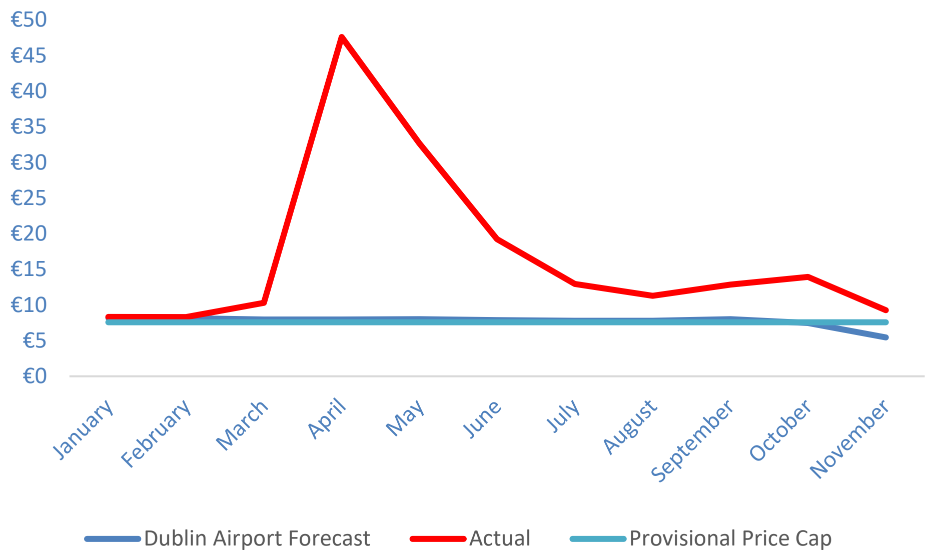
5.14 We have assessed the overcollection as at the end of November. With reference to the provisional price cap set in 2019 of €7.58 per passenger, the quantum of overcollection stood at over €17m, or 24% of the total accrued aeronautical revenues, over January to November.

5.15 We have identified the main factors which have combined to drive this overcollection, each of which is unanticipated and associated with the pandemic:

- Charges for the Winter 2019-2020 season (which ended in March 2020) were set with reference to the 2019 price cap of €9.30. Thus, the yield per passenger until March was notably higher than the annual price cap, notwithstanding the fact that winter charges are generally lower relative to summer. January and February 2020 were anticipated to provide around 12% of the annual passenger total. As a result of the pandemic, which began to substantially impact in March, these months will have instead contributed more than 50% of the annual passenger total. Thus, these yields per passenger were not balanced out by lower yields over the rest of the year as would have been the case if not for the pandemic.

- Once the pandemic started to impact passenger traffic, load factors fell far below forecasts. Thus, there were far fewer passengers relative to aircraft being processed, which, given that the *ex-ante* cap was set at a per-passenger level, led to higher than expected yield per passenger. This effect peaked in April and May with yields which were multiple times higher than Dublin Airport had forecast.
- The overcollection is therefore largely driven by aircraft related charges such as runway and parking charges (with some Passenger Service Charge deviation largely in May-July, likely due to a change in passenger mix between transfer/point-to-point passengers).

Chart 5.1: Yields per Passenger for 2020 were higher than forecast



Source: Dublin Airport (unaudited) data, CAR calculations

5.16 We also expect that a higher proportion of cargo related movements relative to expectations will have contributed to the overcollection.

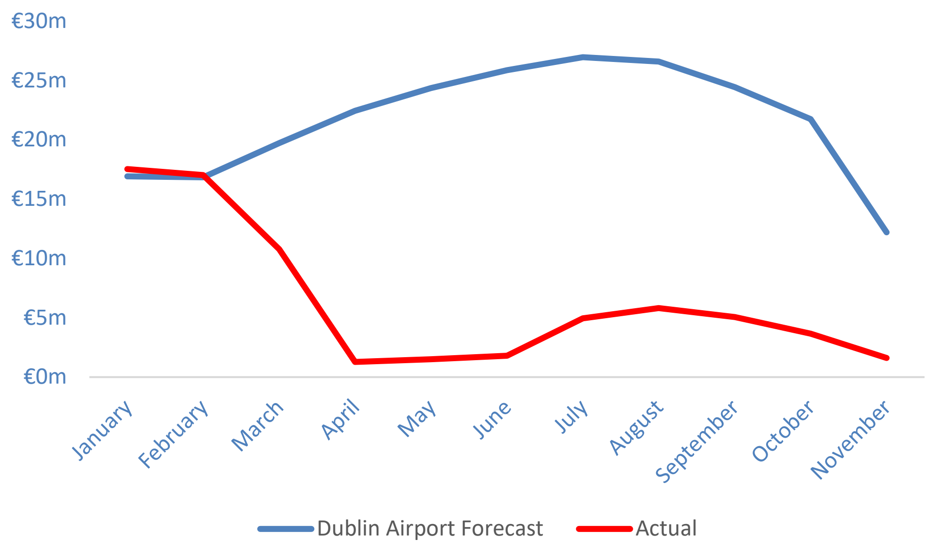
5.17 We have assessed how the higher than expected yield per passenger is spread across different airport users. Due to the nature of different operations, airlines ordinarily pay different levels of airport charges, with some paying above the global price cap and others paying below it. For example, an airline which ordinarily operates with relatively higher load factors and does not use airbridges will, all else equal, pay less in airport charges per passenger than an airline with relatively lower load factors which does use airbridges. Thus, the extent to which different airlines have contributed to the overall higher than expected yield per passenger can be considered from two perspectives:

- Comparing yield per passenger to the global price cap.
- Comparing yield per passenger with Dublin Airport's forecast yield per passenger for an airline or airlines (noting that in some cases, forecasting is done on the basis of groups of airlines rather than individual ones).

5.18 The higher than anticipated yields per passenger are spread across a wide range of airport users. The extent of the higher yield per passenger is substantially related to the extent to which an airline was operating with relatively lower load factors. Comparing to the €7.58 cap, it is clear that airlines which operated with relatively higher load factors, all else equal, paid relatively lower yields per passenger and thus overpaid by less at a per passenger level, and vice versa. Compared to the yield per passenger which was forecast by Dublin Airport in 2019, this effect is still observed but is overall lessened somewhat, because broadly Dublin Airport had forecast that those airlines would overall pay below the cap. In total revenue terms, the contribution of each airline is then also driven by the level of traffic that the airline has operated during 2020.

5.19 In the Draft Decision, we noted that this overcollection against the 2020 price cap is an outcome which Dublin Airport could **not** have foreseen when setting these airport charges for 2020. Based on the evidence we have reviewed, it is clear that Dublin Airport set its charges to precisely hit the price cap, however the impact of the pandemic has frustrated this intention. As stated by Dublin Airport, total aeronautical revenues will be far below either Dublin Airport's or the Commission's 2019 Determination forecasts.

Chart 5.2: Total Aeronautical Revenues per month for 2020 far below Dublin Airport forecasts



Source: CAR calculations, Dublin Airport (unaudited) data

5.20 As stated by Aer Lingus, airlines cannot retrospectively adjust airfares. However, airlines operated at Dublin Airport during 2020 on the basis of the published charging strategy (including the menu of published aeronautical charges and published incentive schemes). Airlines did not have visibility over the quantum of the ultimate overcollection per passenger which would be generated by this charging strategy. Nor did airlines have visibility over the extent to which their own operations would be due a rebate under whatever mechanism might have been developed to distribute the per-passenger overcollection. Enforcing compliance with the *ex-ante* global price cap, on which that charging strategy was based, but due to the pandemic is no longer aligned with, cannot now impact the decisions of airlines in relation to the allocation of capacity, or airfares, for 2020. Nor does it create any incentive for air carriers to drive a recovery in the level of traffic at the airport in 2021 or beyond.

