

Ms Selina Chadha

CAA - Group Director Consumer Markets

By email: selina.chadha@caa.co.uk

Cc: economicregulation@caa.co.uk

Cc: sonia.sousa@caa.co.uk

**Response to the CAA's Proposals on regulatory treatment of early costs
of capacity expansion at Heathrow Airport**

Heathrow West Limited (HWL) is pleased to submit this response to the CAA's consultation on the regulatory treatment of early costs of capacity expansion at Heathrow airport (CAP 3201).

In summary:

- HWL welcomes the CAA's selection of 'guiding principles' to inform its policy on early costs recovery, and its recognition of the benefits of competition for consumers, both to date and potentially in the future.
- We support the CAA's proposals regarding HWL's recovery of costs incurred prior to the November 2025 Announcement.
- We ask that the CAA provides further clarity as to the test it will apply in assessing the recoverability of costs incurred by rival promoters in the period after the November 2025 Announcement.
- We urge the CAA to progress as a matter of urgency the workstreams it has previously said it would undertake as part of ensuring that there is a cost-efficient level playing field for HAL and rival promoters, particularly workstreams required to identify aspects of the planning process which could act as a barrier to competition, and how those barriers could be removed. In our view, it is imperative and time critical that the CAA addresses the factors which put rival promoters to HAL at a material disadvantage. We stand ready to work constructively with the CAA to identify those factors and potential solutions.
- The CAA must also devise a robust costs recovery mechanism which is effective to incentivise a coordinated and efficient process, for the benefit of all stakeholders and consumers.

1. THE CAA'S OVERALL APPROACH

- 1.1 HWL agrees with the CAA's selection of 'guiding principles' for its approach to the assessment of early costs. We particularly support the premise that the CAA should: (i) support the timely and effective development of credible and appropriately mature proposals for expansion, including by providing reasonable certainty over the recovery of costs, and have set out separately our view on how the CAA can develop a regulatory framework to support HWL in this way;¹ (ii) encourage an appropriate degree of competition in the

¹ See HWL's response to CAP 3195.

infrastructure for, and provision of, airport operation services; and (iii) avoid significant and unnecessary duplicate or wasteful planning or early construction costs.

- 1.2 We welcome the CAA's recognition that rivalry between promoters could benefit consumers in future and its acknowledgement of the benefits we have introduced so far through the process of rivalry, both in terms of cost/efficiency pressure but also expanding the universe of options considered in the Government's review.² This demonstrates the material benefits which the introduction of meaningful competition has the potential to deliver, not only in the process of expansion but also longer term in the operations of Heathrow airport. In our view, meaningful competition is the only effective way of securing the benefits of expansion for consumers and meeting the Government's requirement that costs be minimised, particularly given the significant concerns raised over the affordability of HAL's proposals. We reiterate our request for transparency on the process and criteria used to assess competing proposals as part of expansion.

2. THE APPROACH TO HWL'S COST RECOVERY PRIOR TO THE GOVERNMENT ANNOUNCEMENT

- 2.1 We welcome the CAA's view that HWL should be allowed to recover its early costs up to the November 2025 Announcement. We also concur with the CAA that it has significant discretion in designing the regulatory framework through licence conditions and that it can effect these changes through HAL's licence.³
- 2.2 As we have stated previously, we have no objection to being subject to independent scrutiny and/or enhanced reporting requirements, should the CAA consider this appropriate.⁴
- 2.3 We note the CAA's comments that HAL's higher costs could reflect HAL's planning and enabling activities to allow it to meet the Government's timetable.⁵ In our view, this is indicative of HAL's high degree of confidence that it will be able to recover such substantial costs, irrespective of stakeholder opposition (especially from the airlines). Competing promoters do not have that luxury and are at a material disadvantage in this respect, particularly in the absence of a clear regulatory framework to accommodate their proposals and a mechanism by which they may recover their costs. We have separately emphasised the urgent need for the CAA to produce such a framework.⁶ Until there is sufficient clarity on this topic, competing promoters will be operating entirely at their own risk. It is the CAA's (and DfT's) duty to take such considerations into account in seeking to ensure that there is a level playing field between promoters, and guard against HAL's ability to significantly leverage its existing position.

² CAP 3201, para 1.31.

³ CAP 3201, para 2.115.

⁴ Arora response to CAP 3149, paragraph 1.6.

⁵ CAP 3201, paragraph 2.79.

⁶ HWL response to CAP 3195.

