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24<sup>th</sup> April 2024

**Ref: Draft Decision on Winter 2024 Coordination Parameters at Dublin Airport  
(the 'Draft W24 Decision')**

Dear Adrian,

I refer to the above. I also refer to our letter to you of 8<sup>th</sup> April 2024 in which we set out our position on whether (and, if so, how) the IAA should consider condition 3 of planning permission F06A/1248 (An Bord Pleanála Reg. Ref. PL06F.220670) (the “**Terminal 2 Permission**”) and condition 2 of Planning Permission F06A/1843 (An Bord Pleanála Reg. Ref. PL06F.223469) (the “**Terminal 1 Extension Permission**”) (the “**Planning Conditions**”) for the purpose of the Draft W24 Decision.

For the reasons outlined below, Aer Lingus does not support the approach taken by the IAA in respect of the Planning Conditions in the Draft W24 Decision. More specifically, Aer Lingus does not agree with the IAA's conclusion that the Planning Conditions are matters which the IAA is required to take account of in declaring capacity for the winter 2024 Season. Without prejudice to this position, even if the Planning Conditions are relevant matters to be considered by the IAA in declaring capacity for the winter 2024 Season, Aer Lingus disagrees with the manner in which the IAA proposes to address the Planning Conditions in the Draft W24 Decision.

1. The Role of the IAA under the Slot Regulation

The role of the IAA under Council Regulation (EEC) No. 95/93 (as amended) (the “**Slot Regulation**”) is to declare the capacity for Dublin Airport which is done through the allocation of slots. Article 6 of the Slot Regulation provides that the determination of coordination parameters take account of relevant technical, operational and environmental constraints and coordination parameters are defined in the Slot Regulation in the following terms:

*‘coordination parameters’ shall mean the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems”*

The “capacity available for slot allocation” in effect requires the IAA to look at the capacity in terms of the number of slots that can be allocated and the seat capacity of the aircraft which can use such slots.

There is a fundamental difference between setting the capacity for the Airport, in terms of slot allocation, and setting the passenger throughput for the Airport. Indeed this is accepted by the IAA at paragraph 4.16 of the Draft W24 Decision:

*“In that regard, we note that the wording of the 32mppa Conditions provides for a limitation on annual ‘capacity’. The IAA can declare limits on the terminal capacity accordingly, as we propose to do for W24, but this is not the same as determining the final result in terms of passenger throughput. The final result in terms of actual passenger throughput is not determined by the IAA, but rather is determined by the decisions of the airlines operating at Dublin Airport, who sell seats to passengers.*

*For the avoidance of any potential doubt, the IAA cannot ‘ensure’ the delivery of any specific outturn passenger throughput number over a given year, if the 32mppa Conditions are to be interpreted to relate to outturn throughput, rather than capacity. In simple terms, the capacity determination process can control the number of aircraft movements for which slots are allocated, but not how many passengers are on each of those aircraft.”*

daa and Fingal County Council appear to interpret the Planning Conditions as a passenger throughput cap of 32mppa (rather than a limit on annual capacity at the Terminals). It would appear that the IAA has adopted a similar interpretation in declaring a Passenger Air Traffic Movement (“PATM”) seat cap as described in the Draft W24 Decision.

While the IAA correctly states in paragraph 4.16 of the Draft W24 Decision that the Planning Conditions provide for a limitation of 32mppa on “annual ‘capacity’”, which limitation is restricted to the Terminals, it is clear that the approach taken by the IAA in establishing the PATM seat cap in paragraph 4.12 in effect interprets the Planning Conditions to mean a limitation of 32mppa on passenger throughput at Terminals 1 and 2. This is evident as the total PATM seat cap for winter 24/25 and summer 25 proposed by the IAA is well in excess of 32 million.<sup>1</sup>

If it is correct that the Planning Conditions impose a limit on passenger throughput (which, for the avoidance of doubt, we do not accept), the process for determining the coordination parameters is not the appropriate mechanism for seeking to enforce such a limit. This is recognised by the IAA in paragraph 4.16 of the Draft W24 Decision - “*the IAA cannot ‘ensure’ the delivery of any specific outturn passenger throughput number*

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<sup>1</sup> We calculate the total PATM seat capacity for winter 24/25 and summer 25 (based on the assumptions set out in paragraph 4.12 including the same assumed load factor ) to be in the region of 40 million passengers.