5.21 It would be in the immediate interest of airlines who operated at the airport during 2020 to enforce compliance with the *ex-ante* cap. However, the term 'user' should be viewed more broadly under the 2001 Act, as amended, to encompass passengers as well as airlines. It is not clear to us how passengers, current or future, would benefit from enforcing compliance in these circumstances. Furthermore, the interests of prospective users might potentially be better protected by not enforcing the *ex-ante* cap, for example in relation to future financial viability adjustment requirements or the risk profile of Dublin Airport.

5.22 Our other statutory objectives relate to the development and operation of Dublin Airport, in a way which meets the requirements of current and prospective users of Dublin Airport, in a sustainable and financially viable manner. In the current circumstances, these objectives clearly would weigh in favour of not enforcing the *ex-ante* cap, as it would remove a requirement for Dublin Airport to pay out approximately a quarter of the total aeronautical revenues it has earned this year, with total revenue (aeronautical and commercial revenues) already likely to be around 65% below the 2019 Determination forecast.

5.23 Thus, overall, it is our clear view that replacing the *ex-ante* cap with the charges which were actually in effect for 2020 better aligns with our statutory objectives. The immediate interests of airlines who operated at the airport during 2020 are outweighed by other factors as described above, in the particular circumstances of 2020. It is our view that enforcing compliance on the basis of the original *ex-ante* cap would constitute a disproportionate or unjustified transfer of financial impact, generated by circumstances arising from the pandemic, between Dublin Airport and airport users.

5.24 It should be noted that we have not made this decision on the basis that we believe it is necessarily required to enable the ongoing viability of Dublin Airport in the short term. We have not seen evidence which would suggest that is the case. However, in broader terms, clearly it is conducive to enabling daa to operate and develop Dublin Airport in a sustainable and financially viable manner.

5.25 In response to IATA, we do not agree that varied charges arising from incentive schemes should be viewed as a ‘cost’ which warrants any particularly different treatment relative to varied charges as set out in the menu of charges (such as winter compared to summer, for example).[12] Instead of incentive schemes, Dublin Airport might have achieved the same outcomes through a more granular menu of charges. Regardless of whether a variation is included in the menu of charges or set out as an incentive scheme, each will affect the charges paid by airport users, as set out in the menu of charges or the scheme Terms and Conditions, as applicable. For example, the fact that less incentive scheme liability was generated relative to expectations is not particularly more relevant than the fact that considerably more passengers were processed on the basis of winter charges, when usually considerably more passengers are processed on the basis of summer charges.

5.26 In response to Joseph Ryan, we would point out that the higher than expected yield per passenger over 2020 is unrelated to the methodology through which the base price caps were set. It has been caused by the fact that if aeronautical revenue falls, but passenger numbers fall by relatively more, aeronautical revenue per passenger will be higher than anticipated.

Price Cap for 2021

5.27 The Draft Decision proposed to remove all triggers and adjustments contained in the price cap formula for 2021, meaning that the final price cap would be exactly €7.50 per passenger.

Submissions Received

5.28 Aer Lingus suggests that the proposed price cap of €7.50 is likely to lead to somewhat of an

[12] This is aligned with the views of the Thessaloniki Forum: https://www.aviationreg.ie/_fileupload/Incentives%20and%20Discounts.pdf

increase in charges from Q2 2021. This statement is on the basis that charges would have been set from summer 2020 onwards to come in below €7.58 (perhaps around €7.15/€7.20) so as to compensate for the pricing in Q1 2020 being aligned with a €9.30 price cap for 2019. Aer Lingus considers it important that prices be kept as low as possible to allow Dublin Airport to maintain its customer base and to support its long-term viability. Aer Lingus notes that setting an *ex-ante* cap of €7.50 accords with the principle of regulatory certainty. For these reasons it supports the proposed cap of €7.50.

5.29 Dublin Airport's preferred option for 2021 would be for the Commission to extend the 2020 compliance approach into 2021 such that '*Dublin Airport's 2020 charging strategy would continue to be precisely allowed as the determined maximum levels of charges in 2021'*. It considers that achieving price cap compliance to a precise number such as €7.50 per passenger is going to prove very difficult in the current unpredictable environment. It therefore considers that our proposal would potentially require numerous changes to charging over the course of 2021 to achieve compliance with €7.50, which is likely to prove destabilising for the industry as a whole.

5.30 Dublin Airport states that based on current airport charges, average revenue per passenger for 2021 would be predicted to be higher than the €7.50 price cap, despite the fact that total aeronautical revenue will be substantially lower than that envisaged by the 2019 Determination. As a result, in order for Dublin Airport to achieve compliance with a €7.50 price cap it would be required to reduce airport charges for 2021. Dublin Airport therefore considers that this decision would run contrary to the statutory objective of safeguarding the financial viability of Dublin Airport.

5.31 Dublin Airport sets out a comparison table between the options to either set a global price cap of €7.50 for 2021, or alternatively continue the approach which was proposed for 2020, namely setting caps on the individual aeronautical charges. In addition to the points set out elsewhere, the table further states that a reduction in charges would lead to economic inefficiency where average revenue does not reflect average cost, and that there is no evidence that a reduction in airport charges will be passed onto passengers or will stimulate traffic demand.

5.32 Dublin Airport suggests that if the Commission decides to use a global price cap in 2021, we should use average revenue per workload unit (WLU) as this would better reflect the current composition of passengers and cargo flight operations at Dublin Airport.

5.33 Dublin Airport considers that the recent government proposals to implement zero aeronautical charging for part of 2021, which will be funded by government rebates, substantiates the position for retaining the 2020 charges into 2021.

5.34 IATA supports a global per-passenger price cap for 2021. In response to the letter which we received (and published) from Dublin Airport which indicated that many airports are either maintaining or increasing charges, it notes that other airports such as Heathrow and Lisbon are substantially reducing their charges in 2021.

5.35 Joseph Ryan states that the proposal to *'keep the cap at the existing level for all of 2021'* is questionable. He considers that we should leave open the possibility for an increase in late 2021.

5.36 Ryanair considers that the 2021 price cap should be enforced as was set out in the 2019 Determination.

Decision

5.37 We have decided to make no change from our proposal in the Draft Decision, therefore we have set a per-passenger global price cap of €7.50 for 2021.

5.38 Aer Lingus is correct that the charges for January to mid-March 2020 were set on the basis of the 2019 price cap, which, all else equal, would ordinarily mean that a relatively small increase might be required in 2021 to continue to meet the price cap. However, as described above, this effect is counterbalanced by lower than expected load factors leading to higher than expected yields per passenger. This is the main reason why Dublin Airport expects that it would need to lower charges during 2021 to hit a cap of €7.50. It is also worth noting that the real price cap which Dublin Airport was targeting for 2020 was €7.58, as opposed to our proposal for 2021 of €7.50. While we do not yet know how 2021 will unfold, we also expect that Dublin Airport may need to reduce effective charges (i.e. net of discounts/incentive schemes) somewhat during 2021 to hit a per-passenger cap of €7.50, rather than increase them.

5.39 We note that Dublin Airport is currently consulting on a proposed traffic recovery incentive scheme; a scheme such as this might be an effective way to bring 2021 revenue per passenger in line with the global cap, without changing the menu of charges (though it must be subject to consultation as required under the Airport Charges Directive).

