



Decision
Process for Consideration
of a
Supplementary Capex Allowance

Commission Paper 7/2016

9 December 2016

Commission for Aviation Regulation

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1. Executive Summary

- 1.1 On 19 August 2016, the Commission published consultation paper CP5/2016 outlining a proposed additional process for approval of capital expenditure.¹ Five parties responded to the consultation: Aer Lingus, An Taisce, Dublin Airport, IAA, and Ryanair. Responses are published on our website. The Commission has considered the submissions received, and extends its thanks to those parties who made submissions which assisted us in arriving at a decision on the process. The process has been developed having regard to the Commission's statutory objectives.
- 1.2 The Commission has decided to adopt the following process to provide Dublin Airport with increased flexibility to deliver capital projects. It will also provide certainty about how Dublin Airport is remunerated.
- a) When making a submission, Dublin Airport must demonstrate that the additional capital investment is driven by a change in circumstances from the time the prevailing determination was made.
 - b) Prior to making a submission, Dublin Airport must consult with users on a range of issues as set out in Section 3 including the need for project, timelines for delivery and detailed cost information. Dublin Airport will also provide updates on the delivery of the current Capital Investment Programme.
 - c) Once a submission is made, the Commission will review the level of consultation carried out by Dublin Airport to ensure that full information sharing has taken place. We will then publish a draft decision, which would be subject to consultation, in advance of publishing a final decision. The scope of the review will be confined to the supplementary capital expenditure allowance.
 - d) Dublin Airport will provide updates on the delivery of all approved projects to the Commission and other interested parties.
- 1.3 Section 2 provides background to this decision. Section 3 sets out submissions received on the conditions required to make use of this process, the process to be followed by Dublin Airport, the process which the Commission will follow and the reporting and delivery requirements which may be put in place. We then set out our decision on each of these points. We set out our view on how this process complies with our statutory objectives. Section 4 summarises general submissions received. We also set out our responses to the points raised.

¹<http://www.aviationreg.ie/fileupload/2016SupplementaryCapex/2016-08-19%20Process%20for%20interim%20supplementary%20capex%20approval.pdf>

2. Background

- 2.1 The Commission recognises that within a determination period, circumstances may differ from those forecast at the time the determination was made. With regard to changes in capital expenditure requirements, there are a number of options available to Dublin Airport to respond to changing circumstances as we outlined in CP5/2016.
- 2.2 Flexibility within the six capital expenditure groups gives Dublin Airport the ability to allocate spending as it chooses on projects in the category. This flexibility is limited by:
- The total allowance for each group.
 - ‘Deliverables’ in certain groups. Allowances for deliverable projects may not be reallocated. Should these projects not be delivered, the allowance for the relevant group will be revised down by the amount relating to that deliverable.
- 2.3 In the 2014 Determination, the Commission stated that should Dublin Airport take the view that additional expenditure is required over and above the allowance for any capital expenditure grouping, it should consult with users.² Where Dublin Airport obtains unanimous support from users for such a project, the expenditure would likely enter the RAB as part of the subsequent determination.
- 2.4 While this approach provides flexibility to increase capital expenditure in certain circumstances, it is limited by:
- The requirement for unanimous user support.
 - A degree of uncertainty over the exact treatment of the project by the Commission in the subsequent determination, given that this will be subject to consultation with all interested parties as part of that determination process.
- 2.5 It is our view that in the case of a large capital expenditure requirement arising within a determination period, the existing flexibilities may be insufficient and/or lacking in certainty for Dublin Airport. For that reason, we now set out the process we will follow when conducting a consultation and review of a determination to potentially increase the capital expenditure allowance.

² [http://www.aviationreg.ie/fileupload/2014final/2014 Final Determination.pdf](http://www.aviationreg.ie/fileupload/2014final/2014%20Final%20Determination.pdf)

3. Process for Consideration of Supplementary Capex Allowances

3.1 This section sets out submissions we have received on elements of the process we proposed in consultation paper CP5/2016, and our decision on each of those elements, namely:

- The conditions required for making use of this process.
- The process to be followed by Dublin Airport.
- The process to be followed by the Commission.
- Reporting and delivery requirements when the Commission has approved a supplementary capex allowance.

Conditions Required for Making Use of this Process

3.2 In CP5/2016, we proposed a number of conditions that needed to be met under this process.

- Circumstances driving the need for additional capital expenditure must be substantially different to those expected at the time of making the prevailing determination (substantial grounds).
- The capital projects must have a clearly justified need which must be met urgently.
- The projects must be significant in cost – in excess of about 10% of the prevailing non-triggered Capital Investment Programme (CIP).
- All other flexibilities within the existing determination must have been exhausted.

