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Aer Lingus response to CAA consultation CAP3201: Proposals on the regulatory treatment of early costs of capacity expansion at Heathrow airport

Aer Lingus welcomes the opportunity to respond to the Civil Aviation Authority's ("CAA") consultation on proposals for the recovery of early costs in relation to capacity expansion at Heathrow airport.

Aer Lingus fully supports the responses submitted by our sister airlines British Airways, Iberia and Vueling, and by our parent company, International Airlines Group ("IAG"). This submission complements those responses by focusing on a number of critical issues arising from the CAA's proposals which, if implemented, would have significant ramifications for the wider regulatory framework at Heathrow and beyond, for effective competition, and for consumer protection. Heathrow airport is an integral part of Aer Lingus' network and of strategic importance to Irish consumers and businesses, and regulatory decisions taken in this context will have long-lasting consequences.

Aer Lingus supports airport expansion where it is demonstrably in the interests of consumers, including where it delivers additional capacity, operational resilience and long-term efficiency at an affordable cost to consumers. On the other hand, expansion *at any cost* risks undermining those same consumer interests. Decisions taken at this stage will materially shape incentives, risk allocation and the development of airport charges at Heathrow for decades to come. It is therefore critical that the regulatory framework applied is rigorous, proportionate and fully aligned with the CAA's statutory duties.

In this context, Aer Lingus strongly objects to the CAA's proposals to allow Heathrow Airport Limited ("HAL") and other promoters to recover early expansion costs from consumers prior to the granting of development consent. In our view, the safeguards proposed by the CAA are regrettably insufficient and do not provide adequate protection for consumers.

Notwithstanding our clear opposition, should the CAA decide to proceed with licence modifications contrary to stakeholder input, the proposed framework would require significant revision and strengthening. As currently drafted, the proposals risk undermining competition in the delivery of expansion, distorting the balance of risk in favour of HAL, and creating adverse and enduring consequences for consumers. For these reasons, we consider that the CAA's proposals require a fundamental reconsideration, and we urge the Authority to withdraw the current proposals and revisit its approach to the recovery of early expansion costs.

Our grounds and key points are set out below.

Yours sincerely,

Steven Ronald
Director of Schedules Planning and Alliances

1. Early cost recovery inappropriately transfers pre-DCO consent risk onto consumers and is inconsistent with the CAA's statutory duties

Aer Lingus is firmly opposed to allowing HAL, or any promoter, to recover early expansion costs from consumers prior to the granting of a Development Consent Order (“DCO”) and considers the CAA’s proposed approach to be fundamentally flawed.

Costs incurred before development consent is granted are inherently speculative. Allowing such costs to be recovered through regulated airport charges would relieve HAL, as promoter, of development and planning risk and instead transfer that same risk to current passengers, who receive no guaranteed benefit in return. In any competitive market, a commercial entity would be expected to bear the risk of speculative development activity itself. By contrast, the CAA’s proposal would afford HAL an unjustified level of protection, reinforcing its monopoly position to the detriment of consumers.

The CAA states that its objective is to protect consumers from inefficiency and unnecessary costs. Yet the proposed early cost recovery mechanism runs directly counter to that objective. By permitting the recovery of speculative pre-DCO costs, the CAA would expose consumers to undue financial risk and higher charges without effective safeguards or demonstrable consumer benefit. This approach is inconsistent with the CAA’s primary statutory duty to further the interests of consumers, including with respect to the affordability, availability and quality of airport operation services, and with its duty to promote effective competition.

Furthermore, the proposal is incompatible with the principles of Better Regulation. It is neither proportionate nor consistent with transparent, accountable and evidence-based regulation. In Aer Lingus’ view, prohibiting the recovery of early expansion costs prior to development consent best meets the CAA’s statutory duties by protecting consumers from unwarranted charges, preserving the integrity of competitive expansion proposals, and maintaining appropriate incentives for efficiency and cost discipline.

2. The CAA’s approach places undue weight on Government timetable considerations at the expense of consumer protection

The CAA’s proposed approach appears to place disproportionate weight on maintaining the Government’s preferred timetable for expansion, rather than giving primacy to its statutory duties to protect consumers, promote efficiency and support effective competition.

In particular, the CAA appears to treat speed of delivery as a consumer benefit in its own right despite the absence of any independent assessment of the costs, benefits or affordability of expansion. Faster delivery cannot be assumed to be beneficial to consumers. Expansion delivers consumer benefit only where it is undertaken efficiently and results in improved capacity, service quality and connectivity at charges that remain affordable.

In drawing its proposals, the CAA relies predominantly on analysis commissioned by HAL, an interested party, to substantiate claims of consumer benefit. The CAA has not undertaken, nor published, its own independent and evidence-based assessment of the costs, risks and benefits associated with early expansion costs. As a result, the CAA’s assessment is incomplete and unbalanced.