5.40 In light of the above, continuing our approach for 2020 would likely be equivalent to allowing for an increase in the base price cap for 2021. This is aligned with Dublin Airport's view. Dublin Airport broadly sets out two specific reasons why it believes that we should continue the 2020 approach for 2021:

- Setting a price cap of €7.50 would require a reduction in charges during 2021 which would run contrary to our statutory objective of safeguarding the financial viability of the airport.
- It is not possible to accurately forecast 2021, meaning that there is a likelihood that charges may need to be adjusted within the year if it transpires that the current levels would lead to a yield per passenger which is substantially different from €7.50. These adjustments to charges are likely to be destabilising.

5.41 It is important to clarify that our statutory objective in relation to financial viability is to *enable* daa to operate and develop Dublin Airport in a sustainable and financially viable manner. We understand that Dublin Airport has been severely impacted by COVID-19; in 2020, EBITDA will be around negative €14m (based on current draft and unaudited information available).[13] When interest and depreciation are included, losses will be significantly higher. As also suggested by Dublin Airport, this needs to be balanced against our statutory objective to protect the reasonable interests of users, who have also suffered severe impacts as a result of the pandemic. In that context, we agree with Dublin Airport that transferring further financial damage from one affected stakeholder to another should be avoided, and that increases in airport charges at a time when demand for air travel is so depressed, and airlines have also been severely impacted, would not be desirable.

5.42 Dublin Airport has not provided evidence which would demonstrate that, despite taking all reasonable steps to reduce costs and source funding other than from airport charges in 2021, a price cap of €7.50 would not enable the financial viability of Dublin Airport, while on the contrary maintaining the 2020 approach (or otherwise increasing charges for 2021) would be

[13] Inclusive of the decision of the Commission to adjust the compliance requirement for 2020 pursuant to this review.

required to enable it.

5.43 We agree with Dublin Airport that it is not currently possible to accurately forecast traffic for 2021, and that setting a per-passenger cap would lead to a higher than normal probability of changes to the levels of airport charges within the year if overcollection is to be avoided. We made this clear in our Draft Decision. However, as other submissions suggest, we are not clear on why this would be unduly destabilising. It might also be argued that by setting an *ex-ante* global cap, Dublin Airport now has full certainty on the precise yield per passenger it can collect for 2021. There is a mechanism set out in the Airport Charges Directive for consultation on revisions to airport charges within the year. Furthermore, the Determination provides mechanisms to deal with undercollection within 5% of the cap, and for overcollection. As is the case generally, Dublin Airport does not need to precisely hit the cap. Consequently, in our view, the likelihood that charges may need to change within the year is not in itself a strong reason to move away from a per-passenger cap for 2021.

5.44 In relation to the other points made by Dublin Airport, we are unclear as to why the specific circumstances of the pandemic would lead to airlines being less price sensitive as opposed to more price sensitive. As suggested by Ryanair and Aer Lingus, airport costs will impact the ability of airlines to discount fares and the incentive for air carriers to put capacity back into Dublin. We note that the purpose of some of Dublin Airport's incentive schemes is to stimulate traffic growth through charging variation, while the variation between summer/winter charges is intended to incentivise off-peak traffic. Dublin Airport's revealed position is therefore also aligned with this view. Equally, Dublin Airport does not explain why a situation where average revenue does not reflect average cost should be considered as 'economic inefficiency' or why this is relevant to this review. With the incentive based regulatory model in place, average revenue will not generally be equal to average cost. For example, over 2015-2019, average revenue was considerably higher than average cost.

5.45 We note that while our approach for 2020 precisely allows for Dublin Airport's pre-COVID charging strategy including its incentive schemes, this would not be the case for 2021 as Dublin Airport is proposing to change the terms of certain schemes to take account of COVID-19. For example, the SACERS scheme would now exclude routes which were in operation prior to COVID-19 which are being reintroduced. If Dublin Airport's current charging strategy were to remain fully unaltered for 2021, in the event of a significant recovery this and other schemes could lead to a substantially lower yield per passenger than we have allowed for. However, maintaining the current menu of charges, while allowing for changes to the terms of incentive schemes such that they would be less favourable for airport users, would not be consistent with the outcome of our approach for 2020 which is to precisely allow for Dublin Airport's pre-COVID-19 charging strategy.

5.46 Government proposals to issue rebates on airport charges for part of 2021 are not relevant for the purposes of this review. The Commission is making adjustments to the 2019 Determination, having regard to our own statutory objectives, in the context of the impact of COVID-19. It is not our role to consider the extent to which these charges might ultimately be paid by Government as opposed to airport users. This is a matter for Government.

5.47 Therefore, in our view, an adjustment to the approach to compliance which would likely just lead to a prospective increase in the price cap for 2021, which is not justified on the basis of addressing undesirable incentives, would represent a disproportionate transfer of financial damage from Dublin Airport to users. This would also be the case (albeit to a lesser extent) if we were to implement a Workload Unit (WLU) cap as also suggested by Dublin Airport, which would in any case add uncertainty with more variables being brought into the equation. This differs from 2020 in that pricing for 2021 is prospective and can still influence airline decisions in relation to capacity at Dublin, and airfares. Equally, Dublin Airport comes into 2021 in the knowledge that the effects of the pandemic will continue into 2021 and that it may need to adjust charges within the year.

5.48 In response to the comments from Joseph Ryan, we would point out that the base price cap derivation was not included in the scope of this interim review. Stakeholders are aligned with our view that it would not be possible or desirable to re-set the base price cap for 2021. Implementing time based sub-caps within 2021 would only serve to restrict the pricing flexibility of Dublin Airport across the year, which would not be in the interests of Dublin Airport or of airport users.

5.49 We did not receive any submissions setting out whether or why we should adjust the undercollection or overcollection mechanism. In our view, once Dublin Airport identifies a likely need to adjust yield per passenger for 2021, it would be preferable to do this by changing charges within the year rather than relying on expanded mechanisms for under or overcollection. For these reasons we make no changes to these mechanisms, meaning that undercollection of up to 5% of the price cap will be carried forward to 2023, while any overcollection would need to be repaid within 90 days of the end of 2021.

5.50 Ryanair's opposition to our proposed approach to 2021 is centred on our removal of the triggers and adjustments, which are each considered in subsequent sections. In broad terms, as set out in Section 4, we consider that there is merit in removing all triggers and adjustments for 2021, meaning that charges would be set with reference to the base price caps and thus the regulatory building blocks only.

6. Triggers and Adjustments

6.1 This section sets out submissions received and our decisions in relation to our proposals to remove triggers and adjustments which would impact the base price caps for 2020 and 2021.

T2 Box 2 Trigger

6.2 The Draft Decision proposed to remove T2 Box 2 triggers from the price cap formulae in the 2019 determination, which would allow Box 2 to continue to be remunerated from 2020 onwards.

6.3 The Box 1/Box 2 approach to the remuneration of T2 was initially set out in CP3/2007 as part a two-step remuneration approach for the costs associated with T2.[14] While the majority of T2 Capex (Box 1) entered the RAB in 2010 when T2 opened, the remainder (Box 2) was deferred until annual passenger traffic reached 33m. This was based on a finding that the proposed scale of T2 would only be justified when annual passenger traffic reached 33m. Thus it would align Dublin Airport's remuneration with the materialisation of a level of demand which would justify the full size of T2.

