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5 May 2021

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By email

Re: CP1/2021 Consultation on a Second Interim Review due to COVID-19 of the 2019 Determination of Airport Charges

Dear Adrian,

I refer to the above matter and CARs recent consultation paper CP1/2021.

Background

As you know, the COVID-19 pandemic has devastated the European and Irish aviation sectors. IATA commentary predicts that the market will not return to 2019 levels until at least 2024, with most carriers announcing capacity cuts and aircraft disposals / deferrals as they focus on self-preservation and retrenchment. In this context, airport charges at Dublin Airport are already excessive, and any outcome from this review that leads to an increase in airport charges would be illogical and not based on the realities of market demand.

Despite the evident need to stimulate demand through reduced airport charges, the DAA has so far failed to introduce sufficient airport charge reductions, despite the significant reduction in passenger numbers. A reduction to DAA's already excessive airport charges is fundamental for stimulating both Irish air traffic, and the wider Irish tourism sector. Once current government restrictions start to ease (hopefully later this summer), lower airport charges at Dublin will be key to national recovery. Airlines have spent the past year driving costs down to survive and be ready to stimulate traffic, and it is essential for the DAA to do the same. Failure to do so will inevitably harm national recovery.

CP1/2021 – Ryanair's Comments

We welcome CAR's invitation for feedback on a potential second interim review at Dublin Airport. At the outset, it is important to highlight that Ryanair rejects any review which primarily aims to protect the DAA and its State shareholder from volume risk and the

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economic effects of the ongoing pandemic, at the expense of airport users and consumers. Regulation of the Dublin airport monopoly is based on replicating the conditions of competition. In a competitive market, DAA's pandemic related losses would be covered by its State shareholder and / or market borrowing. CAR's decision on this interim review must therefore seek to replicate a market outcome and not push DAA's losses on to airport users and passengers.

Ryanair has survived the past year through a combination of debt, equity placing, and cost reductions. We are projecting a net loss for FY21 of €800m-€850m. We cannot push our losses on to our airport partners or our passengers. We must continue to reduce costs and apply market-based solutions in order to survive. CAR must not permit DAA to transfer its losses on to airlines in a way that would give DAA permission to abuse its dominant position, which would be diametrically opposed to how a competitive market should work. DAA has already had access to the European Commission-approved State aid scheme for compensating Irish airports for COVID-19 damage[1] and any further liquidity measures must be covered by its State shareholder and financial markets.

CP1/2021 outlines three broad options for 2022 and onwards, namely, no review, a limited interim review, or a full review. The "no review" outcome is the most appropriate, and economically rational, response to the current circumstances since it will result in the least amount of market distortion. I outline Ryanair's position below.

1. No Review

The "no review" option is the only fair and reasonable response to the current crisis. The first response to any financial viability concerns of DAA should be its State shareholder and should not automatically trigger a review of the 2019 Determination (CP8/2019). Issues related to the impact of COVID-19 on the viability of DAA are public health measures that are properly the responsibility of its State shareholder, and are not matters that it is reasonable to expect users to pay for. We note that the State has received dividends from DAA of over €130m since 2015 alone. It is therefore appropriate that the State shareholder be the source of funds for DAA to get it through the COVID-19 period.

CAR's decision dated 22 December 2020 on an Interim Review of the 2019 Determination in relation to the regulatory settlements for 2020 and 2021 (CP12/2020) provided that DAA would not be required to rebate to airlines its over-collection of revenue on a per-passenger basis for 2020. CAR's decision in this respect is under appeal, but it is correct that CAR did not remove this requirement for 2021 and it must take the same approach for 2022 going forward. It is for the DAA to reduce its prices and offer adequate incentives so as not to continue to over-collect allowed revenue on a per passenger basis. This outcome is what would be expected of any airport operator behaving competitively in order to stimulate recovery in demand. Airports across Europe have introduced both airport charge reductions and traffic recovery incentives in response to the ongoing pandemic, cognisant of the fact that reduced charges is the only logical way to drive recovery. Attempts to simply pass on COVID-19 costs to airlines through increased charges is characteristic of airports with significant market power, and must be resisted by Independent Supervisory Authorities (ISAs) through the mechanisms in the Airport Charges Directive (Directive 2009/12/EC) and / or national regulatory processes. The current interim review is an opportunity for CAR to

