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Paul Smith  
Civil Aviation Authority

10<sup>th</sup> September 2020

Sent by email to: [paul.smith@caa.co.uk](mailto:paul.smith@caa.co.uk)

Dear Paul,

**Re: HAL's Application for a RAB Adjustment ("Application")**

Further to Heathrow Airport Limited's ("HAL") written response<sup>1</sup> to the Airline Community's letter re the above<sup>2</sup>, both of which you have been copied, on behalf of the airline community at Heathrow we wanted to take the opportunity to update you further on the latest developments given the nature of this matter.

In addition, you will be aware that the Application contained examples of adjustment mechanisms at other airports that HAL has, in part, used to justify the Application. Having reviewed these further we thought it would also be helpful in your deliberations to provide some further context and corrections to these.

HAL's Response

Firstly, HAL's confirmation that they intend to continue with the Application is very disappointing as well as their position that they "*...are not responding to specific matters related to the detail of the application*" and "*consider that substantive feedback on the merits of the application is best dealt with through the CAA process.*". Given such a position our intention therefore will be to address such matters directly to yourselves in future.

The Airline Community also noted in our letters to both HAL and the CAA that the Application could not be considered as the only possible outcome to form the basis of Constructive Engagement as it had neither any regulatory or legal basis, nor had it been accepted by airlines or the CAA. Whilst we note HAL's comments they are working on this, we are deeply frustrated with their response "*...we are working through attempting such an estimate with a view to sharing if available.*". This statement not only lacks any timescale but even any commitment from HAL to address this important matter.

We re-iterate our position that we cannot engage in a process that relies solely on a single, pre-determined scenario of the Application being applied.

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<sup>1</sup> Letter from Heathrow re HAL's response to Airline Community letter (ref 2), dated 28<sup>th</sup> August 2020.

<sup>2</sup> Letter from the Airline Community to HAL re 'HAL's RAB Adjustment Application', dated 4<sup>th</sup> August 2020.

We have informed HAL of our views that this is not an acceptable situation and continue to urge the CAA to ensure HAL addresses this Application issue within both the Building Block Update and Constructive Engagement, and in a manner that allows appropriate and timely scrutiny.

HAL’s Adjustment Mechanism Examples at Other Airports

Firstly, it is worth noting that any comparison needs careful consideration given the numerous factors and differences that exist. Applying particular aspects can lead to more (or less) favourable outcomes based on the scenario onto which it is applied and this is exactly what HAL have sought to do here. Having not pursued such adjustment arrangements in previous quinquenniums, and from which they have benefited from such, HAL are now seeking to rely on these examples in part as justification for their Application. To our mind this is not appropriate.

As well as the overarching point above, with regards to the examples given in HAL’s Application<sup>3</sup> in particular we note the following:

Airport	HAL Statement	Airline Community Observation
AENA	If traffic is 10% lower than forecast, losses beyond this can be recovered through charges in the following year (n+2)	HAL has not fully detailed the circumstances for reopening the settlement (unforeseen event, <u> affecting the financial viability of AENA </u> ) however it also fails to note that <u> any price cap calculation is “capped” at +0% until 2025 (except for the health measure adjustment) </u> .
AdP	AdP has a traffic sharing mechanism for small deviations in passenger numbers and the ability to reopen its regulatory arrangements in the event of large deviations. AdP has applied for its charges to be redetermined due to exceptional circumstances	AdP has triggered the early termination of its contract in 2020 as allowed however: (i) as per the provisions of the contract, <u> the current level of charges will be maintained until the end of the tariff year (April 2021) </u> (what has changed is that AdP will not deliver the capex commitments for the year as per agreement); and (ii) <u> AdP will bear any of the shortfalls generated from the pandemic. </u>  HAL’s assessment fails to note that the traffic sharing mechanism for small deviations is almost negligible due to the maximum percentage adjustments; and whilst AdP can apply for early termination, <u> it is wrong to assume that the airport’s exposure is maximum for one year </u> (due to the charges moderation provision).  It is also worth noting that even in a yearly charges scheme, AdP may not be able to

<sup>3</sup> ‘Table 6 Adjustment mechanisms for comparator airports’ (page 19) and Annex 2: Summary of approaches in other airports and sectors, HAL Application (Version for Airlines), dated July 2020

		fully adjust its charges to cover costs. In French legislation there is provision that any yearly change in charges needs to be “moderate”. As a reference, <u>the regulator has just rejected a +12% proposed increase for 2021 at Nice airport because it was not deemed “moderate”</u> . The law also distinguishes between public airport services (SPA) and the aeronautical till, requiring SPA services not to exceed costs (including the cost of capital.) This also limits the extent to which some charges can be adjusted.
Dublin	A reopener mechanism within the Aviation Act allows for reopening of price control where there are substantial grounds for doing so	While the Commission for Aviation Regulation is analysing the reopening of its <u>recent determination</u> , it is too early to pre-empt what its decision could be given CAR have not issued a response to their consultation. <u>CAR has not indicated the decision will be retroactive</u> (i.e. whether they will adjust to “compensate” for past deviations), as being sought by HAL.
Fraport	Can reset prices at any time for the following year	To date <u>FRA have not proposed any charges changes for 2021</u> .
Schipol	Charges for the next year can be reset to reflect over/under recovery spread over three years	The settlement covers both traffic <u>and opex related to traffic</u> – HAL is only seeking a settlement on the traffic deviations element. Furthermore, changes also relate to the <u>RAB and depreciation</u> .

We hope you will find this helpful in your considerations on this important matter and we remain available to discuss any aspect further.

Yours sincerely,



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Nigel Wicking  
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