**Ryanair Response to Draft Interim Determination CP9/2020**

1. Ryanair welcomes the opportunity to respond to CP9/2020, setting out CAR's Draft Decision on an Interim Review of the 2019 Determination (CP9) (the Draft Decision). In our response to CAR's consultation paper CP3/2020 "COVID-19 Price Regulation Response Airport Charges – Dublin Airport" (CP3), we made clear the over-riding imperative to reduce airport charges at Dublin Airport in order to facilitate stimulation of demand and delivery of recovery in the levels of air traffic through Dublin Airport so as to ensure the continuing role of air connectivity in supporting the Irish economy.

2. Your proposed Draft Decision does not do that, but rather seeks to protect DAA from normal commercial pressures that act upon airports operating competitively; a point that CAR itself acknowledged at para. 3.14 of CP3. It appears to be no coincidence that CAR's proposal mirrors exactly the approach requested by DAA on page 4 of its response to CP3. The Draft Decision set out in CP9 prioritises the interests of DAA over that of its users, contrary to CAR's statutory objectives, specifically the second objective that requires CAR *"to protect the reasonable interests of current and prospective users of Dublin Airport"*. The Draft Decision seeks to protect the DAA as far as possible from the immediate effect of the COVID-19 crisis in terms of overall revenues but does nothing to protect the interests of users, who have been catastrophically affected by COVID-19. For this reason, the Draft Decision is inherently unbalanced.

3. This approach is irrational. The stated purpose of CAR in opening the review was to address "immediate unintended pricing consequences arising from the pandemic in 2020 and/or 2021 in a balanced way" (see CP3 at page 2 and paragraph 3.12). It is irrational to decide to act for a particular purpose and then to fail to have regard to that very purpose when acting. Here, no regard has been had to the achievement of a "balanced" approach in which the interests of both users and the airport are taken into consideration.

4. On this basis, we reject the Draft Decision and consider that the 2019 Determination (as varied in July 2020 by CP5/2020 following the outcome of the Appeals Panel) (the Varied Determination) should remain in force pending any substantive Interim Review that fully addresses the changed circumstances and the need for market responsive pricing by DAA.

## The role of Government

5. Like all stakeholders in the aviation ecosystem, airports are suffering from the COVID-19 crisis. However, airports operating commercially are lowering their charges to stimulate recovery in passenger demand. For example:

- The Cypriot Government has introduced an EU approved, load factor based scheme to incentivise airlines to return to service which delivers incentives of up to €17 per departing passenger (capped at €800,000 per airline). From October to December, passenger load factors between 41%-50% receive a €15 incentive, between 51% - 60% receive €10, between 61% - 70% receive €5.

- Spanish Government majority-owned AENA has introduced a recovery scheme which offers up to 100% discounts on airport landing charges.

- Portuguese airports have introduced a recovery scheme which offers up to 70% discounts on airport landing charges and baggage handling.

- Avinor, the Norwegian Airport Operator waived 100% of the landing charges for all flights. Additionally, the Norwegian Government has waived the €7.50 per departing passenger Government tax until December 2020.

- Numerous privately owned / operated airports across the UK and elsewhere in Europe have introduced schemes offering incentives / discounts of up to €10pdp
  - [CONFIDENTIAL] has agreed a 50% reduction on our passenger charge from [CONFIDENTIAL] per departing passenger to [CONFIDENTIAL] per departing passenger on all traffic until March 2021
  - [CONFIDENTIAL] has agreed incentives of [CONFIDENTIAL] per passenger available to all airlines.

6. The burden of airport losses are being shouldered by equity shareholders and by governments, acting to secure the viability of their airports and airlines to ensure that air transport can play its vital role in economic recovery. For example, Belgium,[1] and Germany[2] have notified State aid schemes to the European Commission to support their airports, while the UK CAA recently responded to a request by Heathrow Airport (LHR) for the CAA to change its approach to the calculation of LHR's regulatory asset base to take account of the actual and expected impact of the COVID-19 pandemic on its revenues in 2020 and 2021.[3] The CAA concluded that LHR failed to demonstrate that its proposed solution was "*appropriately proportionate*". LHR focused on a single remedy, i.e., change of calculation of its RAB, and did not include "*a detailed assessment of potential alternative options*". In particular, 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*", giving the example of IAG, Virgin, Gatwick Airport, Sydney Airport and Rolls Royce.

7. The CAA also noted that "[*A*]*irlines have raised related issues which demonstrate 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*".