3. THE TEST FOR COSTS RECOVERY POST NOVEMBER 2025 ANNOUNCEMENT

3.1 We agree with the CAA's view that an appropriate degree of rivalry between promoters, or by other competitive arrangements, could also benefit consumers in the future.⁷ Introducing competition in the process of expansion will inevitably lead to better outcomes for consumers, through pressure on promoters to keep costs efficient, to innovate and deliver a high quality design which appropriately caters for user demand.

3.2 We welcome the CAA's recognition that other promoters also need reasonable certainty regarding the recoverability of their costs, which it is incumbent on the CAA to provide, particularly given the guiding principles.⁸ In that light, we would welcome clarification from the CAA on the test it is setting out for HWL to recover the costs it incurs post 25 November 2025. Specifically:

3.2.1 We understand from CAP 3201 that the CAA is only proposing costs to be recoverable once HWL's plans are '*credible and appropriately mature.*' HWL requests clarity from the CAA on how it is proposing to assess this, noting that the CAA made a similar finding regarding HWL's previous proposals at the onset of the pandemic.⁹

3.2.2 We also request clarity on how the CAA is proposing to assess the 'clear benefits' to consumers it is requiring promoters to demonstrate. In order to protect the CAA's 'level playing field' approach, to discharge its statutory duties and to avoid procedural bias, this test should be interpreted consistently across all promoters, including HAL. This is particularly important given the findings of 'material uncertainty around the total costs of expansion'¹⁰ which are relevant to the overall cost-benefit analysis for consumers, which also applies to HAL. We caution the CAA against an automatic assumption that expansion, and the provision of additional capacity at Heathrow airport, will in and of itself deliver benefits to consumers, when it comes to HAL, while holding competing promoters to an alternative, higher standard. The test must also not be interpreted such as to set the threshold unreasonably high, in a manner which effectively stifles competition.

4. THE GOVERNMENT'S NOVEMBER 2025 ANNOUNCEMENT DOES NOT ALLEVIATE THE RISK OF DUPLICATIVE COSTS

4.1 HWL has already commented on the urgent need for the CAA to proactively design a regulatory framework which ensures a transparent process for coordination and information sharing.¹¹ We do not propose to repeat our representations on that topic in this consultation.

⁷ CAP 3201, para 1.31.

⁸ And in light of its previous position that HWL had developed proposals without seeking prior CAA agreement as to the funding mechanism (see e.g. CAP 2524H, paragraph 25), which HWL is now doing.

⁹ CAP 1940, Appendix G.

¹⁰ CAP 3201, paragraph 1.11.

¹¹ HWL response to CAP 3195, para 3.1.

We would however emphasise that the failure to design a regulatory framework which ensures appropriate coordination and information sharing between competing promoters would result in significant and unnecessary duplication of planning and/or early construction costs, contrary to the CAA's objectives and guiding principles. It also risks enabling HAL to leverage its existing position of significant market power to foreclose other promoters, jeopardising the level playing field the CAA and DfT are aiming to promote.

- 4.2 We disagree strongly with the CAA's view that, as a result of the Government selecting a single scheme to inform its review of the ANPS, there is a reduced potential risk of the duplication of costs to be recovered from consumers. In preparation of a competing DCO under the single scheme, HWL will necessarily be required to incur certain costs that will be duplicative, unless the CAA intervenes. For instance, HWL will be required to carry out land referencing, land acquisition work, and environmental surveys. Unless HAL agrees of its own free will to coordinate with rival promoters on such matters – which based on previous experience we very much doubt – these are works that all promoters will need to undertake and incur costs for. The selection of a single scheme to inform the ANPS, and ultimately of only one DCO application if that is what the Secretary of State decides, in no way removes the duplicative nature, and necessity, of such works and costs.
- 4.3 Moreover, HAL is currently in an advantageous position during this process. As a statutory undertaker, HAL has powers to access land for such works where landowners do not consent, and such powers are unlikely to be questioned. The position for HWL and other promoters has been questioned. Pre-pandemic, HWL's experience was that where landowners did not accede to a request from HWL to access land, HWL had to resort to applying for statutory powers to be able to do so. This adds costs but also delay, enabling HAL to leverage its existing position to its advantage.
- 4.4 Requiring multiple promoters to go separately through such processes is not only inefficient but also detrimental to stakeholders involved in the expansion process. As we highlighted in our response to CAP 3195, we previously encountered significant levels of stakeholder fatigue, confusion and additional cost (to them as well as to us) in an inefficient process which cannot possibly be in the interests of consumers. A coordinated and efficient process for progressing planning works would not only deliver the CAA's objectives set out in the guiding principles but also significant benefits for consumers in the process of expansion. In addition, it would establish a level playing field enabling rival promoters' proposals to be duly and properly considered – rather than allowing them to be thwarted by the existing uneven process. Other promoters should be allowed a fair chance to be heard and to compete in the selection of the proposal for expansion, in our case through the process for assessing a DCO application. It cannot be right that HAL is permitted to foreclose rivals from even being in a position to present their proposals for assessment, by leveraging its existing statutory advantages.
- 4.5 As such, it is unclear to us why the CAA has focused narrowly on the potential for 'enabling costs' to be a barrier to competition, but also how it appears to have concluded that as a result of the Government's announcement, this risk has somehow gone away or been substantially

