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Consumer & Markets Group
Civil Aviation Authority
11 Westferry Circus
London
E14 4HD

Sent by email to: economicregulation@caa.co.uk

13th September 2019

Re. Economic regulation of Heathrow Airport Limited from January 2020: notice of proposed licence modifications (CAP 1825)

Dear Elly,

This response is made by International Consolidated Airlines Group SA (IAG) in response to the CAP 1825 consultation on proposed licence modifications for the interim H7 period of 2020 and 2021 for the economic regulation of Heathrow Airport Limited (HAL). It represents the views of IAG and its subsidiary airlines: British Airways, Iberia Airways, Vueling, Aer Lingus and LEVEL.

Interim price control arrangements for HAL

As previously stated in our response to CAP1769 IAG supports the commercial arrangements agreed between HAL and a number of airlines including BA (IAG) being used by the CAA as the basis for the price control covering the interim H7 period (2020-2021). However, these arrangements should be seen as a one-off. They are a response to the CAA's proposals for the period which were weaker than we expected and returned HAL's out-performance to consumers and airlines over far too long a period. IAG would note that commercial arrangements made with a company with substantial market power are evidently sub-optimal and do not constitute a "normal" set of commercial arrangements.

IAG disagrees with the CAA's decision not to incorporate the commercial arrangements into the HAL licence and therefore to leave any airline issues with the interim price control to commercial law rather than CAA regulation in the first instance. We note that the CAA have not given an opinion on where the commercial arrangement terms are set out and instead want HAL and the airlines to agree where these should sit in relation to the licence. IAG will review this and engage with HAL.

Despite this we are minded to agree with the CAA's summary that basing the interim price control on the commercial arrangements is in the best of interests of consumers – relative to the other option proposed by the CAA – and that HAL "has a significant amount of work to do...to build on the commercial deal and develop a more commercial relationship with airlines in the future".¹ The commercial arrangements for this interim price control do not mark a change in the requirement for effective regulation of HAL in the future.

The CAA notes that a benefit of this approach is to allow them to focus on HAL's expansion plans. IAG will therefore expect to see the benefits of increased CAA scrutiny on Heathrow expansion - which needs to be far stronger than its proposals for the interim price control. The CAA needs to be stronger and more effective in regulating HAL so we avoid situations where airlines are forced to negotiate with a company with substantial market power.

¹ Para 1.21

IAG agrees that HAL should continue to provide service quality levels in 2020 and 2021 and we support the CAA's stated objectives for HAL in H7 of "reduced prices, improved service quality and the development of new services".² We support the CAA's position of retaining 2021 as the target for making its H7 proposals in time for an H7 start in January 2022 but would not want the CAA to dismiss the option of a further extension if that were needed. In the short-term to support the CAA making its H7 proposals in 2021 IAG and other airlines will need to review HAL's business plans including Expansion fully and so we re-iterate that we expect to have the full 6-month Constructive Engagement period starting in January 2020 available to us, as in previous CAA regulatory reviews.

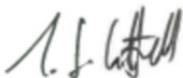
Promoting economy and efficiency – licence condition

IAG supports the CAA proposal to bring forward a licence condition to promote economy and efficiency across all of HAL's activities. However, if this licence condition is going to be effective in policing HAL's behaviours the CAA cannot simply rely on airlines and other stakeholders raising issues to them. The CAA must also be pro-active where they see evidence of inefficiency or inefficient behaviours. The CAA cannot simply modify the licence and then sit back and leave it to solely to airlines and others to raise issues³.

The CAA is the economic regulator of HAL and it needs to be stronger and more active in its regulation of HAL. As well as proposing such a licence condition the CAA needs to show it has the willingness and capacity to use it – without that any powers or licence requirements lose their efficacy and, ultimately, fail the consumer and airlines.

IAG welcomes the CAA's clarification that the licence condition and the obligations it places on HAL should be limited to HAL only and should not result in HAL seeking to include other stakeholders or change its behaviours adversely to other stakeholders. IAG welcomes the scope of the licence condition being broader than simply inefficient expenditure.

Yours sincerely,



Neil Cottrell
Head of Expansion, IAG

² Para 1.5

³ Para 2.40