6.4 Our proposal to remove this 33m passenger condition was based on the fact that, as described further below, Dublin Airport was on track to reach that threshold by 2020, having outperformed forecasts to reach 32.91m in 2019. Therefore, given the specific circumstances under which Dublin Airport will have missed the 33m target, and the fact that T2 has proved to be appropriately sized under 2019 conditions, we did not deem it appropriate to further delay the remuneration of Box 2.

Submissions Received

6.5 Dublin Airport supports the proposed removal of the T2 Box 2 trigger. It states that retaining the mechanism would result in an additional reduction in aeronautical revenues for Dublin Airport, which would further stress its finances. In addition, it notes that Terminal 2 has been in operation for over 10 years now, and that remuneration of a significant portion of its investment will only commence in 2020.

6.6 IATA states that it understands our approach towards T2 Box 2 triggers and sees no issues with our proposal.

6.7 Ryanair is opposed to the proposed removal of the T2 Box 2 trigger. It states that the fact that the threshold was close to being reached does not legitimise the recovery of these costs ahead of the actual threshold being reached.

Decision

6.8 We confirm that T2 Box 2 triggers will be removed from the price cap formulae in the 2019 determination, meaning that Box 2 be remunerated from 2020 onwards and that no downward adjustments will be made to the base price caps on the basis of T2 Box 2.

6.9 The initial intent of this mechanism was to ensure that the materialisation of a level of demand so as to justify the proposed scale of T2 would align with remuneration for Dublin Airport. In

[14] https://www.aviationreg.ie/_fileupload/Image/PR_AC2_PUB1_CP6_2007.pdf
Box 2 was calculated as 27% of the cost allowance (net of disallowed costs) for the core T2 facility, as this was the estimate of the extent to which the terminal size had not been justified. It was adjusted in 2014 to include 27% of the allowed overspend on the project and has also accumulated the cost of capital from 2010 to 2018.

October 2019, our forecast for Dublin Airport in 2019 was 32.85m. We forecast that the 33m trigger threshold would be comfortably exceeded in 2020, with a forecast 34m passengers. Then, in 2019, actual traffic exceeded our forecast to reach 32.91m, to bring Dublin Airport within less than 0.3% of the passenger volume threshold of 33m. However, due to the COVID-19 pandemic, this threshold will not be met in 2020, and is now unlikely to be met for several years depending on the speed of the recovery.

6.10 Nevertheless, the traffic trend showed that the threshold of 33m passengers would likely have been reached in 2020 were it not for the impact of the pandemic. From the perspective of terminal sizing, whether the level of passenger traffic was 32.91m or 33m is negligible in the context of whether the size of T2 was justified by the level of demand which had materialised by 2019. Therefore, in our view, Dublin Airport's decision to build T2 to the scale it did had been justified by 2019. The initial intent of the trigger, namely to align remuneration with the justification of the full scale of T2, is now satisfied.

6.11 Therefore, we consider that it would be disproportionate and inconsistent with the goal of the Two Box approach to withdraw the remuneration of T2 Box 2 in the current circumstances.

Reprofiling Triggers

6.12 The Draft Decision proposed that reprofiling triggers associated with three projects would be removed from the 2021 price cap formula.

6.13 Under the mechanism set out in the 2019 Determination, if each of these three projects was not on site by the end of 2020, the associated reprofiling trigger amount would be removed from the 2021 price cap.

6.14 These triggers were put in place to ensure that the timing of remuneration would not become significantly misaligned with the timing of the project, in the context of an ambitious 5-year capital programme. It provided an incentive for Dublin Airport to progress these projects in a timely manner. However, in light of the current circumstances and with traffic likely taking several years to fully recover, we considered that such incentives would not be desirable any longer.

Submissions Received

6.15 Dublin Airport supports our proposal to remove capital expenditure reprofiling triggers stating that keeping the reprofiling triggers would provide it with a perverse incentive to progress capital development projects at a time when its capital investment program requires selectivity and prioritisation as a response to the current business environment.

6.16 Dublin Airport also noted that given the current adverse circumstances it is facing, and the subsequent need for additional flexibility on timelines and penalties for the relevant capital projects to avoid further stress on the company finances.

6.17 IATA states that it understands our rationale for removing the reprofiling triggers in order to avoid the perverse incentivisation of capital expenditure.

6.18 Ryanair considers that we have not addressed the issue of Capex triggers, instead proposing to allow Dublin Airport to benefit from the revenues associated with projects that '*have not commenced and are unlikely to be commenced within the foreseeable future*'. It states that prefunding of projects which may never commence is unacceptable and irrational.

6.19 Ryanair states that the way to address any perverse incentive to commence projects prematurely to activate the triggers within the price cap, would have been to remove the trigger amounts for those projects for which it is clear that there is no longer any immediate need at least for 2021 (and potentially beyond).

Decision

6.20 We confirm that reprofiling triggers as set out in Table 6.1 will be removed from the 2021 price cap formula.

Table 6.1: The 2021 Reprofiling Triggers are removed

Project	2021 Reprofiling Triggers
T1 IDL Expansion	€0.03
T1 Check-In	€0.03
West Apron Underpass	€0.09

Source: CAR

6.21 The purpose of these triggers was to ensure the timing of remuneration would not be significantly misaligned with the timing of project delivery, within the context of a large 5-year capital program. It was also designed to ensure that Dublin Airport would be incentivised to proceed to deliver these projects quickly, which was desirable in 2019. It should be noted that these triggers were added to the regulatory Determination in the context of Dublin Airport statements that it may not proceed with the investment plan as it had initially proposed. In line with Dublin Airport's view set out above, we consider the postponement of this allowed Capex would be a valid response to the current scenario, to ensure that its capital investment program projects are carefully selected and prioritised. We do not want to disincentive this initiative.

6.22 In the current context, with traffic likely taking several years to fully recover, we consider that the incentive is no longer desirable, from either the point of view of Dublin Airport or airport users, who would be paying for these capital costs in future determinations if Dublin Airport were to respond to this incentive and progress the projects regardless of the current conditions.

6.23 As set out above, we are not re-opening the building blocks allowances established in the 2019 Determination. These projects were included in those building block allowances, with triggered adjustments intended to operate in a scenario where it would be in the interests of airport users that the projects would be progressed in a timely manner. If we were to remove the reprofiling triggers while deducting the associated revenues as suggested by Ryanair, that would be akin to disallowing the projects as part of this review. For consistency, we would then also need to reconsider the other building blocks.

6.24 With regards to concerns suggesting that our decision to remove reprofiling triggers from the 2021 price cap formula is equivalent to allowing pre-funding of projects that may never happen, if these projects were to be ultimately cancelled in the future, we will ensure that this is reflected appropriately in subsequent regulatory reviews. Furthermore, it should be noted that 2020 actual capital cost remuneration is significantly lower than expected capital cost remuneration as forecast in the 2019 Determination, as shown in the tables below. For context, the total amount we expect Dublin Airport to collect from airport charges in 2020 (encompassing our decision to replace the per-passenger cap for 2020) is approximately €20m less than the €95m which the RAB will be depreciated by.

Table 6.2: 2020 Forecast Capital cost recovery as per 2019 determination

	Depreciation	Return	EBITDA available for Capital Remuneration
2019 Forecast	€95.4m	€87.5m	€182.9m

Source: 2019 Determination, February 2019 Prices.