*over a given year, if the 32mppa Conditions are to be interpreted to relate to outturn throughput, rather than capacity.”*

As accepted by the IAA, their role under the Slot Regulation is limited to setting capacity through the allocation of slots – it is not responsible for controlling passenger throughput. However, in proposing a PATM seat cap of 14,405,737 in the Draft W24 Decision having regard to the Planning Conditions, the IAA is in effect attempting to limit the passenger throughput (as opposed to capacity) which it has no jurisdiction to do.

If it is indeed correct that the Planning Conditions relate to passenger throughput (rather than capacity), then the control of passenger throughput at Dublin Airport should solely be a matter for daa as the beneficiary of the relevant planning permissions. The role of the daa in this regard is accepted by the IAA at paragraph 4.15 of the Draft Winter 24 Decision where it states that:

*“It is for daa, as the owner of the relevant planning permissions and as the entity proceeding with development in accordance with those permissions, to determine the appropriate actions to comply with conditions attached to those permissions.”*

It is not for the IAA to purport to do so indirectly when declaring capacity under the Slot Regulation. In this regard, the Planning Conditions are clearly distinguishable from Condition 5 of the North Runway Planning Permission in that Condition 5 of the North Runway Planning Permission seeks to impose a limit on aircraft movements which is directly linked to the allocation of slots which does fall within the remit of the IAA under the Slot Regulation.

Without prejudice to the above, and for the reasons outlined below, Aer Lingus does not support the approach taken by the IAA with regard to the Planning Conditions in the Draft W24 Decision.

2. The Planning Conditions should not be treated as a relevant constraint under the provisions of the Slot Regulation

While the Draft W24 Decision at paragraph 2.1 makes reference to Article 6 of the Slot Regulation, it does not indicate why the IAA has concluded that the Planning Conditions constitute a relevant constraint for the purpose of declaring the W24 capacity. For the reasons outlined in paragraph 1 above, the Planning Conditions are not relevant to determining capacity at Dublin Airport under the Slot Regulations.

The definitive position taken by the IAA that the Planning Conditions should be treated as a relevant constraint in the Draft W24 Decision marks a very significant shift from its position as recently set out in its submission to Fingal County Council in respect of daa's recent planning application seeking an increase in the capacity of the airport (Reg. Ref. F23A/0781) for which the IAA gives no explanation. In this submission, the IAA indicated that it had not reached a decision on this point:

*"The passenger cap limitation which limits the 'permitted combined capacity of Terminal 1 together with Terminal 2 of 32 million passengers per annum (32mppa)' is likely to be a relevant constraint for the purpose of the capacity parameters." (emphasis added)*

Likewise, the IAA does not explain in the Draft W24 Decision why, if the Planning Conditions are a relevant constraint in decisions determining the coordination parameters at Dublin Airport, they have not been taken into consideration in any of the previous decisions. In particular, it does not explain why the Planning Conditions were entirely disregarded by the IAA in its previous decisions even though, since 2018, there has been the real possibility that the capacity of Terminal 1 and Terminal 2 would meet or exceed 32 million passengers (based on certain interpretations of the Planning Conditions including the interpretation now adopted by the IAA in the Draft W24

Decision). This is particularly inexplicable with regard to the IAA's decision setting the Coordination Parameters for summer 24, in which the Planning Conditions were not treated by the IAA as a relevant constraint. This is despite the fact that the Planning Conditions were brought to its attention in written submissions and the IAA would have been well aware of the expected passenger numbers for 2023 together with the planned growth in passenger numbers for 2024. In light of the fact that to date the IAA has not considered the Planning Conditions to be a relevant constraint, we do not see any basis for the conclusion, as stated in paragraph 4.10 of the Draft W24 Decision that "*an annualised capacity of 32mppa is likely to become a limiting constraint on demand by, at the latest, 2025.*"

There is therefore no rational explanation as to why the IAA has now, for the first time, decided to consider the Planning Conditions as a relevant constraint for the purpose of determining the coordination parameters. This inconsistency in approach by the IAA now risks causing significant and irreparable harm to Aer Lingus by impeding its growth plans for summer 2025 and beyond (which are well known to the IAA and daa). Moreover, the IAA's decision on declared capacity for summer 2024 (in which the Planning Conditions were not considered a relevant constraint), facilitated new airlines being allocated slots for the first time at Dublin Airport with the prospect of these slots benefitting from historic rights under the Slot Regulation in future seasons.

