



**Dublin Airport Response to Consultation
Options for Timeline and Period in Force
of the Review of the 2019 Determination**

December 2022

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1. Introduction

1.1 Dublin Airport Submission

- 1.1.1 Dublin Airport welcomes this opportunity to comment on the timeline and period of implementation for the 2022 Interim Review of the 2019 Determination and options [for same]. This has been necessitated given the possibility the Air Navigation and Transport Bill (ANTB) will not be enacted in time to allow for a final four-year decision to be made by the Commission in December 2022.
- 1.1.2 However, given that the ANTB has now passed through all the required stages of the Oireachtas, Dublin Airport is now optimistic that the ANTB will be enacted in sufficient time to allow the Commission to complete a four-year Review as originally proposed (e.g., Issues Paper, 4 February 2022, para 2.15) in December 2022.
- 1.1.3 For the avoidance of doubt all of Dublin Airport's submissions in this 2022 Review of the 2019 Determination process are hereby reaffirmed and should be read together. Our submissions in this document essentially make the same points as Dublin Airport has made consistently throughout this process and are just re-stated here by reference to the particular options up for consideration and the latest facts.

2. Legal Considerations

- 2.1.1 We have considered the various options presented by the Commission in CP6/2022 with respect to the Final Decision in the 2022 Review.
- 2.1.2 Our view is that there is a legal basis for all of the options presented. In our view, the options involving a four-year determination are most consistent with the Commission's statutory objectives under Section 33 – as is and as being amended (to make explicit matters regarding climate change and sustainability which are currently implicit) – due to the below-described positive effects of greater regulatory certainty on the sustainable development, efficiency and quality outcomes which the Commission must further pursuant to Section 33.
- 2.1.3 Some of the options present negative timing issues with regard to the *European Communities (Dublin Airport Charges) Regulations 2011*, as set in more detail at 3.2 below, and if the ANTB is enacted in December 2022, those options then become moot and therefore the associated legal issues would not arise.
- 2.1.4 It is of course the sole responsibility of the Commission to decide on an option for implementation of a Final Decision in the 2022 Review, in accordance with all the relevant legal requirements including its duty to have regard to materially relevant considerations, and Dublin Airport reserves its position on the correctness of that decision until it is made.
- 2.1.5 For the avoidance of doubt, this Dublin Airport response relates only to timing options. Dublin Airport has raised concerns with the substance of the proposed decision, including the proposed cost calculations and cap changes in light of the unforeseen and unprecedented post-COVID challenges for Dublin Airport which clearly merit significant changes under a

Section 32(14) mid-term review. Dublin Airport continues to hold those concerns but does not restate them here as they are outside the scope of this consultation.

3. Dublin Airport Response

3.1 Duration of the Amended Determination

- 3.1.1 Our preference would be for a four-year rather than a two-year amended determination. This has been Dublin Airport's consistent preference since the start of this consultation process, which we are restating here [while also noting that regulatory certainty and financeability has become an even more pressing concern for Dublin Airport since the last consultation due to capital markets and cost control being more challenging with increasing interest rates etc.].
- 3.1.2 In July 2022, the Commission set out its proposed price caps for 2023-2026 as part of its Draft Review Decision. Dublin Airport welcomed the fact that the Commission proposed a 4-year period for an amended 2019 Determination as this would provide the airport with a price cap path for an extended period allowing for greater financial certainty in the recovery phase post COVID-19 pandemic, and in turn enhancing the financeability of the airport.
- 3.1.3 Dublin Airport understands that the Commission's ability to implement a four-year amended determination does remain contingent on the enactment of the ANTB.

3.2 Implications of the Timing of the Final Decision

- 3.2.1 For the reasons explained in 3.1 above, the Commission's options 1 and 2 are preferable as they involve a four year determination. In addition, we submit that there is a separate and lower order consideration that options which involve an earlier determination are preferable – i.e., option 1 is preferable to option 2 or 3 as explained below.
- 3.2.2 In the options being proposed by the Commission for the completion of the Review, options 2 and 3 of the current review are envisaged as not being finalised until 28 February 2023.
- 3.2.3 A delayed finalisation of this review will have potential negative implications, in particular by disrupting Dublin Airport's normal process of charges consultation with airlines in accordance with legal requirements.
- 3.2.4 Airport charges at Dublin Airport are set in accordance with the *European Communities (Dublin Airport Charges) Regulations 2011*. In line with the requirements of this legislation Dublin Airport consults with its airline customers once a year on airport charges for the following year and any proposed price changes which will be implemented with the appropriate advance notice. Custom and practice has been to consult in Q4 and give the required notice well in advance of the start of the following summer season.
- 3.2.5 The practice of Dublin Airport consulting in Q4 will be impacted if there is no confirmation of the final price cap for 2023 by December 2022 and no certainty of when the consultation will occur and when any changes will be made. Such uncertainty is not in the interest of the airport or its airline customers. However, we acknowledge that some uncertainty is unavoidable and

Dublin Airport will stand ready to promptly launch a consultation once there is regulatory certainty.