8. Similarly, lenders are showing a willingness to adapt their terms to maintain key infrastructure assets within their portfolios. In the case of Dublin Airport, the equity shareholder and the government is one and the same entity and it is reasonable to expect

[1] State Aid SA.58299 (2020/N) – Belgium - Covid-19: Aid to the Flemish airports
[2] State Aid SA.57644 (2020/N) – Germany - COVID-19: Airport Scheme
[3] CAP 1966, available at:
https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=9795

that the financial effects of the pandemic on the airport should fall to it to shoulder rather than the burden being passed to users.

9. 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 that they have to pay in order to replicate the conditions of competition. Instead, the proposed Draft Decision is based on a number of adjustments that ultimately favour DAA and deny users both a rebate on charges in 2020 and the prospect of lower prices in 2021 (and beyond) to stimulate traffic recovery. The overarching aim of the proposed Draft Decision appears to have been to protect DAA's revenues rather than to ensure a fair balance in the outcome to protect users in the short and the long term. As explained above, since the stated purpose of CAR was to achieve a balanced approach, this is irrational.

**Flaws in the proposed Draft Decision**

***Capex and T2***

10. Our response to CP3 made clear that any limited interim review needed to focus principally on capex triggers and ensuring that users were not paying prematurely for investments that have been deferred or are no longer necessary so as to lower prices to support recovery. CAR has not addressed this issue at all and proposes to leave DAA benefitting from the revenues associated with a number of triggered capex projects that have not commenced and are unlikely to be commenced within the foreseeable future. This means that users will continue to pay for projects that have not commenced and, indeed, are no longer required and may never commence. Such pre-funding of unknown future capex projects is unacceptable. It is also irrational. In the circumstances of a global pandemic which has had a devastating effect on airport users, to require those users to pre-fund projects which may never materialise is a decision which no rational decision maker could reach.

11. The way to address any perverse incentive on DAA to commence projects prematurely, so as to activate the triggers within the price cap, would have been to systematically 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), i.e., to remove the revenue from the price cap as set out in the Varied Determination. Instead, CAR has simply allowed DAA to retain the benefit of those triggered projects in terms of the price cap, so earning €0.12 more per passenger in 2021 than it is entitled to given that work on the T1 Departures Lounge, T1 Check-in and West Underpass are all highly unlikely to commence by Q1 2022. The implications will roll forward to later years as well if not addressed in any subsequent interim review as we discuss further below.

12. Specifically, the Draft Interim Determination does not follow the principles laid down in CP3 for a narrowly focussed interim review to address *"immediate unintended consequences"* as it does not actually address those consequences but makes other unwarranted adjustments to the Determination that favour DAA over the interests of users. The identified areas for adjustments in CP3 were:

- Remuneration of T2 Box 2;
- Commercial Revenue rolling schemes; and
- Over-recovery in 2020.

13. Most important of these are the treatment of T2 and the over-recovery in 2020 and, potentially, 2021.

14. We cannot accept that CAR is justified in allowing DAA to start to recover the costs of Box 2 of T2 from 2020 as the trigger threshold was not reached in 2019. 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 as it was clear from the outset that the costs related to the oversizing of T2 should not be recovered when passenger throughput remains below 33 mppa. The decision to retain €0.32 within the price cap seems to be solely motivated by a desire to protect DAA and is fundamentally unfair to airport users, which have an equal need to be protected from the impact of the pandemic.

15. By excluding the T2 Box 2 costs and properly implementing other capex triggers to delete amounts for projects not commenced or no longer justified, and assuming no opex passthrough allowance for rates identified at para. 6.46 of the Varied Determination,[4] we estimate that the price cap in 2020 and 2021 would be approximately €0.50 lower. Taking into account the elasticity of intra-European short haul demand to price[5], a reduction in airport charges of this order would translate to demand recovering by 1.5% per annum more quickly than would otherwise be the case (based on Ryanair's average fare of €37[6]). This would be beneficial to users and to DAA, as well as delivering wider economic benefits to Ireland. Contrary to what DAA said in its August 2020 response to CP3, retaining the price cap at €7.50 would do nothing to *"protect our air connectivity during this crisis and ensure its recovery and restoration over time"*[7] as it is the airlines that provide this connectivity and retaining the price cap at its current set level does nothing to stimulate recovery.