Table 6.3: Actual Capital cost recovery in 2020 is expected to be negative

	Aeronautical Revenue	Commercial Revenue	Operating Expenditure	EBITDA available for Capital Remuneration
2019 Determination	€255m	€217m*	€290m	€183m
2020 Latest Expected	€74m	€89m	€177m**	-€14m

Sources: 2019 Determination. Approximate CAR estimates for 2020, based on Dublin Airport actual data (based on current draft and unaudited data available) to end November 2020. Net of CAR decision to change compliance requirement, pursuant to this review, for 2020. Nominal Prices.

**Net of historic rolling scheme adjustments.*

***Net of applicable general government supports/waivers.*

Opex Passthrough Mechanism

6.25 The Draft Decision proposed that the Opex passthrough mechanism included in the 2019 Determination is removed from the 2020 and 2021 regulatory settlements. Consistent with this approach and the 'no adjustments' approach generally, we would also remove the W-Factor from the price cap formula for 2022 (which refers back to 2021) and the Y-Factor from the price cap formulae for 2022 (which refers back to 2020) and 2023 (which refers back to 2021).

6.26 As part of the 2019 Determination, a mechanism allowing Dublin Airport to pass through variations in costs deemed uncertain and largely out of its control, was included. These costs included:

- Local Authority Rates applicable to Dublin Airport and not rechargeable to tenants; and
- Direct charges set out in new or amended primary or secondary legislation, which are outside the control of Dublin Airport, which exceed €0.5m and relate to activity undertaken by the regulated entity.

6.27 However, given the uncertainty regarding the inputs necessary to calculate the passthrough and the potential for this mechanism to generate a much higher level of volatility in the price cap than was anticipated (as the volume risk on this component sits with airport users), we proposed to remove this mechanism from the 2021 price cap calculation.

Submissions Received

6.28 Aer Lingus supports the removal of this mechanism as proposed, on the grounds that it is a pragmatic response to the high level of uncertainty in both the 2020 commercial rates which will be imposed on Dublin Airport and the 2021 passenger volumes.

6.29 Dublin Airport accepts our proposal that the Opex cost pass through mechanism be inapplicable for 2020 and 2021. However, it states that unexpected operating costs related to the public health measures mandated by Government regulatory authority will therefore be left unrecoverable. Dublin Airport further states that, as traffic recovers and strict COVID-19 related protocols need to be maintained, related public health costs will need to be considered within the regulatory framework.

6.30 IATA states that it has no major comment on the proposal to remove the Opex passthrough mechanism for 2020 and 2021.

Decision

6.31 We confirm that the Opex passthrough mechanism is removed from the 2020 and 2021 price cap formula. It had related to:

- Changes to local authority rates applicable to the regulated entity and not rechargeable to tenants; and
- Direct charges set out in new or amended primary or secondary legislation, which are outside of Dublin Airport's control, which exceed €0.5m and relate to activity undertaken by the regulated entity.

6.32 The mechanism was scheduled to take effect in 2021 based on qualifying Opex incurred in 2020, and would require up-to-date forecasts of the following items:

- Applicable rates and direct charges in 2020; and
- Passenger numbers in 2021.

6.33 However, there is significant uncertainty over these items, which could potentially trigger very volatile adjustments. For example, a €10m increase in qualifying Opex, together with even a 20m passenger forecast for 2021, would increase the price cap by €0.50.

6.34 Therefore, we consider that this mechanism, which was initially expected to make relatively minor adjustments to the price cap from year to year, to be inappropriate in the current high uncertainty environment.

6.35 As set out in the Draft Decision, in order to give effect to this change we have also removed the W-Factor from the price cap formula for 2022 (which refers back to 2021) and the Y-Factor from the price cap formulae for 2022 (which refers back to 2020) and 2023 (which refers back to 2021).

Quality of Service adjustments

6.36 The Draft Decision proposed that financial penalties associated with quality of service targets be removed from the 2020 and 2021 price cap formula.

Submissions Received

6.37 Dublin Airport supports our proposal to remove financial penalties associated with the quality of service scheme, for 2020 and 2021, given the current environment and the difficulty to gather meaningful samples across the different passenger types relevant to the scheme.

6.38 IATA states that it is reasonable that any changes to the quality of service regulatory regime should wait until there is greater understanding of how traffic returns, and which health measures will be enduring.

Decision

6.39 We confirm that financial penalties will be removed from the price cap formula for 2020 and 2021, which removes the link between the price cap and the performance of Dublin Airport on quality of service for those years.

6.40 We consider the current environment inadequate to allow Dublin Airport to collect meaningful data from passengers for the purpose of meeting many of the relevant quality of service targets. In addition, as COVID-19 continues to impact the way passengers are processed by Dublin Airport, we consider that it will be unexpectedly challenging for Dublin Airport to meet certain relevant quality of service targets. For areas where data collection is possible, Dublin Airport must continue to report performance to us and we will continue to publish the results.

Inflation adjustment

6.41 The Draft Decision proposed that inflation adjustments be removed from the 2020 and 2021 price cap formula.

Submissions Received

6.42 Dublin Airport accepts our proposal to remove inflation adjustment from the 2020 and 2021 price cap formula, as part of the overall ‘no adjustments’ approach.

6.43 IATA states that it has no major comment on our inflation adjustment proposal.

Decision

6.44 Consistent with our ‘no adjustments’ approach, we confirm that there will be no inflation adjustment to the 2021 price cap.

6.45 We consider that is unclear whether the October to October CPI change, on which the price cap has historically been adjusted, will be a good proxy for full year inflation this year, given the broader economic uncertainty.

7. Regulatory Mechanisms

7.1 This section sets out further details on proposed changes to the regulatory settlements for 2020 and 2021 which do not impact the price cap in those years, but may have impacts in future years.

Clawback of the Remuneration of Unspent Capex Allowances

7.2 The Draft Decision proposed that with respect to new Capex allowances for 2020 and 2021, remuneration of unspent capex would not be clawed back. For clarity (to avoid any potential misunderstanding which may have arisen), this proposal related to the remuneration of any unspent new Capex allowances for 2020 and 2021 only. Unspent Capex allowances will not enter the RAB for future ongoing remuneration (as might have been the case if Dublin Airport had spent the allowances).

Submissions Received

7.3 Aer Lingus' view is that the treatment of unspent Capex allowances should only be considered in any forthcoming interim review of the building blocks of the 2019 Determination and no decision on the treatment of unspent Capex made in the current narrow-focus review. It states that it is unclear whether this proposal is necessarily related to the proposed price caps for 2020 and 2021, or whether the two issues should be considered completely separately.

7.4 Aer Lingus notes that substantial allowances for new Capex were included in the 2020 and 2021 price caps, and not clawing back these allowances as per the RAB roll-forward principles would imply that users would be paying for Capex which does not exist. It questions how this is consistent with our statement that '*We did not envisage that this review would make any changes to the core aspects of the 2019 Determination building block allowances or the risk allocation*'.

7.5 Dublin Airport supports the proposal to not claw back unspent Capex in 2020 and 2021.

7.6 IATA is concerned that we are not planning to claw back unspent Capex from 2020 and 2021, stating that we allowed some €100m in depreciation and return on capital for new capex for these years (EUR 34.3m and EUR 68.6m for 2020 and 2021 respectively, in 2019 prices). It states that not clawing back these allowances would imply users paying for Capex that does not exist, and there could be a potential double payment if the capex is later added to the RAB and then depreciated in the following period. It asks us to provide clarification on this topic, and how we plan to tackle adjustments to the opening RAB for the next review.