The process for determining the coordination parameters at Dublin Airport is not the appropriate mechanism to give effect to the Planning Conditions and also exacerbates the harm caused to carriers operating at Dublin Airport. While the Planning Conditions impose an annual limit on the capacity of Terminal 1 and 2 of 32mppa, the approach proposed by the IAA would result in two separate caps being imposed for the winter 24/25 and the summer 25 seasons respectively. There is no basis for such seasonal caps in the Planning Conditions and the effect of this approach is that carriers would not be able to mitigate the financial impact of the Planning Conditions by transferring capacity from the low demand winter season to the high demand summer season.

3. The IAA has erred in its interpretation of the Planning Conditions in the Draft W24 Decision

As noted by the IAA in the Draft W24 Decision, the majority advice of the Coordination Committee (93%) is that the Planning Conditions are ambiguous and should not be considered in the winter 24/25 capacity determination until their precise meaning and effect has been clarified. Given that Article 5 of the Slot Regulation provides that one of the specified tasks of the Coordination Committee is to “*to make proposals concerning or advise ... on .... the coordination parameters to be determined in accordance with Article 6*”, its position with regard to the relevance of the Planning Conditions should carry considerable weight with the IAA in determining the coordination parameters. The IAA also notes in paragraph 4.11 that daa, which is the beneficiary of the Planning Permissions, has no position on whether any particular measure is, or is not, warranted to assist in achieving compliance with the Planning Conditions.

The IAA also notes the very different interpretations of the Planning Conditions put forward by Fingal County Council and daa together with the position set out in our correspondence of 8th April that only originating and destination passengers should be counted. However, while acknowledging in paragraph 4.9 that “*[T]he correct interpretation of a grant of planning permission is a matter of law to be determined by objective interpretation, and may ultimately be decided only by a court*”, the IAA then proceeds to conclude in paragraph 4.10 that “*the existence of different possible interpretations of the 32mppa Conditions does not provide a basis not to reflect the constraint in the declared capacity at all*”.

However, it is clear from the IAA’s submission to Fingal County Council made in respect of planning application Reg. Ref. F023A/ 0781 that it does not know how the Planning Conditions are to be given effect in the capacity parameters:

*“Should the Proposed Development be permitted such that the passenger cap limitation is increased, the IAA suggests that it would be helpful to clarify more precisely the nature of that cap, which is currently the subject of some confusion / disagreement among airport stakeholders. This would be helpful to allow the IAA to accurately give effect to the constraint in capacity parameters. In particular,*

- What exact airport infrastructure is encompassed within ‘Terminal 1 together with Terminal 2’, as described by An Bord Pleanála, and what infrastructure is not.*
- Precise detail on how passenger numbers would be counted for the purposes of this restriction. For example, whether each individual transfer passenger (most of whom do not use Terminal 1 or Terminal 2) should be counted once, twice, or not at all.”*

While the IAA appears to adopt the interpretation put forward by Dublin Airport (i.e. originating, destination and single count transfer passengers that used a Terminal) for the purpose of establishing a seat cap parameter, the Draft W24 Decision does not give its reasons for adopting such an interpretation. The adoption by the IAA of such a definitive interpretation is difficult to reconcile with its submission to Fingal County Council whereby it sought clarification as to how a future passenger cap is to be calculated.