16. We were also surprised to read of DAA's plans to carry out major work on the T1 façade[8] at a time when it is claiming a need to amend the Varied Determination. Traffic has collapsed, with an uncertain recovery period, therefore it is unclear why DAA has selected 2020 to pursue this project. It is a perfect example of a project that is within the regulatory settlement for 2020-2024, but which should be postponed and the revenue returned to users pending any future interim review or new determination for 2025-2029. We can only conclude that now-redundant capex projects that remain in the

[4] We do not have visibility on this issue
[5] https://www.iata.org/en/iata-repository/publications/economic-reports/estimating-air-travel-demand-elasticities---by-intervistas/
[6] https://investor.ryanair.com/wp-content/uploads/2020/07/Ryanair-Holdings-plc-Annual-Report-FY20.pdf.
[7] Paragraph 3.8.6
[8] https://www.dublinairport.com/latest-news/2020/11/05/new-look-for-dublin-airport's-terminal-1

price cap are creating perverse incentives for DAA to pursue these projects to protect the price cap at the expense of users.

***Over-recovery***

17. In the current economic circumstances, we can see no legitimate argument for denying users the rebate on charges due to over-recovery by DAA in 2020. In its response to CP3, DAA suggested that it was expecting to over-recover by 15% against the price cap. Given the ongoing effect of travel restrictions, it is likely that this over-recovery will be substantially higher. It is also unclear whether the extent of over-recovery was estimated against the base price cap in the Varied Determination or one adjusted, as it should be, by removal of untriggered capex allowances. At 15% over-recovery, users are due, at a minimum, a rebate of €1.125 for each passenger that they carried through Dublin Airport in 2020. Ensuring that users are rebated this amount would go some way to compensating them for the losses incurred in operating flights at far below normal load factors and at a loss in many cases. Given that the stated aim and purpose of CAR is to achieve a "balanced" approach, it is not logical to deny the promised rebate.

18. The cost for this should rightly fall on DAA, given its state ownership, and not on the users of Dublin Airport. A failure to retain the entitlement to a rebate in 2020 and 2021 would unfairly pass even more of the risk related to the pandemic from the State to airport users.

**Issues for any Subsequent Interim Review**

19. We are extremely concerned that, by not addressing issues related to capex triggers now, (i.e. allowing DAA to retain the benefit of those triggers regardless of whether the conditions have been met) and going further, at para. 5.4 of the Draft Decision in suggesting that DAA can keep the benefit of underspent capex to shore up opex in the meantime, CAR has to a large extent pre-determined any future interim review to the further detriment of users' interests. Effectively, CAR has pre-determined that the capex programme will be unaltered by the effects of the pandemic and the consequent slowing of demand growth. This cannot be legitimate and is contrary to common sense. We now seek assurances from CAR that a full and proper examination of future capital investment requirements, with recovery of unspent amounts, will be at the heart of any future review if conducted using a 'building blocks' approach.

20. It remains our view that a strict building blocks approach is not appropriate in the current circumstances. This view is shared by other commentators as set out in the attached article presented at GAD World 2020, which makes clear that the building blocks regulatory model is not fit for purpose in the current circumstances and rigid adherence to this approach runs the risk of a return to slower aviation growth with higher fares and lower demand. Such a circumstance would not be conducive or consistent with the important role of aviation in supporting and stimulating economic recovery.

21. We would also highlight that a thorough review of operating costs will be required. DAA is on record as saying that the effect of the pandemic has forced it to consider the cost effectiveness of its whole operation[9]. This is long overdue as we have repeatedly made clear in response to each regulatory reviews. Far greater opex efficiency targets must be incorporated in future reviews if CAR persists in a 'building blocks' approach.

**Summary**

22. We call on CAR to withdraw the Draft Decision and enforce the return of over-recovery in 2020 and, potentially, 2021, as well as adjusting downwards the price caps for 2020 and 2021 in the light of the threshold for recovering T2 Box 2 not having been reached and in the light of the reasonable expectation that triggered capex schemes will not be delivered on programme.

23. In terms of any subsequent full interim review, this should be based on the principle of market prices and reflect the imperative of traffic recovery. As part of this, it will be important to ensure that premature commitment is not made to capacity schemes until the speed of traffic recovery is clear and that the remainder of the capital programme is reduced accordingly. Similarly, DAA must demonstrate that its response to the crisis has been to accelerate the adjustments to its operational costs to reach an efficient benchmark.

[9] https://www.dublinairport.com/latest-news/2020/06/05/covid-19-costs-daa-160m-in-lost-turnover