3. The CAA’s proposal risks undermining competition, contestability and the integrity of the wider regulatory framework review

As an airport operator with significant market power, HAL is not subject to effective competitive constraints, which is why robust economic regulation is vital to protect consumers. In this context, contestability - the credible threat that alternative developers could pursue expansion, is one of the few

mechanisms available to discipline costs, encourage efficiency and constrain monopoly behaviour. The preservation of contestability is therefore crucial to maintaining incentives that mimic the effects of competition at Heathrow.

By underwriting early expansion costs, the CAA risks entrenching HAL as the default developer for expansion, thereby materially weakening contestability. Early and preferential assurances on cost recovery give HAL a structural advantage relative to any alternative promoter, increase sunk costs, and raise barriers to entry. This scenario would weaken the competitive pressure that contestability is intended to provide.

This risk is compounded where consumer-funded early works generate design, technical or preparatory outputs that remain under HAL's control. Unless explicitly addressed, early cost recovery would allow HAL to leverage consumer-funded design work to its own advantage, shaping scheme development and constraining the ability of alternative promoters to compete on equal terms.

To preserve a level playing field, any design work, studies or technical outputs funded through early cost recovery must be made available to potential alternative promoters or bidders on an open-book basis, subject to appropriate confidentiality and intellectual property protections.

In this context, the CAA must also require HAL to engage with alternative promoters or bidders in good faith, including by providing timely, fair and non-discriminatory access to relevant information funded by consumers. Without such safeguards, contestability would be undermined in practice, regardless of the theoretical availability of alternative delivery models.

These concerns are particularly acute given that the CAA is currently conducting a review of the regulatory model for capacity expansion at Heathrow, specifically consulting on whether the existing framework remains appropriate or whether alternative models could better serve the interests of consumers (CAP3195, paragraph 1.14). While the CAA acknowledges the potential merits of alternative approaches, these proposals effectively assume continuation of the current regulatory model and provide HAL with early assurances on cost recovery. In doing so, the CAA risks pre-empting the very questions under examination in its own review.

Proceeding with a parallel consultation on early cost recovery, rooted in the existing regulatory framework, creates a real risk of undermining both the procedural fairness and the credibility of the CAA Review. The outcome of that review could fundamentally reshape how expansion is planned, financed and delivered at Heathrow. Introducing early cost recovery ahead of such outcome risks constraining future options, diluting the effectiveness of alternative models, and locking in regulatory outcomes before the appropriate framework has been fully assessed and consulted upon.

It is therefore critical that the CAA avoids compromising the integrity of its own review process or the stability of the H7/H8 regulatory framework by providing premature assurances on cost recovery. Aer Lingus' consistent position is that cost recovery should not be addressed until expansion has been approved and the delivery and regulatory model has been settled.

If, notwithstanding these concerns, the CAA proceeds with its proposals, it must at a minimum ensure that any regulatory treatment of early costs remains fully reversible and capable of being aligned with the conclusions of the CAA Review once published, without prejudice to alternative models or to the interests of consumers.

4. Material risk of cost duplication and inefficient expenditure unaddressed

There is a material risk that the proposed early cost recovery framework would result in duplication of costs and inefficient spend being recovered from consumers.

The CAA has not demonstrated that the £320 million of early expansion costs sought for 2025–26 are additional to the £500 million of pre-COVID expansion costs already included in HAL’s Regulatory Asset Base (“RAB”) and funded by consumers. Nor has the CAA provided assurance that existing work, studies and preparatory activity funded through the RAB are not being duplicated and redone. A full review is therefore required of what the proposed £320 million cap includes in order for the CAA to ascertain against any cost duplication.

In the meantime, having initially sought recovery of up to £320 million (in 2024 prices) for the 2025–26 period in its submission of 10 September 2025, HAL subsequently increased its request in its letter of 9 December 2025 to an amount closer to £400 million, together with additional flexibility to allow for further expenditure. These developments amplify our concerns regarding cost discipline, proportionality and the effectiveness of any proposed cap.

In particular, a cap that is subject to reopening or upward revision in response to promoter requests does not operate as a binding constraint on expenditure and loses its effect. The proposed cap appears to be treated by HAL as an initial reference point rather than a hard limit. This weakens incentives for HAL to control costs and creates a risk that higher costs become normalised over time. If HAL, or any other promoter, can reasonably expect the cap to be revisited, the disciplining effect of the cap is rendered completely ineffective.

The CAA suggests that the risk of duplication can be addressed through an ex-post review. However, under such a framework, preventing double recovery would be, in practice, very challenging. Once costs are incurred and sunk, regulatory leverage is significantly reduced, and HAL’s substantial information advantage would make it all the more difficult for the CAA or airlines to prove duplication or inefficiency.