Submissions Received on the Required Conditions

3.3 Aer Lingus states that it supports these conditions.

3.4 Dublin Airport seeks guidance from the Commission as to the type of circumstantial changes which would be considered to give rise to substantial grounds, particularly in relation to projects driven by changes in capacity requirements or the operating models of airport users.

3.5 Dublin Airport notes that while the cost threshold of 10% of the prevailing non-triggered CIP may be appropriate for the current regulatory period, this should be reviewed in subsequent periods given that triggered and non-triggered allowances will vary.

3.6 Dublin Airport states that the requirement for it to prove that all flexibility has been exhausted adds unnecessary complexity to the process given that remaining flexibility may be difficult to determine, particularly in the early part of a determination process. It further states that such analysis could take place at the time of the following determination at no cost to users.

3.7 Ryanair states its support for these conditions.

Commission's Decision on the Required Conditions

3.8 The Commission has decided that the 10% threshold is not an absolute rule. It should be considered as a guide on the scale of projects which we envisage may necessitate a statutory review. Smaller projects should be able to be accommodated within the standard approach to capital approvals. We will examine any proposed supplementary capital project on its own merits, taking into account the point in time in the determination cycle as well as the need for and scale of the project.

3.9 The Commission has decided to relax the requirement to demonstrate that flexibility in the prevailing Capital Investment Programme must be exhausted. The extent to which there is remaining flexibility may be difficult to determine with any degree of certainty during the five

year process. In addition, the requirement to provide this level of detail may result in slowing up the process for delivering necessary projects. On reflection, we are of the view that it would be more efficient to carry out this analysis at the time of the next determination, including an adjustment for differences in the relevant Consumer Price Indices. This means that at the time of considering supplemental capital projects, we will simply seek to establish that the project in question has not already been afforded an allowance.

- 3.10 All allowable costs for the project will enter the price cap **no earlier than** at the time of the next determination. This means the annual charges listed in the **prevailing** determination are not affected by any decision on supplementary capital projects.

The required conditions are:

- The need for the additional capital expenditure must be driven by a significant change in circumstances from the time the prevailing determination was made.
- The capital projects must have a clearly justified need which needs to be met before the next determination.
- CAR will examine any proposed supplementary capital project on its own merits.
- The project must not have been previously approved as part of the prevailing determination.

Substantial Grounds

- 3.11 Substantial grounds will be established by a change in circumstances from the time of making the prevailing determination which has resulted in an unexpected need for capital expenditure before the next determination period.
- 3.12 External requirements imposed on Dublin Airport, such as security or environmental requirements, would constitute substantial grounds. Another example would be where the available infrastructure is insufficient to meet the capacity requirements of users of Dublin Airport. Although passenger numbers which differ from those forecast would in itself not constitute substantial grounds to review a determination, the effects of the increase in passenger numbers however may constitute substantial grounds, if for example, the existing infrastructure at the airport is insufficient to meet the increased demand from users.

Process to be followed by Dublin Airport

- 3.13 In CP5/2016 we proposed that Dublin Airport should consult with users before making a submission to the Commission.
- (a) We stated that the following areas should be included in the consultation process.
- Details on delivery of current Capital Investment Programme including which projects have been prioritised, added or dropped from the Programme.
 - Timelines for delivery of existing Capital Investment Programme and the expected outcomes.
 - How Dublin Airport has used the flexibility within capex groups to try to address the needs driving the request for a supplementary capex allowance.
 - Plan (including detailed timeline) for the remainder of the regulatory period for delivery of the existing Capital Investment Programme.
 - Projections for existing trigger projects – when are they likely to enter the price cap.
- (b) Where new projects are required to deliver additional capacity a comprehensive capacity assessment must underpin the requirements. This assessment should show how the use of current infrastructure is being maximised.

- (c) Detailed business cases must be provided to users; these should include detailed cost information. Costs must be worked up comprehensively to allow an assessment by users of the costs and benefits of projects.
- (d) Where appropriate Dublin Airport should present the costs and benefits of a number of options for addressing a need.
- (e) Detailed timelines and milestones for projects should be consulted on.