Given this level of uncertainty, our position remains that, until there is clarity as to what passengers are to be counted for the purpose of the Planning Conditions, the IAA should not, and indeed cannot, consider such conditions as a relevant constraint. Such an approach would be consistent with that adopted by the IAA in relation to the summer 2024 Coordination Parameters where the interpretation of Condition 5 of the North Runway Planning Permission is the subject of ongoing court proceedings. The IAA seeks to justify in paragraph 4.7 of the Draft W24 Decision its different approach relating to the Planning Conditions on the basis that:



*“Unlike Condition 5 of the North Runway Planning Permission, the 32mppa Conditions and/or their enforceability has not been challenged by Dublin Airport, nor credibly challenged/disputed by another interested party.”*

However, this distinction is without merit. The legal challenge by daa in relation to Condition 5 only arose after an enforcement notice was issued by Fingal County Council. With regard to the Planning Conditions, no such enforcement notice has yet been issued by Fingal County Council and, therefore, the basis for such a challenge has not yet arisen. It is therefore premature and inconsistent for the IAA to decide to implement the Planning Conditions in the Coordination Parameters winter 24/25.

Alternatively and without prejudice to this position, if the IAA considers that the Planning Conditions are a relevant constraint, and having regard to the fact that the IAA is required (as noted in paragraph 2.6 of the Draft W24 Decision) to tend towards a maximal rather than minimal approach when taking account of such relevant constraints, the IAA should interpret the Planning Conditions as set out in our correspondence of 8<sup>th</sup> April (i.e. applying to originating and destination passengers only).

#### 4. Implications of the Draft W24 Decision for EI

The Draft W24 Decision, if implemented, will have very significant financial, operational and reputational impact on Aer Lingus. In addition, the imposition of an artificial constraint on supply will inevitably result in significant price increases for consumers given the high level of demand for travel to/from Dublin Airport.

Being able to secure historic precedence from the slot pool for new slot series has provided the critical stability that is needed for airlines to make long term investment decisions which allow for growth and route development. Implementing a radical

change to that process (as is proposed in the Draft W24 Decision) at such short notice, puts that investment and growth opportunity at risk making forward planning impossible.

This is the first time that the IAA have proposed the use of a PATM seat cap and, as discussed above, different PATM seat caps will apply to the winter and summer seasons respectively and it will not be possible to transfer capacity from one season to the other. Given the serious implications which the PATM seat cap will have, at a minimum, a much longer lead time that allows operators to consider and make the appropriate changes as to how they manage their own capacity across both winter and summer seasons would be required for such a significant change in approach. For instance, airlines may be required to review their resourcing and aircraft requirements and route strategy as a result of restrictions being imposed on capacity. In this regard, it should be noted that Article 8(1) of Regulation (EU) No. 598/2014 at Union airports requires significant advance notice be given before noise-related operating restrictions can be introduced.<sup>2</sup>

The Draft W24 Decision is also unclear as to how the PATM seat parameter will actually be applied. The IAA states in paragraph 4.13 that:

*“An individual airline seasonal quota would not be applied. Rather, the total seasonal limit applies to all users.”*

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<sup>2</sup> Article 8(1) of Regulation 598 provides that: *“Before introducing an operating restriction, the competent authorities shall give to the Member States, the Commission and the relevant interested parties six months’ notice, ending at least two months prior to the determination of the slot coordination parameters as defined in point (m) of Article 2 of Council Regulation (EEC) No 95/93 for the airport concerned for the relevant scheduling period”*.

It is therefore unclear how the IAA's proposed approach will impact on individual carriers. Full transparency on this is essential for airlines to assess the effect on their operations and to plan accordingly.

While the Draft W24 Decision relates to the winter 24 season, it would appear that the IAA intends to adopt a similar approach when it comes to declare capacity for the summer 25 season. Based on certain assumptions relating to load factor and the seasonal split in passenger numbers between the winter and summer season set out in paragraph 4.12 of the Draft W24 Decision, the IAA proposes a PATM seat cap of 14,405,737 for winter 24.