Under the current proposals, the practical burden would fall on the CAA to demonstrate that costs are duplicative, rather than on HAL to demonstrate that they are not. This is a very high bar for the regulator, given the information asymmetry in favour of HAL.

If early cost recovery is contemplated at all, the burden of proof must rest clearly and firmly with HAL, on an ex-ante basis.

5. The proposed “guardrails” are insufficient and ineffective

The safeguards proposed by the CAA do not provide meaningful or effective protection for consumers.

The reliance on ex-post review, combined with a requirement that costs be shown to be “demonstrably inefficient or wasteful” in order to be disallowed, sets an excessively high threshold for regulatory intervention and creates weak incentives for cost discipline. The CAA itself recognised in the H7 decision the inherent limitations of ex-post assessments. Those limitations are even more pronounced in the context of early expansion costs, where costs are inherently speculative and sunk before key decisions are taken.

Moreover, a cap that can be revisited or reopened in response to timetable pressures or promoter requests does not operate as a binding and genuine constraint on spending.

The absence of clear, enforceable rules governing true-up, disallowance and consumer protection further undermines the effectiveness of the proposed safeguards.

Without substantial revision, the proposed guardrails risk embedding inefficient costs into the regulatory framework and weakening long-term incentives for efficiency, to the detriment of consumers.

6. Land and property acquisition risks undermining the integrity of the single till

Land and property acquisition is a particularly concerning category of early expenditure as these costs are generally irreversible and risk foreclosing alternative development options if funded by consumers before expansion is approved.

The CAA has not explained how it will prevent consumer-funded land acquisition from influencing future decisions on the boundary of the single till, particularly in light of HAL's proposals under H8 to remove certain property assets from the single till. Allowing early recovery of land acquisitions while permitting HAL to develop or dispose of that land outside the single till would transfer downside risk to consumers while allowing HAL to retain any upside. This would undermine the core principles of the single-till framework and must be explicitly prevented by the CAA.

These risks are not hypothetical. HAL has already argued that property assets should sit outside the single till on the basis that the current framework weakens development incentives. In this context, early consumer-funded land acquisition risks predetermining future regulatory outcomes and weakening the CAA's ability to maintain a clear and stable single-till boundary.

The CAA has also acknowledged that land acquisition can act as a barrier to competition. However, the proposals do not explain how land acquired by HAL during early development would remain neutral with respect to alternative delivery models or promoters, nor how consumer interests would be protected if such land were later excluded from the single till.

Without explicit safeguards, the proposed approach risks undermining the integrity of the single till, weakening contestability, and exposing consumers to irreversible costs without corresponding protection or benefit.

7. The CAA's approach departs from both established regulatory practices and its own findings without justification

The CAA's proposed approach would represent a clear departure from established practice across UK regulated sectors and from the CAA's own recent regulatory findings.

Across other regulated sectors, early expenditure is not treated as an open-ended entitlement to recover speculative development costs prior to consent or cost certainty. Where early costs are recoverable, they are typically subject to ex-ante regulatory approval, clear gating arrangements, and a demonstrable needs-case showing consumer benefit.

In energy, water and rail, speculative development and bidding costs for projects that do not proceed are borne by companies, not consumers. Even where early-stage funding is permitted for nationally significant infrastructure, such as under RAPID in the water sector or Ofgem's accelerated strategic transmission investment framework, recovery is tightly controlled through ex-ante allowances, regulator-defined gateways, and independent assessment at each stage. These frameworks provide funding certainty for developers while maintaining far stronger cost discipline and consumer protections than those proposed by the CAA.

The CAA's proposal also departs from its own recent conclusions. In H7, the CAA explicitly recognised the limitations of ex-post assessment, noting that it sets a high bar for disallowance, weakens efficiency

incentives, and has proven ineffective in practice. The CAA has since stated that ex-post evaluation should be used only in extreme cases. Reverting to an ex-post framework for early expansion costs is therefore inconsistent with the CAA's stated regulatory approach and with the principles of Better Regulation, including consistency and proportionality.



Finally, the proposal does not align with the CAA's own analysis of Heathrow's already-large RAB and high capital intensity, and the resulting affordability concerns for consumers (as set out in CAP3000 and CAP3195). Having identified RAB growth as a key consumer risk, the CAA has not adequately justified why it is now proposing to add further speculative, pre-consent costs to the RAB.

8. The CAA fails to assess the cumulative impact of early expansion costs on airport charges which already face significant upward pressure under H8 proposals

The CAA has not adequately assessed the impact of early expansion costs on the overall level and affordability of airport charges at Heathrow.

