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Response to Economic Regulation of Heathrow – CAP2488 Holding Cap for 2023

Thank you for the opportunity to respond to the above consultation, setting out the CAA's proposals regarding an interim price control arrangement for Heathrow Airport Limited ("HAL") for 2023 (the "Consultation").

This submission is made jointly by the London (Heathrow) Airline Consultative Committee ("LACC"); Heathrow Airline Operators Committee ("AOC"); and International Air Transport Association ("IATA"), collectively referred to as (the "Airline Community") and sets out agreed principles and outcomes that we believe the CAA's policy should aim to address. Individual airlines, groups and alliances may make their own submissions detailing their specific views on the CAA's proposals.

Setting an Interim Level of Charge for 2023

Firstly, and as described further within the Consultation¹, given the absence of a binding price control for 2023 we fully support the CAA's intervention to ensure that HAL is not able to set charges at its own choosing.

As raised by the Airline Community at the time², such a position has been evidenced to be against the interest of consumers when, having faced a similar situation for 2022, HAL sought to unilaterally raise charges by over 80%. Given such a risk, it is right that the CAA sets an interim cap for 2023 and as soon as possible.

Indeed, whilst HAL has used the CAA's Final Proposal figure in its own consultation with airlines³ we understand from the Consultation that HAL has already attempted to increase the proposed level of charge for 2023 beyond this level⁴. We note our support of the CAA's assessment and subsequent rejection of HAL's approach, as set out in Paragraph 2.6 of the Consultation, and welcome the CAA reaffirming its position on assessments being made against the "notional company".

The Level of Interim Charge

Whilst supportive of the CAA intervening, the Airline Community are deeply disappointed and frustrated at the level of charge being proposed.

¹ Chapter 1, CAA CAP2488

² Letter from Rafael Schwartzman (RVP Europe, IATA) to Paul Smith (Group Director Consumers and Markets, CAA) "Proposed 2022 Aeronautical Charges at Heathrow", 20th September 2021

³ Heathrow Airport Limited, "Aeronautical Charges and Conditions of Use Consultation for 2023"

⁴ Paragraphs 2.3 – 2.5, CAA CAP2488



Instead, we believe there is strong justification for an immediate downward adjustment to the level of charge beyond that set out in the Final Proposals, and that continuing with an outdated passenger forecast means consumers in 2023 will be paying more than they otherwise should be.

Whilst recognising the context of setting an interim charge for 2023 and the analysis being undertaken as part of the price control determination for the whole of H7, the Airline Community believe it is entirely appropriate and correct for the CAA to have undertaken an uplift at this stage to the passenger forecast in advance of a wider determination on H7.

In particular we would note on passenger forecasting that:

1. The CAA have already clearly indicated to all parties in both its Final Proposals and the subsequent Consultation that this would be an area open to further consultation and likely to be updated;
2. Building on the evidence already submitted by the Airline Community as part of our engagement on the Final Proposals, we have seen a material difference in the expected levels of passenger volumes against the CAA's Final Proposal passenger forecast. Not only is this seen in general industry analysis previously shared, but in actual performance at Heathrow. We note for example that HAL's own latest estimates for 2022 at being circa 10m passengers more than the CAA forecasted in Final Proposals; and
3. The CAA have proposed to 'true up' in the event of a difference between the interim and final level of charge (further comments on which provided further within this response) which would allow for any further corrections.

The underlying reason for the CAA not updating the passenger forecast now, despite the clear evidence as outlined above, appears to be the potential 'headwinds' in 2023 touched on in Paragraph 1.1 of the Consultation. We reiterate that factoring such assumptions or risks into its decision making runs the likelihood of 'double counting' any effects on the overall level of passenger forecast given the CAA have already included a traffic 'shock factor' to take account any potential dampening effects within the price control period. As such, this should not prevent any interim update now.

Finally, we put on record our disagreement to the CAA's position of deferring to the HAL passenger forecast⁵, which is not only lower than the CAA's Final Proposal figure, but also now outdated and lower than HAL's own expectations⁶. Whilst this may not ultimately have a bearing on the level of charge itself, it is a deep concern and further example of the use of pessimistic forecasts being used. Furthermore, given the time taken for the CAA to publish a position that reverts back the Final Proposal for the interim 2023 level of charge raises questions on the process of this consultation.

Duration of the Interim Charge

Whilst the approach set out within the Consultation of maintaining the level of charge for the entirety of 2023⁷ provides a degree of stability for airlines, we note HAL have benefited from hundreds of millions of pounds in over-recoveries to date and with no clear position as to when this will be promptly returned. By maintaining a level set against an outdated forecast, the CAA's

⁵ Paragraph 2.14 of the Consultation

⁶ As reported in TravelWeekly 16th December <https://travelweekly.co.uk/news/air/heathrow-upgrades-profit-forecast-amid-stronger-than-expected-travel-recovery>

⁷ Paragraph 2.15, CAA CAP2488



approach to 2023 is highly likely to continue to exacerbate this imbalance between consumers and HAL further and will ultimately lead to HAL having up to four years' worth of over-recovery, with returns only starting to come back in 2024.

In addition to the above, we would also highlight that the scale of over-recoveries has been particularly acute over the past few years and continuing this approach will again put an unwarranted burden on consumers travelling in 2023.

Notwithstanding the above, should the CAA continue to hold the proposed level of charge for 2023 following this Consultation, rather than waiting until the end of the year before undertaking a 'true up', the CAA must look to update the level of charge at the time of Final Determination to minimise the growing return that will be due to be returned by HAL.

Use of 'True up' Mechanism

With regards to a 'true up', in addition to the earlier comment on the current imbalance, the Airline Community would also take this opportunity to highlight the CAA's required consideration of the latest situation given the ongoing delays in finalising H7. In particular, for 2022 whether the 'true up' will be based on 'forecasts' or actual figures, and whether this would apply across some or all of the building blocks? If actuals are proposed, it would be important to reflect the enforced capacity constraints HAL applied during 2022 and that furthermore HAL would have had at least one year of the settlement at a 'risk free rate' which must ultimately be taken into account.

Changes to SQRB

We note the changes set out in Chapter 3 being made as part of the transition towards the H7 OBR framework. Given the delays in finalising H7 we also encourage that the CAA should similarly be taking steps and consideration with the H7 mid-term review in mind as well.