7.7 Ryanair states that by not clawing back unspent Capex, thus allowing underspent capex to shore up Opex, we have to a large extent pre-determined any future interim review to the further detriment of users' interests. It considers that we have pre-determined that the capex programme will be unaltered by the effects of the pandemic and the consequent slowing of demand growth. It states that this cannot be legitimate and is contrary to common sense.

Decision

7.8 We confirm that with respect to capex allowances for 2020 and 2021, unspent capex will not be clawed back.

7.9 While we agree with Aer Lingus that the treatment of unspent capex allowance in 2020 and 2021 and the proposed price caps for 2020 and 2021 are two separate issues, our view is that addressing the former now is also a necessity. Leaving this issue unaddressed would provide Dublin Airport with the perverse incentive to continue spending on projects to avoid clawback. If we wait until the next time there is a full building blocks review, this incentive will continue to be in effect at least for 2021. If Dublin Airport responds to this incentive by spending more Capex than it otherwise would have, this will have implications for future airport users in relation to the levels of airport charges.

7.10 We note the concerns that users are paying for non-existing assets. For clarity, this change only applies to the remuneration (depreciation and return on capital) of the allowances for new Capex in 2020 and 2021. Unspent Capex allowances will not enter the RAB for ongoing future remuneration.

7.11 As set out in Section 6, it should be noted that in 2020, Dublin Airport will not in reality have recovered any of its capital costs, compared to €182.9m of capital costs forecast to be recovered as per the 2019 Determination. This includes both the unspent allowances as well as the Capex Dublin Airport does actually spend in 2020. While some traffic recovery is expected in 2021 there is likely to be a significant shortfall on the recovery of the determined capital costs.

7.12 This remuneration shortfall, induced by significantly lower traffic than expected, is already likely to ensure that unspent Capex is not being remunerated in reality. While Dublin Airport is assigned the volume risk and thus actual capital remuneration always varies somewhat relative to forecasts, like other mechanisms the clawback mechanism is intended to operate on the basis that the actual remuneration collected bears reasonable relation to that which was forecast, and thus we are clawing back remuneration that has been actually collected. That is not the case in 2020/2021.

7.13 Dublin Airport has continued to spend Capex in 2020 and will spend Capex again in 2021, to a certain extent. The materialisation of downside risk in 2020 and 2021 also applies to new Capex that Dublin Airport does actually spend in 2020 and 2021. That is, in 2020/2021, Dublin Airport is in reality likely to only receive remuneration for a portion of the new Capex even if there is a significant recovery in 2021. For example, if Dublin Airport spends 50% of the Capex allowances across 2020/2021 and there is a significant demand recovery in 2021 such that it recovers 25% of forecast capital costs across 2020/2021, it will still have only recovered half of the capital remuneration in 2020/2021 relating to Capex it did actually spend. This would be before clawing back the other 50% of unspent allowances, which it would not have recovered at all, is considered. The future clawback of theoretically remunerated unspent Capex, none of which is likely to have been collected in reality, is not an outcome that was envisaged when the 2019 Determination was made.

7.14 Rather than pre-determining that the Capex programme will be unaltered by the effects of the pandemic and the consequent slowing of demand growth, the effect of this adjustment is the opposite. We are removing an impediment to the optimal re-prioritisation or adjustment of the capital programme in light of the pandemic. The consultation process set out below then is intended to ensure that airport users are involved in this re-prioritisation.

7.15 Therefore, in view of the two reasons stated above, namely that 1) keeping the clawback mechanism would provide a perverse incentive to spend in a non-efficient manner thus maintaining more Capex in the RAB and 2) Dublin Airport is unlikely cover any of its capital costs in 2020 and to a lesser in extent in 2021; we have decided that unspent Capex allowances in 2020 and 2021 will not be clawed back.

Capex Consultation Process

7.16 The Draft Decision proposed that Dublin Airport would consult with airports users on substantial projects which it wishes to progress in 2020 and 2021, and that it may only continue a project with certainty over future remuneration if it obtains support from airport users representing 50% of passenger traffic at Dublin airport in 2019, or alternatively demonstrates that the project was safety critical or required for regulatory compliance. The Draft Decision proposed that the threshold for substantial projects be set at €4m, and to encompass all CIP2020 projects with the exception of projects in Appendix G in CIP2020 ('Other projects'), but not PACE projects with the exception of South Apron Stands Phase 2.

Submissions Received

7.17 Aer Lingus supports the proposed consultation provided it is limited only to agreement on the timeline for the delivery of the projects and not the overall need for the project to facilitate a 38m passenger volume at some point in the future. It states that the suitability and desirability of the projects to facilitate a 38m passenger flow has already been extensively consulted upon with strong agreement from airlines for the current CIP projects, and consequently this should not be revisited.

7.18 IALPA states that it looks forward to contributing positively to this process. It considers the West Apron Underpass project to be safety critical and consequently considers that this project should be a priority for Summer 2021.

7.19 IATA states that the 2020-2024 investment programme was well considered and needed, however, the demand upon which it was built and the timeline for delivery has been severely disrupted. It considers that investments which retain the support of airport users or are required for safety, security or regulatory compliance should proceed. The focus should be on assessing the priority and phasing of projects to ensure alignment with the recovery of demand.

7.20 Dublin Airport states that while it does not disagree with our Capex consultation proposal, it should be noted there is already a substantial level of time commitment required of Dublin Airport. It suggests that the threshold for substantial projects be increased to €10m, as most projects under this threshold are asset replacement projects and projects which are essential to keep the airport operational and efficient. It provides details of projects which are already on-site, which, it states, in some cases are almost complete.

Decision

7.21 We confirm that we are implementing a consultation requirement, the focus of which is intended to be on the timeline for projects which Dublin Airport wants to progress in 2021.

7.22 We agree with Dublin Airport that regulation should be proportionate and not impose unnecessary burdens on the industry. Dublin Airport suggests a threshold of €10m is appropriate to strike such a balance, rather than €4m. We note that Dublin Airport's response identifies projects which were deemed essential to progress in 2020, and further identifies projects which are on-site already and Dublin Airport states that some of these are nearly complete. In our view, rather than adjusting the threshold for inclusion in this consultation, a better approach would be to instead exclude projects which are already on-site (as per Dublin Airport's response) from the list.

7.23 In early 2021, we will ask Dublin Airport to provide us with evidence that each project is already on site in order that it be excluded from the consultation requirement. For CIP.20.02.004 (Passenger Boarding Bridges - Maintenance & Pier 3 Enhancement & FEGP), our understanding is that it is the maintenance aspects of this project which are on-site; in that case, if Dublin Airport wanted to progress the Pier 3 new airbridge in 2021, this should be included in the timing consultation.

7.24 In reassessing the timeline for the Capex programme in the context of the pandemic, Dublin Airport already identified these projects as critical to progress in 2020. Thus excluding these projects would better achieve the goal of a proportionate, meaningful and targeted consultation provided that they are already on site. These are all asset care projects with the exception of Gate Post 9 Expansion.

7.25 In addition, Dublin Airport has put these projects on-site on the basis of allowances provided for in the October 2019 Determination, before any additional consultation requirement was set out pursuant to this review.

7.26 We have listed each project which is therefore relevant for this consultation process in the Appendix.

7.27 In our view, this timing consultation should take place in early 2021. It would be preferable for the timing of projects to be considered, before the detailed StageGate assessment and consultation process for advancing more projects to StageGate 1 takes place. For any project set out in the Appendix which Dublin Airport thinks should be progressed in 2021, including any StageGate projects, it would set out either:

- Details on why the project needs to be progressed in 2021 on the basis of safety criticality or regulatory compliance.
- Why it would be beneficial to progress this project in 2021, and seek support of airport users representing 50% of passengers (as set out below).