Given the scale of the early costs proposed (£320 million for the 2025–26 period), which the CAA estimates represent approximately 12% of total capital expenditure over the same period, we are concerned that the CAA has not sufficiently considered the effect of these costs on current and future airport charges.

In particular, the CAA has not assessed the cumulative impact of allowing early cost recovery alongside other significant upward pressures on charges, including the substantial increases currently proposed under the H8 consultation process (amounting to increases of at least 47% in real terms, in 2024 prices) and the very significant expansion costs being advanced by HAL as promoter, estimated to be at least £49 billion (in 2024 prices).

Instead, the CAA is choosing to treat early expansion costs as an isolated assessment. This approach is difficult to reconcile with the CAA's own analysis elsewhere. In its separate consultation on regulatory models for capacity expansion, the CAA explicitly acknowledges that increases in airport charges arising from expansion, when combined with HAL's proposed increases under H8, are likely to result in Heathrow's charges significantly exceeding those at comparator airports, even after controlling for other relevant factors (CAP3195, paragraph 2.68).

By failing to assess early expansion costs within this wider charging and affordability context, the CAA risks understating the impact of its proposals on consumers, undermining its primary statutory duties towards consumers.

These cumulative pressures are particularly acute for Aer Lingus, a short-haul airline providing frequent services between Ireland (Dublin, Cork, Shannon and Knock) and Heathrow. The viability of our short-haul operation is critical not only for point-to-point passengers, but also for enabling transfers over both Heathrow and, to a lesser extent, Dublin. Aer Lingus is a significant provider of the network traffic supporting Heathrow's global network. It carries 500,000 passengers each year connecting to/from destinations across every continent, to aligned and non-aligned airlines in every terminal at Heathrow.

Further increases in airport charges at Heathrow, which are already very high, would place additional strain on the economics of short-haul operations and risk our continued ability to sustain our existing frequency. The impact on consumers should therefore be a central focus for the CAA in assessing the cumulative impact of early expansion costs alongside other upward pressures on charges.

Our recommendations

As outlined above, Aer Lingus strongly opposes the CAA proceeding with the recovery of early costs from consumers prior to DCO approval and we urge the CAA to withdraw its proposals.

Notwithstanding our position, and strictly without prejudice, should the CAA nevertheless decide to proceed with a form of early cost recovery mechanism, the regulatory framework must be materially strengthened as follows:

1. **Ex-ante approval as the default:** Any early cost recovery must be conditional on prior CAA approval against clear criteria (necessity, timing, options preserved, quantified value case), with increased scrutiny for expenditure that creates irreversible commitments or significantly reduces future optionality (such as land or property acquisition).
2. **Certainty against duplication:** HAL must provide a transparent mapping of proposed new workstreams against pre-COVID activity, supported by independent assurance, to enable effective scrutiny by airlines and the CAA, before early costs and a cap is set
3. **A binding cap:** Costs above the cap should not be recoverable without a fresh ex-ante CAA determination following public consultation, with the burden of proof resting entirely on HAL.
4. **Single till protection:** Any land acquired through early cost recovery must remain within the single till and cannot be removed or transferred without the full return of acquisition costs and any uplift to consumers.
5. **Debt-like remuneration pre-consent:** Early costs should attract only a cost-of-debt return until DCO is granted, with any equity return contingent on delivery milestones.
6. **Transferability protections:** Land must carry transferable access and development easements for any alternative promoter.
7. **Strengthened ex-post review:** If an ex-post approach is retained, it must assess purpose and timing as well as efficiency, with a standard that enables meaningful disallowance.
8. **Clawback mechanism:** There must be a clear and enforceable clawback if the scheme is abandoned.
9. **Licence modification clarity:** The scope, tests and mechanics of the ex-post review and true-up must be explicitly defined in the licence.
10. **Independent assessor:** Any assessor must be appointed by, and accountable to, the CAA, not HAL.
11. **Alignment with the CAA Review:** Early cost treatment must remain capable of being aligned with the outcome of the CAA's ongoing review of the regulatory framework.

Conclusion

For the reasons set out above, Aer Lingus considers that the CAA's proposals to permit the recovery of early expansion costs prior to development consent to be flawed, inconsistent with established regulatory practice, and insufficiently protective of consumers. The proposals risk distorting risk allocation, undermining competition and contestability, weakening cost discipline, and setting a dangerous precedent for the economic regulation of Heathrow and other airports.

Aer Lingus therefore urges the CAA to withdraw the current proposals and reconsider its approach to early cost recovery. If, notwithstanding these concerns, the CAA decides to proceed, any such framework must be materially strengthened to ensure that consumer interests are fully protected, consistent with the CAA's primary statutory duties and ongoing review of the regulatory framework for capacity expansion.

Aer Lingus appreciates the CAA's consideration of our views on this important matter. We would be happy to discuss any aspect of our response or provide further details, as required.