Submissions Received on the Process to be followed by Dublin Airport

- 3.14 Aer Lingus agrees with the need for detailed consultation and provision of cost information, together with a capacity assessment where relevant.
- 3.15 Dublin Airport states that the level of detail required for the consultation is not consistent with the intention that the process be completed in a timely manner. It states that the requirement to report on the existing Capital Investment Programme is not relevant to users when considering supplementary capital projects.
- 3.16 Dublin Airport does not agree with the requirement that they provide projections as to when existing triggered allowances are likely to enter the price cap. It states that as triggered allowances are inflexible, they are not relevant to this process.
- 3.17 Dublin Airport states that the requirements place an undue burden on it to prove the necessity of the supplementary spend to users and does not consider a situation where users themselves are driving the demand for additional capital spending.
- 3.18 IAA states that the consultation process should provide stakeholders with an opportunity to propose amendments to the proposed infrastructure.
- 3.19 Ryanair supports the proposed process for Dublin Airport.

Commission's Decision on the Process to be followed by Dublin Airport

- 3.20 We agree that demand for additional capital projects may be instigated by Dublin Airport or be driven by users. This means the active involvement of stakeholders is key to delivering a result which meets their needs. With that in mind we envisage this process as collaborative, with relevant information being shared by users as well as Dublin Airport. For example, users can engage in this process through:
 - Setting out a coherent and consistent view on any proposal made by Dublin Airport.
 - Setting out a business case for a project that they wish to propose to Dublin Airport, or if relevant, setting out business cases for two or more options to address a need.
 - Providing feedback on plans proposed by Dublin Airport to ensure that they fully address the requirements of users and take account of current or anticipated regulatory requirements.
 - Setting out their views on any range of options proposed by Dublin Airport to address a need.
- 3.21 The requirement to report on the existing Capital Investment Programme is driven by the need to allow stakeholders to take a fully informed view. The timeline for delivery of the Capital Investment Programme is relevant as it provides a holistic context for a proposed supplementary capital spend and provides stakeholders with more complete knowledge when

considering a particular project.

- 3.22 The Commission will consult further with Dublin Airport and stakeholders about reporting requirements for the full Capital Investment Programme. We will include this topic in our work on enhanced constructive engagement which is expected to commence in Quarter 1, 2017.
- 3.23 The consultation outlined in this section does not impose an unduly onerous burden on Dublin Airport, given that it is the same level of detailed information that should ideally be shared with users in any other consultation process. It is our view that this consultation process allow users to take a better informed view without leading to undue delay in the delivery of the necessary schemes.

The process for Dublin Airport is as follows:

- In advance of making a submission to the Commission, Dublin Airport shall consult with users on the following:
 - the need/merit of the project;
 - details on delivery of proposed project; and
 - timelines for the delivery of the proposed project.
 - Details on delivery of current Capital Investment Programme including which projects have been prioritised, added or dropped, together with a timeline for delivery of the Programme.
- Proposed projects to deliver additional capacity must be underpinned by a capacity assessment showing that existing infrastructure is being maximised. This assessment can be conducted by Dublin Airport or a third party.
- Detailed business cases and cost information must be provided to users. Costs must be worked up comprehensively to allow an assessment by users of the costs and benefits of projects.
- Where appropriate, Dublin Airport should present the costs and benefits of a number of options for addressing a need.
- Detailed timelines and milestones for projects should be consulted on.

Process to be followed by the Commission

- 3.24 In CP5/2016 we proposed that the Commission would assess the costs of and need for a project. We would consult with stakeholders as set out in legislation to potentially amend the existing determination to allow additional capex where the consultation is limited to the supplementary capital allowance. If an additional allowance were deemed necessary, additional trigger mechanisms could be used to adjust the price cap on the occurrence of an event (for example delivery of a project).

Submissions Received on the Process to be followed by the Commission

- 3.25 Aer Lingus supports the proposed process, though it notes that the Commission must conduct the process in a timely manner to facilitate the delivery of necessary infrastructure.
- 3.26 Dublin Airport states that the imposition of trigger mechanisms to adjust the price cap could generate uncertainty as to the timing of remuneration for the project. It states that the imposition of multiple triggers would be incompatible with a project which is required immediately. It suggests that if remuneration were to be trigger based, one single trigger mechanism would be appropriate.
- 3.27 Ryanair supports the proposed process.

Decision on the Process to be followed by the Commission

- 3.28 In paragraph 3.9, we state that we will not require Dublin Airport to demonstrate it has used up the flexibility built into the determination when considering a project under this proposed approach. Rather we would build this into the next determination process. Similarly, the supplementary projects will not enter the price cap until the next determination. This means there will be no change in annual charges until the next determination due to these projects.

The Commission will:

- assess the need for a project;
- consult with stakeholders as set out in legislation to potentially amend the existing determination to allow additional capex where the consultation is limited to the supplementary capital allowance;
- assess the efficient costs of the project;
- make provision for the recovery of the efficient costs of the project as part of the next determination process.