3.3 The Duration of the Amended Determination and the Cost of Capital

3.3.1 Paragraph 1.12 of CP6/2022, states that *“Option 3 for the shorter regulatory period would reduce the risk exposure to Dublin Airport.... this would potentially result in a lower cost of capital, all else equal”*.

3.3.2 We believe that option 3 may heighten the perception of an unstable regulatory regime and increase the cost of capital. Investors prefer stable and predictable regulatory frameworks above all and having to regularly adjust their expectations owing to changes by the regulator may result in investors demanding a greater return from daa to compensate for this uncertainty.

3.3.3 There is a direct relationship between the stability of the regulatory regime, the credit rating and the cost of debt (and by association, implied equity risk). For example, the credit rating agency Moody’s take regulatory stability into account when assessing companies’ credit ratings:

- The parameter “Concession and Regulatory Framework” holds a high weighting (15%) in their “scorecard” approach for evaluating credit risk for airport¹.
- Moody’s rating methodology for other regulated networks establishes the emphasis they place on stability of regulatory regimes in particular – for example, the factor “Stability and Predictability of Regulatory Regime” holds the joint-highest rating out of all parameters for regulated electric and gas networks².

3.3.4 There are examples in the past of network companies being downgraded following unexpected changes in the regulatory framework – for example, in 2018 Moody’s downgraded its outlook for four UK water companies to negative after Ofwat proposed a new gearing outperformance sharing mechanism, departing from its previous policy on capital structure³. Moody’s set out that the reason for this downgrade was the departure from Ofwat’s existing framework on gearing: *“Ofwat’s long-standing position has been companies are responsible for determining their capital structure and that they carry any associated risks. While maintaining that this view still holds, the proposed gearing outperformance sharing mechanism [...] would explicitly discourage a financial profile that diverges from the notional capital structure. This is a clear departure from previous practice and -- in Moody’s view -- a reaction to mounting political (and public) pressure on the sector”*.

¹ Moody’s Rating Methodology, Privately Managed Airports and Related Issuers, <https://ratings.moodys.com/api/rmc-documents/63380>

² Moody’s Rating Methodology, Regulated Electric and Gas Networks, <https://ratings.moodys.com/api/rmc-documents/386754>

³ Moody’s changes outlook to negative on ratings of 4 UK water groups (22 May 2018), https://www.moodys.com/research/Moodys-changes-outlook-to-negative-on-ratings-of-4-UK--PR_383966

3.4 Assessment of the Commission's Proposals

- 3.4.1 In CP6/2022, the Commission has set out three options for consideration in regard to the completion of the 2022 Review of the 2019 Determination.
- 3.4.2 Since the Commission published its Draft Decision CP4/2022 the passage of the ANTB through the legislative process has moved on considerably, and it is likely it will be enacted in December 2022. In light of these changed circumstances and the above-described points in favour of a four-year review and an earlier determination, Dublin Airport would like to confirm that option one would be our preference. Under this option, the Commission is proposing the publication of its decision by 23 December 2022 which will cover the period 1 January 2023 to 31 December 2026.
- 3.4.3 Dublin Airport believes that option 1 is in the best interest of both the airport and its airline customers given that the longer duration of the amended determination will increase regulatory certainty and the earlier decision date will allow for confirmation of 2023 airport charges in a more timely manner.
- 3.4.4 Dublin Airport understands that the implementation of option 1 is contingent on the enactment of the ANTB by the 23 December 2022. If in the event that this does not happen our preference would be for option 2 over option 3.
- 3.4.5 Our preference for option 2 over option 3 is based on the fact that option 2 will allow for an amended determination of a four-year duration albeit at a potentially later decision date.
- 3.4.6 While we are not in favour of the proposed option 3, if in the event that the Commission does decide to implement option 3, our preference then would be for option 3A over option 3B, given that this would offer an earlier publication date thus allowing for confirmation of the 2023 airport charges at the start of our airport charges consultation process.
- 3.4.7 Dublin Airport submits that option 3B is the least desirable option on the basis that it would result in an amended determination of a shorter duration with a delayed publication date both of which are not in the interests of the airport or its airline customers for the reasons explained above.

4. Conclusion

- 4.1.1 We have considered the various options presented by the Commission in CP6/2022 with respect to the final Decision in the 2022 Review. Our preference is for option 1. This option is in the best interest of both the airport and its airline customers given that the longer duration of the amended determination will increase regulatory certainty and the earlier decision date will allow for confirmation of 2023 airport charges in 2022.
- 4.1.2 In the event that option 1 cannot be implemented as the ANTB is not enacted by the 23 December, then our next preferred option would become option 2 as we believe this would offer a superior outcome for both the airport and its customers in terms of regulatory certainty.