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The Times Building,  
11 – 12 D'Olier Street,  
Dublin 2.

24 April 2024

**By Email only: [consultation@iaa.ie](mailto:consultation@iaa.ie)**

Dear Sirs

**Re: Draft IAA Decision on Winter 2024 Coordination Parameters at Dublin Airport dated 11 April 2024**

We refer to the above draft decision on Winter 2024 Coordination Parameters at Dublin Airport dated 11 April 2024 (the "**Draft IAA Decision**").

### **Introduction**

As the IAA are aware, the grant of planning permission for Terminal 2 and the extension of Terminal 1 includes conditions which restrict the combined capacity of Terminal 1 and Terminal 2 to 32 million passengers per annum (the '**32mppa Conditions**').

On 24 January 2024, daa wrote to Fingal County Council confirming compliance with the 32mppa Conditions for 2023. With respect to terminal passenger capacity out-turn for the 2023 calendar year, 31,908,815 passengers used Dublin Airport, on a combined terminal basis.

Given the 2023 outturn, daa emphasised to the IAA ahead of the Winter 2024 season that the 32mppa Conditions needed to be considered for 2024.

daa acknowledges and welcomes the fact that the approach suggested in the Draft IAA Decision will establish a pathway for ensuring compliance with 32mppa Conditions in 2025. daa believes that the Passenger Air Traffic Movement (PATM) is a recognised industry standard in this regard. However, daa considers that additional measures will be required for 2024 in order to ensure that there is no breach of the 32mppa Conditions, during this year. In daa's view, the proposals put forward by the IAA in the Draft IAA Decision are not adequate to ensure that there will be compliance with the 32mppa Conditions in 2024. Daa continues to consider, for the reasons which are explained more fully below and which has been discussed at the Coordination Committee which would, based on the forecasts presented to the IAA and Coordination Committee<sup>1</sup>, facilitate the use of the Terminals by a number of passengers in excess of that which is permitted by the 32mppa Conditions.

### **The role of the IAA**

1.1 Pursuant to Section 8(1) of the Aviation Regulation Act, 2001 (as amended) (the "**2001 Act**"), the IAA constitutes the competent authority in Ireland for the purposes of Council Regulation (EEC) No. 95/93, as amended (the "**Slot Regulation**"). As such, the IAA's regulatory remit extends to, *inter alia*, the determination of coordination parameters at coordinated airports in

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<sup>1</sup> Daa confirms that the forecasts presented to the Coordination Committee and the IAA remain valid and in fact traffic is currently trending slightly ahead of those forecasts.

line with Article 6 of the Slot Regulation. In doing this, the IAA must take account of all relevant *'technical, operational and environmental constraints as well as any changes thereto'*.

- 1.2 Article 6(3) of the Slot Regulation requires that the determination of the parameters and the methodology used shall be discussed in detail with the Coordination Committee, before a final decision is made. The IAA has pointed out that this discussion takes place *'with a view to increasing the capacity and number of slots available for allocation'*.
- 1.3 Pursuant to Article 6(3) of the Slot Regulation, given that the process by which IAA consults with the Coordination Committee in setting coordination parameters is *'with a view to increasing capacity'*, daa's stated position was that it was not in a position to propose increases to the runway and terminal capacity limits for the Winter 24 season. To do so would risk breaching the 32mppa Conditions. As such, and following conclusion of the final coordination committee meeting on 25 March 2024, no specific proposals were put to the IAA with respect to the altering of runway parameters.
- 1.4 Given that the IAA is the competent national authority pursuant to Section 8(1) of the 2001 Act, daa's view is that it is for the IAA to make a decision that respects the limits on capacity at Dublin Airport. This must be determined with regard to, *inter alia*, *environmental* constraints which extends to consideration of the 32mppa Conditions (as is provided for under Section 4.10 of the Draft IAA Decision), which states:

*'On any of the suggested interpretations, we consider that, based on current data and traffic forecasts, an annualised capacity of 32mppa is likely to become a limiting constraint on demand by, at the latest, 2025. Thus, on any of the posited interpretations, it appears to us to be necessary to reflect the limitation on capacity which is set out in the 32mppa Conditions in the capacity declaration for W24, a season which will conclude in March 2025'.*