7.28 If Dublin Airport's view on which projects should be progressed during 2021 should change materially subsequent to this consultation, it could hold a second consultation later in the year.

7.29 In relation to the 50% threshold, rather than silence being considered agreement, we think it is reasonable that the threshold would encompass only airport users who actually engage with the consultation by submitting a response specifying support or not (provided that all relevant airlines are invited to the consultation). Among this group, Dublin Airport would need to obtain agreement or support of airlines corresponding to 50% of passengers represented, based on 2019 traffic. For example, if 5 airlines representing 90% of 2019 traffic were to engage with the consultation specifying either support/agreement, or a lack of support, Dublin Airport would need to attain agreement or support from airlines which constitute 50% of passengers represented by these airlines, or in that example 45% of the total 2019 passengers.

7.30 We make no other changes to this mechanism. In particular, the following points set out in the Draft Decision should be noted:

- Unless continued progression of the project is either substantially supported by airport users (as defined above) or alternatively is required on the grounds of safety critical maintenance and/or required for regulatory compliance, Dublin Airport should not continue to spend Capex on these projects with the expectation of ongoing remuneration in future determinations.
- No clawbacks will be applied to these Capex allowances in 2020 or 2021, in line with the 'no adjustments' approach.

- There are no implications for the projects which have already been approved at StageGate 1 and are currently in the StageGate 2 phase, namely Terminal 2 Hold Baggage Screening Standard 3 (HBS3) and the rehabilitation of Taxiway W2. Similarly, there are no implications for Terminal 1 HBS3 which is currently going through StageGate 1.
- Given that we require Dublin Airport to consult on the timing of certain projects, we will change our Capex reporting to ensure it reflects this change. We will work with Dublin Airport on this in Q1 2021.

7.31 Depending on developments in 2021 and/or on the scope of any further Interim Review carried out in 2021, the Commission may consider extending this process or a similar process beyond 2021.

Commercial Revenues

7.32 The Draft Decision proposed that the 2019 Determination rolling scheme mechanism be removed for 2021.

Submissions Received

7.33 Aer Lingus states that it has no visibility on the potential size of any 'outsized gain' arising from this mechanism. Therefore, in the interests of fairness to all parties and the principle of regulatory certainty, it requires more information on why the removal of this mechanism is considered to be necessary.

7.34 Dublin Airport acknowledges that as a consequence of the low passenger volumes, the average commercial revenue per passenger has been somewhat inflated for 2020. This could lead to outperformance when compared to the targets for commercial revenue, although Dublin Airport states it does not expect that will be the case in 2021. Dublin Airport maintains that the commercial revenue rolling incentive mechanism is critical in driving improved performance across the commercial revenue portfolio and should be retained in the regulatory determination post 2021.

7.35 IATA supports the removal of this mechanism.

Decision

7.36 We confirm that the 2019 determination rolling schemes with respect to the four commercial revenue categories shown below, will be removed for 2021.

Table 7.1: Yields per passenger comparison between 2021 as per 2019 determination, and January to September 2020

Yield (€, nominal)	Retail	Car Parking	Lounges, Fast track, and Platinum services	Advertising
2021 targets as per 2019 determination	3.23	1.60	0.56	0.17
January-September 2020	3.63	1.80	0.63	0.30

Source: 2019 Determination, Dublin Airport data

7.37 As shown in the table above, the fall in passenger traffic has inflated the revenue yield for the four categories subject to the rolling mechanism. The extent of the unexpected outperformance varies across different categories (note that the 2020 figures relate to January to September only and thus may increase further over October to December). While this demonstrates outperformance on a per passenger basis, in reality it is traffic underperformance which is the main driver. The extent to which this will continue into 2021, and thus generate 'outperformance' which would ordinarily be rolled into the next determination, is not yet clear. The effects of outperformance can be substantial. For example the 2020 Commercial Revenue targets were reduced by a total of €47m as a result of outperformance in the previous regulatory period.

7.38 Like certain other aspects of the 2019 Determination, the commercial revenue rolling scheme mechanism is intended to operate where actual traffic might deviate from the Determination traffic forecast within reason, which is not the case here. Therefore, we are excluding 2021 performance as part of this mechanism, to preclude the risk that the mechanism might roll a high level of outperformance into the next Determination which in reality would have been generated by the fall in traffic. The mechanism remains in place from 2022 as intended but may be reconsidered as part of future reviews.

8. Compliance with Statutory Requirements, Directions and Policy

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

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

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

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

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

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

8.5 The scope of this review does not encompass a full review of the building blocks. No respondent suggested a full review should be carried now, and it is not possible to make reasonable traffic or financial projections at this time. Thus, we do not reconsider the aspects of the Determination which are out of scope (notably, the derivation of the base price caps) in relation to our statutory requirements.

8.6 As set out above, the purpose of this review is to address immediate unintended pricing consequences, arising from the pandemic in 2020 and/or 2021, in a balanced way. In the current circumstances, this involves balancing the reasonable interests of current and prospective airport users, with facilitating the efficient and economic development and enabling the financial viability of Dublin Airport. This approach has informed all of the amendments we have made to the 2019 Determination.

8.7 For example, in relation to protecting the reasonable interests of current and prospective users, we have:

- Not made adjustments which are likely to permit an increase in Dublin Airport's current effective charges.
- Introduced a Capex consultation process to protect future users from the potential for a high degree of misalignment between capacity and demand.

8.8 As an example of facilitating the efficient and economic development and operation of Dublin Airport in a sustainable and financially viable manner, we have adjusted the price cap compliance requirement for 2020 such that the charges which were in effect during 2020 are precisely compliant with the 2019 Determination.

8.9 Furthermore, in the context of financial viability, we note that the ability of daa to efficiently raise significant liquidity during 2020 has demonstrated that the 2019 Determination and previous determinations have been successful in enabling financial viability of Dublin Airport, notwithstanding the unprecedented impact of COVID-19 on the aviation industry.

9. Future Review(s)/General comments

9.1 This section considers other general submissions we have received, as well as submissions in relation to future reviews. In the Draft Decision, we set out our expectation that we would carry out a further interim review in 2021. Whether this would be a wide-ranging review or a narrow-focused review would depend on how the situation develops over the rest of this year and early next year.

Submissions

9.2 Ryanair states that in the industry generally the burden of airport losses is being shouldered by equity shareholders and by governments. It provides examples of airports which are providing discounts/incentives to stimulate recovery, and countries which have provided state aid to their airports.

9.3 Ryanair quotes from a recent paper from the UK CAA which stated that the CAA '*did not see evidence that LHR had taken the example of other airports, airlines and companies exposed to the aviation sector by "exhaust[ing] alternative options for funding, such as by raising a combination of new equity and debt"*'. Ryanair also quotes the UK CAA as stating that, in practice, European airports are responding to the crisis in different ways, but are not generally seeking changes to the price control that would increase prices to consumers.

9.4 Dublin Airport states that in the medium-term, it would recommend a full Interim Review of the current 2019 Final Determination, to allow for a reappraisal of the regulatory building blocks in the wake of the COVID-19 pandemic. However, the full impact of COVID-19 will remain uncertain for the short to medium term thereby making it impossible for the aviation sector to properly plan until the volatile nature of COVID-19 settles and the impact can be assessed with a degree of accuracy.