reduced. There are many areas of potential duplicative costs. We would be happy to provide further details and information on these, if that would be helpful for the CAA.

- 4.6 It is imperative that the CAA designs a robust mechanism to address the concerns we have highlighted above, and we laud the CAA's stated intention to do so¹² (which we would suggest widening out to consider where such barriers may arise in other aspects of enabling and planning works for reasons set out above). We also welcome the CAA's intention to consider issues around coordination.¹³ Although the status of these workstreams is unclear, given how critical they are to delivering an effective regulatory framework, we look forward to engaging further with the CAA on such matters, in our capacity as the only other promoter whose plans the CAA has assessed to be credible and appropriately mature.

5. A ROBUST APPROACH TO COST RECOVERY

- 5.1 In addition to designing a regulatory framework to pre-empt issues relating to coordination and information provision (on which we have commented separately), the CAA needs to devise a mechanism for costs recovery which will be effective to deter HAL from gaming the system, given the clear benefits that would result for consumers in the long-run, ultimately facilitating the development of a more affordable Heathrow expansion project. In particular, the CAA needs to be clear about the different categories of consumer benefits which an effective approach can unlock. It is obviously key and consistent with past practice that only efficient costs are permitted to be recovered. But the CAA should not confine itself to only disallowing costs where these are *inefficient* for the relevant operator. Where a coordinated approach has the potential to minimise disruption and cost (financial or otherwise) for stakeholders, the CAA's approach needs to recognise the consumer benefits that would flow from that. This is in addition to the obvious benefits which competition can introduce in maintaining pressure on promoters to deliver high quality, both efficiently and innovatively.
- 5.2 Accordingly, in devising the mechanism for allowing costs, the CAA must in our view incorporate mechanisms to disallow costs which are duplicative in nature and which have been incurred as a result of HAL's unreasonable and/or obstructive position, such as refusing to respond to reasonable requests to coordinate or share results with other promoters in a timely manner. We understand that the CAA is minded to do so, given its intention to take into account harm to competition and duplication in considering whether to disallow costs.¹⁴ However, we urge the CAA to clarify now how it proposes to do so, rather than leaving that to be determined at a later juncture as part of the price control review. Delaying such clarity around these processes reduces the potential for such mechanisms to incentivise coordination and engagement, especially in the light of the weaknesses in *ex post* reviews which the CAA has flagged.

¹² CAP 3173, page 7.

¹³ CAP 3149, paragraph 3.18 and CAP 3173, page 5.

¹⁴ CAP 3201, paragraphs 2.80 and 3.8.

- 5.3 While any such mechanism will need to be compliant with competition law, the credibility of claims regarding the sensitive nature of information needs to be scrutinised carefully. We caution the CAA against an automatic assumption that there is necessarily both a competitive dynamic in all respects and sensitive information. Many of the data categories previously sought by HWL, and which if provided would have facilitated a more efficient process, are not sensitive.
- 5.4 In order to properly ensure its approach guards against wasteful and duplicative expenditure, and protects consumers' interests, the CAA's policy approach should at the very least disallow HAL's costs (i) incurred in respect of works which are duplicative; and (ii) where the duplication results from an unreasonable stance taken by HAL, such as obstruction or refusal to engage or share results with a third party, in a timely manner, without a compelling reason. The CAA could consider disallowing HAL's costs up to the amount incurred by HAL (rather than the competing promoter) for the specific workstream, but which the CAA could benchmark against another promoter's equivalent costs to assess efficiency. This would provide an additional incentive on HAL to monitor the efficiency of the costs it incurs. It is otherwise not clear how the current CAA approach would be in line with its guiding principles.

Yours sincerely,



Carlton Brown
CEO – Heathrow West Limited