It should be noted that, in determining the PATM seat cap for winter 2024, the IAA assumes an allocation of the capacity limit to winter 2024 of 34.7% based on the outturn split in passenger numbers between summer 2023 and winter 2023. This implies that an allocation of 65.3% will be applied to summer 2025 when the IAA declares capacity for that season. We believe that this analysis is flawed. Given that there is an overall upward trend in passenger numbers (when compared to the previous corresponding season), using the passenger split between a summer season and the subsequent winter season will not accurately reflect the split between a winter season and a subsequent summer season. Consequently, if the IAA carries this approach forward in its capacity declaration for summer 2025, the allocation of capacity for summer 2025 will not accurately reflect the actual split in passenger numbers between winter 2024 and summer 2025 resulting in the capacity allocation for summer 2025 being lower than should be the case.

If, notwithstanding the above, the IAA applies a seasonal split of 34.7% / 65.3% between winter 2024 and summer 2025 and the same load factor assumption of 81% is made in respect of summer 2025, this would indicate that a PATM seat cap in the order of 25.8 million will be applied for summer 2025. However, as it is likely that a higher load

factor assumption will be applied for the summer season, the PATM seat cap for summer 2025 will likely be significantly lower than this number. This may well mean that there will be insufficient capacity in summer 2025 to enable the full allocation of all historic slots. There is no legal basis under the EU Slot Regulation or precedent at any other European airport for the withdrawal of such historic slots and the IAA does not give any indication as to how it would address such a situation. It is essential that the IAA address this issue in its final decision. Any interference with such historic slots would have a very significant effect on Aer Lingus' planned operations in summer 2025 and would be contrary to the requirements of the Slot Regulation. We fully reserve our rights in this regard.

Aer Lingus has openly and consistently communicated to the IAA and daa our planned investment in modernising and expanding our Dublin based fleet. To this end, we have made investments in the order of hundreds of millions of dollars. Aer Lingus has already taken delivery of eight A321 NEO-LRs and four A320 NEOs aircraft. We also have orders for four further A320 NEO aircraft for delivery in 2024 and 2025 and for six A321 NEO-XLR aircraft for delivery between late 2024 and summer 2025. We are therefore extremely concerned about the potential impact of the Draft W24 Decision on this planned growth.

In addition to the consequences of the approach adopted by the IAA for summer 25, the Draft W24 Decision will also have an immediate and material impact in winter 24/25. Paragraph 4.19 of the Draft W24 Decision states that the seat cap of 14.4m would be sufficient to allow the full allocation of historic slot entitlements arising from winter 23. Even if this is the case, the Draft W24 Decision if implemented will likely have a significant impact on the availability of ad-hoc slots which have historically formed a core part of the Aer Lingus flying programme. Ad-hoc slot flying programmes during the winter season would typically include, for example, Christmas operations to Lapland, flights for high profile sporting events such as the Six Nations Championship, international soccer fixtures and the Cheltenham festival, as well as additional flights

for Christmas and school half-term holidays. We estimate that operations using ad hoc slots would ordinarily constitute approximately 2% of our Dublin capacity in winter 2024. This ad hoc flying is also particularly profitable as it serves periods of unusually high demand. It is unlikely that such operations will be possible under the proposed seat capacity parameters requiring the cancellation of planned services causing significant financial and reputational damage to Aer Lingus .

It should also be noted that ad-hoc slots are used to facilitate scheduled services where the historic times are not available. This is an efficient use of airport capacity. Consequently, the IAA's proposals will make it likely that Aer Lingus will not be able to operate some of its scheduled frequencies as the ad hoc slots necessary to supplement its historic slot portfolio will not be available.

Base carriers such as Aer Lingus are traditionally the biggest users of ad-hoc slots at Dublin Airport. Aer Lingus aircraft based at Dublin Airport can only be sustainably flown to and from Dublin whereas other operators, not based at Dublin, have alternative options to deploy aircraft on other routes. We therefore consider the Draft W24 Decision to be discriminatory in nature as it will disproportionately affect Aer Lingus' operations.

In light of the above, it is Aer Lingus's position that the Final Winter 24 Decision should not treat the Planning Conditions as a relevant constraint for the purpose of declaring capacity and that a PATM should not be applied.

Aer Lingus remains available to discuss any of these point with the IAA in more detail.

Yours sincerely,



General Counsel