9.5 IATA agrees with our proposals as to what needs to be considered once a wider review is deemed necessary.

CAR Response

9.6 We note Ryanair's comments on the ability of airports to raise capital at this time and also that state aid has been used in some jurisdictions as a response to the crisis. However, these are not matters for the Commission, but rather for Dublin Airport and the Irish government.

9.7 As set out above, our view is that it is very unlikely that changes arising from this interim review will allow for an increase in effective charges at Dublin Airport. In fact, as discussed above, it is rather likely that effective charges will need to be lowered in 2021, to avoid overcollection on the maximum aeronautical revenue yield per passenger.

9.8 With respect to a subsequent review, our view remains unchanged that another review will be needed in 2021. We will continue to monitor how the situation unfolds in deciding on the timing and scope of such a review. We will consult further regarding our current thinking on the timeline in advance of commencing any wide-ranging review.

Appendix: Projects subject to revised consultation requirement

CIP Code	Project	Allowance €m
CIP.20.01.002	Apron Rehabilitation Programme	40.2
CIP.20.01.003	Airfield Taxiway Rehabilitation Programme*	16.4
CIP.20.01.004	Apron Road Rehabilitation Programme	4.4
CIP.20.01.006	Airfield Southern Perimeter Road Upgrade Programme	4.3
CIP.20.01.008	Runway Approach Lighting Mast Improvement Programme	11.1
CIP.20.01.009	Aerodrome Ground Lighting (AGL) Improvement Programme	4.7
CIP.20.01.010	Airfield Lighting Control & Management System Improvement Programme**	4.9
CIP.20.01.016	Airfield Maintenance Base Improvement Programme	4.4
CIP.20.01.020	Terminal 1 Façade, Roof & Spirals	25.2
CIP.20.01.034	Campus Roads Critical Maintenance**	6.5
CIP.20.01.039	Airport Roads Critical Maintenance	5.0
CIP.20.01.065	Airport Heavy Fleet & Equipment Replacement**	9.0
CIP.20.01.074	Advance Visual Docking Guidance System (5G, Pier 1 & Pier 2)	5.4
CIP.20.01.099	RWY 16/34 Lighting for Low Visibility Procedures (LVP)**	5.5
CIP.20.07.032	Unit Load Device (ULD) Storage	5
CIP.20.02.001	Medium Voltage (MV) Electrical Network	6.3
CIP.20.02.004	Passenger Boarding Bridges (Maintenance & P3 Enhancement) & FEGP	17.2
CIP.20.02.005	Lift Upgrade Programme - Terminal and Multi-Storey**	6.2
CIP.20.02.006	Airport Water & Foul Sewer Upgrade	4.9
CIP.20.02.007	Life Safety Systems (LSS) Upgrade Programme Terminal and MSCP Buildings	10.1
CIP.20.02.008	Terminal Buildings HVAC Upgrade**	17.8
CIP.20.02.009	Campus Buildings: Mechanical, Electrical & LSS Upgrade	9.4
CIP.20.02.010	Pier 3 Life Extension Works - Mech, Elec and Foul Drainage	14.0
CIP.20.02.013	Small Energy Projects**	5.4
CIP.20.07.030	Large Energy Project - Photovoltaic Farm	8.5
CIP.20.03.004	Gate Post 9 Expansion (West Lands)**	8.5
CIP.20.03.006	Terminal 1 Kerbs	13.6
CIP.20.03.011A	Terminal 1 Check-In (Partial shoreline)	26.0
CIP.20.03.012	Terminal 1 Central Search - Relocation to Mezz Level	31.5
CIP.20.03.013	Terminal 1 Departure Lounge (IDL) Reorientation and Rehabilitation	32.9
CIP.20.03.015	Terminal 1 Baggage Reclaim Upgrade & Alterations	19.0
CIP.20.03.020	Terminal 2 Check-in Area Optimisation	13.2
CIP.20.03.021	Terminal 2 Central Search Area Expansion	4.6
CIP.20.03.028	Terminal 2 Early bag store and transfer lines	27.9
CIP.20.03.029	New Pier 5 (T2 and CBP Enabled)	298.7
CIP.20.03.030	Expansion of US Pre-Clearance Facilities	55.1
CIP.20.03.031	South Apron Expansion (Remote Stands, Taxiway and Apron)	71.3
CIP.20.03.033A	Enablement of Pier 3 for Precleared US bound passengers	7.6
CIP.20.03.034	Pier 3 Immigration (Upgrade & Expansion)	4.7

CIP.20.03.036	North Apron Development – Pier 1 Extension (Module 1) & Apron 5H PBZ	163.5
CIP.20.03.043A	Terminal 1 Piers - New Airbridges (6NBE / 3WB)	23.3
CIP.20.03.049	De-icing pad at Runway 10R	5.0
CIP.20.03.051B	West Apron Vehicle Underpass - Pier 3 Option	169.0
CIP.20.03.052	Surface Water Environmental Compliance	51.6
CIP.20.03.054	New Remote Apron 5M - 17 NBEs	82.5
CIP.20.03.057	Airside GSE Charging Facilities (Ground Handlers)	4.9
CIP.20.03.071	Hydrant Enablement - Pier 2 & 3	23.7
CIP.20.04.002	Car Hire Consolidation Centre	13.6
CIP.20.04.005	Long Term Car Parking - Eastland's (2000 spaces)	9.4
CIP.20.04.006	Terminal 1 Multi-Storey Car Park Block B (466 spaces)	17.4
CIP.20.04.007	Terminal 2 Multi-Storey Car Park (680 spaces)	14.9
CIP.20.04.009	Staff Car Park	5.8
CIP.20.04.017	Airline Lounges - Expansion, Upgrade & New	11.4
CIP.20.04.021	West Apron - Accommodation & Welfare Facilities	4.5
CIP.20.04.025	Commercial Property Refurbishment	6.0
CIP.20.07.010	Office Consolidation & Refurbishment (primarily Level 4 & 5, Terminal 1)	11.6
CIP.20.08.001	Retail Refurbishments, Upgrades and New Developments	8.0
CIP.20.05.001	Airfield Optimization	5.6
CIP.20.05.003	Integrations and Data	5.1
CIP.20.05.005	Business Efficiency	6.2
CIP.20.05.007	Reliability, Safety, Security & Compliance	8.2
CIP.20.05.009	Network Components - Lifecycle & Growth	6.8
CIP.20.05.010	Passenger Processing (excl. Security Screening)	11.0
CIP.20.05.011	Security Technology Innovation (Biometrics & FOD Detection)	5.0
CIP.20.05.012	Servers and Storage - Lifecycle & Growth	5.6
CIP.20.05.015	New Data Centre Hosting Location	4.0
CIP.20.05.016	Microsoft Enterprise	6.0
CIP.20.05.020	Innovation Fund	4.0
CIP.20.06.001	Cabin-Baggage X-Ray Replacement & EDS Upgrade	16.8
CIP.20.06.014	Screening and Logistics Centre	13.3
CIP.20.06.015	Intrusion Detection Systems for Dublin Airport Boundaries	4.0
CIP.20.06.041	Security Screening Equipment - End of Life	4.5
CIP.20.06.042	ATRS - Central Search Areas (T1 and T2)	11.0
PACE	South Apron Stands, Phase 2	37.3

*with the exception of Taxiway W2

**will be excluded once Dublin Airport provides evidence to the Commission that the project has already gone on-site (for CIP.20.02.004 this applies separately to the maintenance works and the new P3 airbridge).