- 1.5 We welcome and support the IAA's conclusion in the Draft IAA Decision that the 32mppa Conditions constitute a constraint / limitation that the IAA should take account of and reflect in its decision on coordination parameters.
- 1.6 We refer to the IAA's letter to the Coordination Committee dated 5 January 2021, which set out the roles of the IAA and daa in applying restrictions in planning permissions (i.e., environmental constraints), and IAA's legal advice in the context of addressing the application of Condition 5 of the North Runway Planning Permission. The letter states:

*"The [IAA] determine the number of aircraft that can be scheduled to use the runway at Dublin Airport. daa cannot limit the use of the runway in this way. It would therefore fall to the [IAA] to implement any such restriction in the declared capacity.*

#### *Legal Advice*

*The [IAA] sought legal advice on the status of this condition in the context of our role, particularly whether the [IAA] could lawfully implement this condition under the Slot Regulation, thereby withdrawing historic slot entitlements from air carriers. We also sought legal advice on the status of a condition which appeared to place an obligation on daa to restrict the use of the runway, when daa itself cannot restrict the use of the runway, but rather would be reliant on the decision of a third party (the [IAA]) to enable compliance.*

*In summary, the advice we received was that the condition is valid and subsisting and therefore would constitute an environmental factor to which the [IAA] must have regard under the Slot*

*Regulation. Article 8B states that the 'entitlement to series of slots referred to in Article 8(2) shall not give rise to any claims for compensation in respect of any limitation, restriction or elimination thereof imposed under Community law, in particular in application of the rules of the Treaty relating to air transport'. The system contemplates that the [IAA] will declare parameters/capacity, and that, in turn, takes account of environmental factors (including noise factors), and thus the [IAA] would be eliminating historic slot entitlements in accordance with Community Law (i.e. the Slot Regulation itself)."*

- 1.7 daa agrees with the IAA's position and the IAA's legal advice as set out above and submits that this advice should be reflected throughout the IAA's final decision.

## **2 daa involvement with the Winter 2024 Slot Coordination Process**

- 2.1 At all times during the slot coordination process for Winter 2024, daa has taken the position that it will be necessary to ensure compliance with the 32mppa Conditions and that it may be necessary to take additional steps to ensure compliance with the 32mppa Conditions.

- 2.2 During a Coordination Committee process in December 2023, daa voted in favour of implementing a Local Rule to suspend all ad-hoc slot approvals for 2024. However, the airlines did not support the proposal, and it was ultimately rejected by the coordination committee. daa wrote to the IAA on 23 December 2023 notifying it of the position and asked the "IAA, as the body responsible for Ireland's compliance with the relevant EU law framework, to advise daa if a version of the proposed Local Rule can be considered by it for implementation, either in advance of, or as part of the next seasonal process". In its response dated 29 January 2024, the IAA stated that it may be that "this [i.e., compliance with the terminal capacity] would more appropriately be attempted via the capacity declaration process, which is the appropriate mechanism to take account of any relevant technical, operational, or environmental constraints".

- 2.3 A summary of daa's compliance concerns was set out in a letter dated 30 January 2024 to the IAA:

*'Last week, Dublin Airport issued its traffic and movement data for 2023. A letter was also sent to Fingal County Council outlining daa's compliance with the Terminal 1 and 2 passenger cap (which I attach for reference).*

*The letter highlights that there is limited headroom between the 2023 out-turn and the cap. Therefore, to remain compliant in 2024, daa believes that terminal passenger growth will unfortunately need to stall. We have conveyed this message to the based airlines and also through our media release on the 2023 outturn. We will also shortly communicate this message to the wider Co-ordination Committee.*

*As you are aware, the Co-ordination Committee will meet in March to discuss the parameters for the Winter 24/25 season. daa will not be proposing increases to the runway and terminal capacity limits for this season. At a minimum, daa believes that slot allocation for Winter 24/25 will need to restrict movement activity to the same levels as Winter 23/24'.*

- 2.4 On 20 February 2024, an extraordinary general meeting (EGM) of the Dublin Airport Coordination Committee was called by the Chair to discuss the 32mppa Conditions. In the meeting, the Chair provided an update on the potential for a breach of the 32mppa Conditions in 2024 and suggested that a subcommittee be formed to explore possible solutions to remain compliant with the Terminal limits. Subsequently, a subcommittee was convened with volunteers from the Coordination Committee and chaired by an external independent facilitator,

Mott MacDonald (the “**Facilitator**”) to form suggestions and summarise the discussions that were had.