Reporting and Delivery Requirements

- 3.29 In CP5/2016, we stated that the Commission is likely to include project specific reporting and delivery requirements for any projects approved under this process. We proposed there would be a link between cost recovery and Dublin Airport delivering the project in accordance with specifications it had consulted on and that Dublin Airport develop a detailed timeline at the start of the process and report regularly against agreed timelines.

Submissions Received on Reporting and Delivery Requirements

- 3.30 Dublin Airport states that they do not understand the enhanced reporting and monitoring requirements relative to the requirements relating to projects in the original Capital Investment Programme.
- 3.31 Ryanair states that the supplementary allowance should enter the RAB no sooner than the relevant infrastructure is commissioned or as part of the following determination, whichever is later. It further states that additional revenues accruing from the infrastructure, including commercial revenues, should be fully taken into account when setting the price cap.

Decision on Reporting and Delivery Requirements

- 3.32 In earlier paragraphs, we have dealt with the points raised by interested parties and have decided to implement the proposals set out in the consultation paper. Ryanair's submission on the timing of remuneration is addressed in paragraph 3.28.

The Commission will:

- require Dublin Airport to develop and implement specific reporting requirements for approved projects; and
- require Dublin Airport to develop a timeline for the project (in consultation with users and with the agreement of the Commission) and to report regularly against this timeline.

Compliance of this Process with Statutory Objectives

- 3.33 Under the Aviation Regulation Act, 2001, as amended by State Airports Act, 2004, the

Commission has three primary objectives when making an airport charges determination.³ These 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 Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner.

3.34 A clear, streamlined process to approve supplementary capital expenditure will bring further flexibility to the regulatory framework, enabling a quick and efficient response from Dublin Airport to an unexpected change in circumstances. The introduction of such a process is thus in line with our statutory objectives. Furthermore, the process outlined in this paper strikes an appropriate balance between these objectives.

3.35 The process itself has been set out with these objectives in mind. Close involvement of users will ensure that projects which are the subject of this process meet their requirements. The Commission will ensure that proposals are cost efficient, meaning that any resulting increase in airport charges is minimised and thereby protecting the interests of current and prospective users. Dublin Airport will have certainty over the timeline for remuneration of efficiently incurred capital expenditure, which will allow it to develop the Airport sustainably and in a financially viable manner.

³ http://www.aviationreg.ie/fileupload/Image/PR_Legislation_Pub1_StateAirportsAct2004.pdf

4. Summary of General Submissions Received

- 4.1 This section summarises submissions received on issues other than the specifics of the process, which have been addressed in Section 3. We also set out our response to these submissions.

Necessity for a Process to Consider Supplementary Capex Allowances

- 4.2 Aer Lingus, Dublin Airport, IAA, and Ryanair all state their general support for a process to consider supplementary allowances within a determination period where flexibility in existing capital allowances is insufficient to cover a need.
- 4.3 Dublin Airport sets out detailed arguments as to why existing flexibilities are inadequate in certain situations.

Efficiency of the process

- 4.4 Aer Lingus, Dublin Airport, and IAA stress the need for this process to be fast and efficient. IAA further note the need to fast track investments relating to safety or security requirements, and that priority should be given to projects which will deliver enhanced capacity.

The Commission's View on Efficiency

- 4.5 If detailed information sharing has occurred during consultation, we do not envisage an overly lengthy process. We would note that the greater the level of agreement that is reached during consultation, the lesser the likelihood of an appeal. If agreed during the consultation, the Commission would also consider a fast-tracked allowance whereby cost efficiency is reviewed at the end rather than the start of the construction phase.
- 4.6 If so requested, the Commission will consider two or more separate requests for allowances simultaneously in order that the process be as efficient as possible in delivering required infrastructure.

Compliance of this Process with the Climate Action and Low Carbon Development Act, 2015

- 4.7 An Taisce raises the point that in discharging its functions the Commission should have regard to the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.⁴

The Commission's View on the Compliance of this Process with the Climate Action and Low Carbon Development Act

- 4.8 This paper sets out a process as to how future capital projects may be allowed to enter Dublin Airport's RAB and thus the price cap. The Commission does not approve or disapprove capital projects at Dublin Airport, however, it does decide which projects and what level of expenditure can be remunerated via the price cap. When the details of any future projects are known, the relevant bodies should exercise their respective functions having regard to the Climate Action and Low Carbon Development Act 2015.

⁴ See section 15(1)(d) of the Climate Action and Low Carbon Development Act, 2015.