[1] SA.59709 (2021/N) – Ireland – COVID-19 - Aid to airport operators

demonstrate an appropriate regulatory process to its peer EU ISAs by replicating the conditions of competition and not requiring loss-making airlines to bail out the State-owned DAA.

Carrying out a limited interim review which seeks to transfer volume risk to airlines, will further distort competition and market power in favour of the DAA. Through excessive airport charges, users have already paid for DAA to carry volume risk within the current regulatory period. Any review which seeks to now shield DAA from any volume risk will result in distortionary market outcomes, and protect DAA and its shareholders from the economic effects of the pandemic at the expense of consumers. Given that the Irish government has committed to providing significant State aid to Dublin Airport, as approved by the European Commission, any further support by CAR to DAA would be irrational and damaging to the recovery of the aviation sector.

2. Limited Interim Review

As noted above, "no review" is our preferred option. Ryanair is opposed to any interim review which would allow DAA to keep over-collected per-passenger revenue and keep unspent capex in the RAB. As we already stated in our response to CAR's first interim review,[2] we would be concerned if a review was primarily motivated as a means of ensuring the financial viability of Dublin Airport. In the current circumstances, this approach would represent an unacceptable transfer of risk arising from the pandemic from the State, as owner of the DAA, to users of the airport.

Should CAR carry out an interim review, it must not transfer risk to airlines and should provide for a downward revision of airport charges to reflect the natural competitive outcome. Ryanair objects to another review which would allow DAA to keep over-collected per-passenger revenue and unspent capex. Instead of passing costs on to airport users in the context of a limited interim review, DAA must also take the opportunity of the COVID-19 pandemic to finally correct its excessive opex, which has been commented on in the 2020 Appeals Panel decision on the 2019 Determination and by CAR's own consultants Indecon/Jacobs prior to the 2019 Determination. Recent media reports state that DAA has cut operating costs by 42% last year.[3] We welcome this long-awaited reduction in opex (which shows the "glide path" to efficiency can be accelerated as necessary). Any limited interim review by CAR must look to build these cost savings into the RAB, and pass on these cost savings to airport users.

3. Full Review

Ryanair does not support the commencement of a full review, given the ongoing uncertainty around the building blocks. The traffic uncertainty caused by the current crisis means an accurate or reliable full review is not a viable option. If the building blocks approach is maintained, despite reduced levels of opex and capex creating significant savings for the DAA, short to medium term passenger forecasts cannot reliably be made, especially given ongoing and unpredictable government travel restrictions. Given that most market commentators are predicting that 2019 traffic levels will not be restored before 2024, the

[2] Letter to CAR dated 18 August 2020 (attached)

[3] https://www.irishtimes.com/business/retail-and-services/irish-aviation-has-lost-a-second-summer-says-airports-chief-1.4551570

industry will not be able to forecast passenger numbers sufficiently reliably until the end of the current quinquennium i.e., the end of the current regulatory period. At this stage, it makes more sense to retain the length of the current regulatory period (2020-2024) with a view to a full determination in 2024 when there should be more certainty around passenger forecasts and economic recovery more generally.

A full review at this stage would be an absurd outcome, which would likely lead to further interim reviews, or perhaps even the need for a further full review shortly thereafter, given the outcomes are likely to vary significantly from any projections made by CAR in a full review. The air travel industry needs to settle down from its current state of crisis before a full review would be appropriate.

We are happy to discuss the above points in further detail if required.

Your sincerely,

Eoin Kealy
Head of Competition & Regulation

cc Regan Tilson. Airport Economics Manager, Ryanair