- 2.5 daa sets out below a summary of the information presented to the subcommittee (and including the IAA) and the content of discussions between the members of the subcommittee over the course of the subcommittee meetings.
- 2.6 On 27 February 2024, the first subcommittee meeting took place. In the meeting, daa presented an initial forecast for 2024 which provided initial forecast information for 2024 and the potential increase over the 2023 adjusted passenger total, assuming daa’s interpretation of the 32mppa Conditions. daa also noted that there were 240,000 less transit passengers in 2024, all of whom are considered non-Terminal passengers by daa.
- 2.7 The Facilitator then presented potential options to reduce passenger numbers which varied from reductions during the two months of Winter only, or over several months if passenger reductions were to be considered in Summer 24. The range of scenarios presented identified reductions of 18% if reductions were spread over the 2 months of Winter 2024 season (i.e. November and December 2024) or between 4% and 12% per month if reductions were spread over a longer period from July to December. Airlines expressed their views on whether Summer 24 should be considered as part of the reduction proposal, as the airlines who fly in summer and winter would end up paying for those who only fly in summer.
- 2.8 The Facilitator identified and presented three airports where similar caps are in place to manage capacity.
- 2.9 Finally, the Facilitator provided a list of declaration options for consideration in the subcommittee. The options presented are noted below:
- Increase Capacity;
  - Flat capacity;
  - Only allocate historic – allowing extension of year-round operations;
  - Only allocate historic – no new operations;
  - Capacity reduction by movements; and
  - Passenger caps by Airline
- 2.10 Airlines were given a brief explanation of each scenario and provided with the information presented in the meeting to allow them time to consider options prior to the next subcommittee meeting.
- 2.11 In the second subcommittee meeting, held on 5 March 2024, daa presented refined passenger forecasts for 2024. These forecasts indicated the adjusted passenger total could be in excess of the 32mppa Conditions.
- 2.12 Also in the second subcommittee meeting, daa presented forecasted scenarios based on the declaration options presented in the first subcommittee meeting. These forecasts indicated a range of scenarios and the potential gross (*Aviation count*) and adjusted (*for the purposes of assessing compliance with the 32mppa Conditions*) passenger totals. Included in those scenarios was the option referred to as “allocate historic only”. This scenario indicated the potential quantum of passengers in excess of the 32 mppa Conditions. daa notes that this option is closest to the seat cap parameter (as discussed below) proposed by the IAA. However, in the forecasts used by daa, there was an assumed 5% voluntary reduction in aircraft

movements by the airlines. Without the voluntary reduction, the adjusted passenger total would be similar to the initial estimate identified in the first subcommittee meeting.

- 2.13 The Facilitator presented options for the capacity declaration and the potential options to spread reductions over Winter or Summer and Winter (combined)
- 2.14 Projected passenger numbers, presented in all subcommittee meeting and the Coordination Committee Pre-meet indicate a requirement to reduce passenger numbers in 2024. The options presented to the subcommittee demonstrate the potential mechanisms for capacity reduction and note that the options of holding capacity or only allocating historic would not be sufficient to result in compliance with the 32mppa Conditions, across calendar year 2024.
- 2.15 daa has prepared the following table, which illustrates the passenger forecast based on the IAA parameters suggested in the Draft IAA Decision:

**Table 1: Winter Capacity and Passenger forecast based on IAA seat CAP**

|   |                   |
|---|-------------------|
|   | Winter            |
| Seasonal Split                          | 34.7%             |
| Seats                                   | 14,405,737        |
| Load Factor                             | 80.8%             |
| <b>Passenger total (Aviation count)</b> | <b>11,639,835</b> |

- 2.16 The Draft IAA Decision states that the IAA assumes the proportion of passengers not using Terminal 1 or Terminal 2 will be similar across 2023 and 2024 (4.8%). daa has previously indicated in the subcommittee meetings that there will be 249,000 less transit passengers in 2024. On that basis, the expected percentage of passengers who will not enter a terminal building in 2024 is 4.1% (and not 4.8% as the IAA have assumed). The discrepancy of 0.7% equates to the 249,000 transit passengers.
- 2.17 Table 1 above identifies the potential passenger outturn for the Winter 24/25 period based on the IAA seat cap assumptions. As compliance with the 32mppa Conditions is required within the 2024 calendar year, daa has prepared Table 2, which identifies the number of passengers that could be expected by month in Winter 24/25, assuming the same monthly split of passengers as Winter 23.

**Table 2: Number of Passengers Expected by Month for Winter 24/25 based on IAA seat cap assumptions**

|              | %of Winter Season | Distribution of Seats | Passenger (Assuming 80.8% LF) |
|--------------|-------------------|-----------------------|-------------------------------|
| October      | 2.2%              | 318,151               | 257,066                       |
| November     | 19.5%             | 2,805,030             | 2,266,464                     |
| December     | 20.3%             | 2,923,398             | 2,362,106                     |
| January      | 19.0%             | 2,730,534             | 2,206,272                     |
| February     | 18.0%             | 2,586,704             | 2,090,057                     |
| March        | 21.1%             | 3,041,919             | 2,457,870                     |
| <b>Total</b> | <b>100%</b>       | <b>14,405,737</b>     | <b>11,639,835</b>             |

- 2.18 When considering the above potential passenger outturn for November and December and with the previously advised increase in passenger growth from 1 January 2024 to the end of the summer season (as presented in the Coordination Committee pre-meet), daa believes there continues to be a significant risk that the adjusted passenger totals for 2024 will be in line with or higher than those presented throughout the W24/25 slot coordination process, including through subcommittee meetings.

### **3 *Suggested Measures to achieve Compliance with 32mppa Conditions***

#### **Seasonal Terminal Seat Capacity Constraint**

- 3.1 daa notes the proposal to establish a seat cap parameter for the Winter 24 season and is of the view that this constitutes a welcome and sensible attempt at achieving compliance with the 32mppa Conditions in the future.
- 3.2 However, the difficulty with respect to the introduction of a seat cap across the months of November and December only is that the coordination parameters for the Summer 24 season have already been set (which have established slot capacity from the period of 31 March – 26 October, 2024). As such, in the absence of any reduction in capacity across the Summer months, Dublin Airport would not be on course to comply with the 32mppa Conditions across the 2024 calendar year.
- 3.3 Instead, Dublin Airport is unlikely to see compliance until 2025, at the earliest, and on the premise that the IAA's seat cap parameter as set out in the Draft IAA Decision for Winter 24/25 continues, in earnest, across later declaration processes. This is particularly the case given that in 2024 to-date, use of the existing capacity by airlines has also trended above the most recent forecasts of both the IAA and daa (which took place in both December 2022, and November 2023, respectively).

#### **Re-opening of Summer 2024 Decision**

- 3.4 daa notes the proposal made by Aer Lingus, and recorded at 2.27 of the Draft IAA Decision, that the Summer 24 declaration should be re-opened. As noted in the Draft IAA Decision, daa supported this proposal.
- 3.5 On this point, daa wishes to clarify that the IAA incorrectly states at 2.17 of the Draft IAA Decision that questions 2 to 6 put to the Coordination Committee were proposed by daa. Question 6 stated:

*"If reductions in passenger numbers are required to remain compliance with adjusted terminal passenger limit of 32mppa, Summer should also be considered for action?"*

- 3.6 In fact, as set out above, Aer Lingus proposed question 6. Accordingly, the IAA's statement in this regard is incorrect and should be corrected.
- 3.7 If compliance is to be achieved in the 2024 Winter months, daa estimates a reduction of 25% in seats could be necessary in both November and December to ensure passenger numbers remain in compliance with the 32mppa Conditions.

- 3.8 However, if the IAA were to consider reductions in Summer 24 as well as Winter 24, then daa suggests that such reductions could be spread between September and December. On that basis, the IAA may decide that the level of reduction may be proportionally spread, with higher number of seat reductions in Winter and a lower number in Summer. By way of example only, this could range from 5% in September and October and 10% in November and December.
- 3.9 The data presented in subcommittee meetings and Coordination Committee Pre-meet, as noted above, clearly indicated the need for passenger numbers to reduce by between 810,000 and 870,000 in 2024 in order to ensure compliance with 32 mppa Conditions. As a result of this and the continuing high level of demand daa believes the level of reduction required to remain compliant with the 32mppa Conditions in 2024 is at least between 1 million and 1.4 million seats depending on the duration over which the reductions are spread and assuming load factors are in line with the IAA assumptions as above.
- 3.10 daa wishes to make the following comments in respect of the proposal to re-open the Summer 2024 Decision:

- **Re-opening:** daa agrees that the re-opening of the Summer 24 season should be considered as an appropriate means of achieving compliance with the 32mppa Conditions in 2024 (subject to the IAA being satisfied as to compliance with its obligations under the Slot Regulations).
- **Timing of the re-opening:** the Summer 24 season runs from 31 March to 26 October 2024. Given that we are now almost one month into the Summer 2024 season, the IAA may determine that it would be necessary to re-open the Summer 24 season immediately.
- **Questions regarding airlines' grandfather rights:** Pursuant to Section 8.1 (*key principles of slot allocation*) of the *Worldwide Airport Slot Guidelines*<sup>2</sup>, historic slots may not be withdrawn from an airline to accommodate new entrants or any other category of aircraft operator. Confiscation of slots for any other reason other than proven, intentional slot misuse is not permitted. Further, under Article 8(2) of the Slot Regulation, it notes that where an airline operates a series of slots and fulfils certain conditions in doing so, most notably operating at least 80% of the slots in the series, this '*shall entitle the air carrier concerned to the same series of slots in the next equivalent scheduling period*'. daa does not condone the removal of historic slot rights, in any capacity, save for those grounded under Community Law or industry guidance.

It is noted that Article 8B of the Slot Regulation states that the '*entitlement to series of slots referred to in Article 8(2) shall not give rise to any claims for compensation in respect of any limitation, restriction or elimination thereof imposed under Community law, in particular in application of the rules of the Treaty relating to air transport*'. In the event that the IAA seeks to eliminate historic entitlements such actions could only be undertaken in accordance with Community Law, including the Slot Regulation.

### **32mppa Conditions as a Limiting Constraint**

- 3.11 We welcome the IAA's view 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*

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<sup>2</sup> See, [here](#), for Worldwide Airport Slot Guidelines.

at all', and that an annualised capacity of 32mppa is likely to become a limiting constraint on demand by, at the latest, 2025. In this regard, we reference below section 4.10 of the Draft IAA Decision, which holds the following:

*'We agree with Dublin Airport that, for the purposes of the W24 capacity declaration, 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. On any of the suggested interpretations, we consider that, based on current data and traffic forecasts, an annualised capacity of 32mppa is likely to become a limiting constraint on demand by, at the latest, 2025. Thus, on any of the posited interpretations, it appears to us to be necessary to reflect the limitation on capacity which is set out in the 32mppa Conditions in the capacity declaration for W24, a season which will conclude in March 2025.'*

3.12 It is clear that the 32mppa Conditions constitute an environmental factor to which the IAA must have regard to under the Slot Regulation. While the introduction of a seat cap parameter is a helpful start in addressing this limiting constraint, unfortunately, daa does not believe that the measures proposed by the IAA in the Draft IAA Decision are sufficient to achieve compliance for the 2024 calendar year. The IAA, therefore, must take additional measures for 2024, given the constraint on capacity at Dublin Airport.

3.13 Insofar as there may be ambiguity in respect of the 32mppa Conditions in circumstances where, as noted in the Draft IAA Decision, daa and Fingal County Council appear to have differing interpretations of the 32mppa Conditions (and indeed a certain amount of the airlines have arrived at other interpretations). This does not mean that the 32mppa Conditions can be ignored and the limiting constraint of same must be reflected in the final capacity declaration, as recognised in the Draft IAA Decision.

3.14 The IAA notes at section 4.16 of the Draft IAA Decision that the 32mppa Conditions provide for a limitation on annual 'capacity'. In this regard, the IAA states that it 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 results in terms of actual passenger throughput is not determined by the IAA, but rather is determined by the decision of the airlines operating at Dublin Airport, who sell seats to passengers. For the avoidance of any potential doubt, the IAA cannot 'ensure' the deliver 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 movement for which slots are allocated, but not how many passengers are on each of these aircraft."*

3.15 The IAA's point that the 32mppa Conditions provide for a capacity limit, not an outturn (i.e. use) limit, is of course correct. daa is in a similar position to the IAA in that it also cannot manage the number of seats sold (as that is for the airlines).

3.16 A capacity limit connotes a limit on physical capacity as referenced in the reasons for the 32mppa Conditions which have regard to "capacity constraints (transportation) at the eastern campus".

#### **4 Factual Clarifications / Corrections**

4.1 daa asks that IAA makes certain clarifications in its final decision. We take these in turn below.



#### 4.1.1 ***Alleged ambiguity in respect of the 32mppa Conditions***

Section 4.9 of the Draft IAA Decision states that it is not for the IAA to decide on the precise meaning and effect of ambiguous or disputed planning conditions. In this regard, the IAA states that *"the 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"*.

That position is not correct and overstates the position, in particular insofar as it suggests that the IAA is precluded from interpreting the terms of a grant of planning permission.

The IAA's responsibility under the Slot Regulation is to determine the appropriate limits on terminal capacity at Dublin Airport, which must be done with regard to, *inter alia*, *environmental constraints* which extends to the consideration of the 32mppa Conditions. It is a basic principle of administrative law that a public body should take into account all relevant considerations<sup>3</sup>, which includes the terms of any grant of planning permission in respect of the Airport. While it is correct to say that the ultimate decision on the correct interpretation of a planning permission is a matter for the Superior Courts, that does not preclude any regulatory authority, including the IAA, from interpreting such a permission for the purposes of exercising its statutory powers. Indeed, it will be necessary for the IAA, in the exercise of its statutory functions, to take a view on the meaning of the relevant planning conditions, given its obligation to take into account constraints.

#### 4.1.2 ***Daa's position in the slot coordination process***

Section 4.11 of the Draft IAA Decision states:

*"We agree, in principle, with the view expressed by Dublin Airport in relation to point 1 of the voting, as regards taking account of the 32mppa Conditions in the W24 declaration. However, we note that, having proposed a Local Guideline and set out its view that passenger growth in the terminals needs to 'stall', Dublin Airport, in its comments in the Coordination Committee advice letter, now appears to suggest that it has no position on whether any particular measure is, or is not, warranted to assist it in achieving compliance with the 32mppa Conditions. As noted above, Dublin Airport has made no proposal on the specifics of any such measure'*

It is disingenuous to imply that there has been a change in the stated daa position throughout the course of this consultation process. As noted above, on 30 January 2024, Simon Fagan (in his capacity as Head of Capacity Planning at Dublin Airport) wrote to the IAA. This letter noted that, on account of the limited headroom available between the 2023 out-turn and the 32mppa Terminal capacity limit, terminal passenger growth will unfortunately need to stall if daa is to remain compliant in the 2024 calendar year. It was further noted that this message was conveyed to the based airlines and also through daa's media release on the 2023 outturn. The letter goes onto to note the following:

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<sup>3</sup> Niamh Connery and David Hodnett, *Regulatory Law in Ireland* 2009, page 530

*'As you are aware, the Co-ordination Committee will meet in March to discuss the parameters for the Winter 24/25 season. daa will not be proposing increases to the runway and terminal capacity limits for this season'.*

Any prospective *stalling* was purely with a view to ensuring compliance with the 32mppa Conditions. At this point in time, daa did not offer a proposal on the appropriate measures that ought to be implemented to allow for compliance with the 32mppa Conditions.

Equally, in the Coordination Committee advice letter of 4 April 2024, daa's position was unchanged. That being, passenger growth should be paused *'only if that is what is required to ensure compliance with the 32M annual passenger terminal capacity'*.

#### 4.1.3 **The IAA's Role**

With respect to Section 4.15 of the Draft IAA Decision, the following is cited by the IAA:

*'We do not agree with certain claims made by Dublin Airport in the Coordination Committee advice letter, most notably that 'it is a matter for the IAA to determine the appropriate actions to comply with the 32m annual passenger terminal cap', and various similar statements. The IAA is not responsible for the enforcement of, or compliance with, the 32mppa Conditions, nor for deciding how they ought to be interpreted. 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'.*

daa fully accepts that it is the *owner* of the associating planning conditions. However, as noted, the IAA constitutes the competent national authority for the purposes of determining the coordination parameters at Dublin Airport. It is, therefore, for the IAA to determine coordination parameters in a manner that is consistent with applicable limits on capacity at Dublin Airport. This must be determined with regard to, *inter alia*, *environmental constraints* which extends to consideration of the 32mppa Conditions (as is now provided for under Section 4.10 of the Draft IAA Decision).

### **5 IAA's obligations in the slot coordination process / wider statutory remit**

- 5.1 It is also necessary to make some observations in respect of the IAA's role in the slot coordination process, and wider statutory remit:
- 5.2 As a public body vested with certain statutory powers, the IAA is required to take decisions which are consistent with the terms and conditions of the relevant planning permissions. Any decision by the IAA on the coordination parameters which are to be implemented during Winter 2024/25 should be consistent with an appropriate interpretation of the terms of the said planning permissions.
- 5.3 The process that has been followed across previous declarations is that the airlines prepare a wishlist and daa provides the relevant data in this respect. Accordingly, the references by IAA in the Draft IAA Decision to the process in previous seasons being based on proposals by daa are incorrect and must be corrected in the final decision.
- 5.4 The provision of relevant data by daa accords with daa's obligations under Article 7(3) of the Slot Regulation, which provides that "*the schedules facilitator or the coordinator, the managing*

*body of the airport and the air traffic control authorities shall exchange all the information they require for the exercise of their respective duties, including flight data and slots". daa has provided such information to the IAA and can of course facilitate the IAA by providing further information, if necessary.*

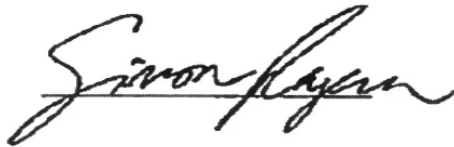
- 5.5 Nowhere in the Slot Regulation does it provide that an airport authority must make proposals in respect of an airport's capacity parameters before the competent authority can carry out the requisite modelling necessary to determine airport capacity. As you know, the IAA constitutes the decision maker for the purposes of setting coordination parameters, at Dublin Airport.
- 5.6 In this regard, and as noted above, the Article 6(1) of Slot Regulation provides that the IAA's determination must be based on an "*objective analysis*" of the possibilities of accommodating airport traffic. This must be done while taking into account of "*all relevant technical, operational and environmental constraints*". While the IAA has ostensibly taken account of the 32mppa Conditions in the Draft IAA Decision – and this is to be welcomed – daa does not believe it has not done so to the requisite extent.
- 5.7 If the IAA does not have sufficient resources or expertise to carry out an objective analysis of the possibilities of accommodating air traffic, or formulate proposals, the IAA must obtain independent advice, engage an external consultant, or refer a question to the courts for determination. This also applies to the IAA's duty to consider environmental factors.
- 5.8 It is not the responsibility of daa to make proposals upon which the IAA should carry out its regulatory function. Accordingly, the IAA's approach in the Draft IAA Decision that appears to take issue with the absence of any proposals by daa appears to be somewhat disingenuous. Pursuant to its role in the coordination committee, daa is a consultative body only. This has been made clear in the Draft IAA Decision itself, where the IAA notes explicitly at Section 2.20 that with respect to final coordination committee advices furnished to the IAA, they are indicative only, and do not, ultimately, bind the IAA in its decision making powers. Section 2.20 of the Draft IAA Decision notes the following:
- "Only those who are present (online or in person) at the Coordination Committee can vote. We note that the voting process is **an indicative part of the Coordination Committee's advice to the IAA, rather than the IAA being bound to follow the majority position.** As part of the process, we take into account all positions set out by Coordination Committee members, as well as any associated comments or evidence relevant to the parameter declaration".*
- 5.9 It is clear from the above statement that the IAA is fully aware that it is the responsibility of the IAA alone to determine the number of aircraft that can be scheduled at Dublin Airport. Further, the IAA expressly states that daa cannot carry out this function.
- 5.10 Notwithstanding this, daa has endeavoured, both in its role as the managing body of the airport under the Slot Regulation and as a member of the Coordination Committee, to provide as much assistance as possible to the IAA in the slot coordination process. daa called an EGM of the Coordination Committee to discuss the 32mppa Conditions on 20 February 2024, which arranged for the formation of a subcommittee, facilitated by Mott McDonald, to explore possible solutions to remain compliant with the 32mppa Conditions, for 2024. The setting up of this subcommittee at the request of daa represented a shift away from normal process and endeavoured to assist the IAA and the Coordination Committee in considering possible measures that might be taken to achieve compliance.

5.11 As part of this process, daa furnished the IAA with a multitude of data, to assist the IAA in its decision making.

**6 Condition 5 of the North Runway Planning Permission**

6.1 Finally, there remains an obligation on the IAA to take account of Condition 5 of the North Runway Planning Permission in its decisions in respect of capacity declarations for Dublin Airport.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Fagan', written in a cursive style.

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Simon Fagan  
Head of Planning & Regulation