

08 August 2022

Civil Aviation Authority
CAA House
45 - 59 Kingsway
London
WC2B 6TE

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

Dear Sirs,

Consultation Response: Economic regulation of Heathrow Airport Limited: H7 Final Proposals (CAP 2365)

I write on behalf of Pandox, as operator of Hilton Garden Inn London Heathrow in respect of the ongoing consultation regarding the economic regulation of Heathrow Airport Limited (“HAL”) and should be grateful if the Civil Aviation Authority (“CAA”) would take into account the following comments.

Overall duties on CAA

The CAA must carry out its functions under Chapter 1 of the Civil Aviation Act 2012 (“CAA2012”) in a manner which it considers will further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services. Guests at Hilton Garden Inn London Heathrow are very likely to be users of air transport services at Heathrow.

In meeting that duty, the CAA must promote economy and efficiency on the part of each holder of a licence under Chapter 1 CAA2012 in its provision of airport operation services at the airport to which the licence relates. The ‘single till’ approach to regulating finances at Heathrow Airport Limited dictates that this must include all charges levied by HAL and not just the provision of airport operation services. Inefficiencies in any aspect of HAL’s costs will directly affect the range, availability, continuity, cost and quality of airport operation services.

Whilst we welcome of the proposals outlined in the final H7 document, we remain concerned that the CAA is not meeting fully the duty set out above to ensure that all services are provided economically and efficiently. The language of the document as a whole often ignores non-airline users and appears to prioritise the interests of airlines over other service users. Whilst a great deal of scrutiny is apparent when looking at the core operations, the CAA have undertaken no meaningful assessment at all of Other Regulated Charges.



We set out more specific comments below.

Chapter 8 – Other Regulated Charges

Marginal costs approach

We note that the CAA records the significant advantages of setting ORCs on a marginal cost basis. That position is then undermined by the decision, without detailed explanation, to backtrack on their previously stated position and take a different approach to some ORCs by separating out a proportion of ‘non-airline fixed costs and annuities’ and adding them to the marginal cost calculation proposed by HAL for particular ORCs such as electricity.

This is particularly surprising given that CAA have themselves acknowledged that there is currently insufficient transparency over how these costs are identified. The CAA proposal includes no definition of what constitutes an airline or non-airline operator, and the proposed split is based on an arbitrary point in time rather than any detailed analysis. The CAA have also not considered the practical complications of calculating this split pricing annually, which is likely to lead to additional work and costs for HAL which will ultimately be passed back to the ORC users and is likely to lead to an unfair split between airline and non-airline users.

It is our view that adding fixed costs and annuities into the ORC calculation places an unfair burden on non-airline ORC users who are forced to bear these additional costs leading to uncompetitive prices with no option for the ORC users to obtain a competitive market price for these services. Whilst we support the CAAs objective to keep the airport passenger charges competitive, we still believe that the ‘fixed costs & annuities’ would be better added to the passenger charge rather than passed back to the ORC users.

In the case of electricity the ‘fixed costs and annuities’ equate to approximately £18m per year, versus the ‘direct cost’ of approximately £17m per year, this has the effect of more than doubling the ORC users cost per unit of electricity, whereas if this £18m worth of ‘fixed costs & annuities’ were to be spread over the forecast passenger numbers of 67 million passengers (CAA Mid Case 2023) it would have a negligible impact of around £0.25 per passenger.

Furthermore, given that the CAA propose an independent review and will establish new rules and dispute resolution procedures, it is surprising that this work is not going to be completed in advance of any changes to HALs proposed marginal costs approach. We would encourage the CAA to complete the independent review and undertake a more detailed analysis of the true costs of providing peripheral services to non-airline users before seeking to include such fixed costs in the pricing calculations.

Governance arrangements

We note and welcome the proposals to strengthen the governance measures around ORCs. We would implore you to ensure that these proposals work for all ORC users are not too airline centric to be of benefit to all.

Other issues

We wholeheartedly disagree with the conclusions at paragraph 8.81 that:

“Wider complaints relating to alleged exploitation of dominant position are a matter for the relevant competition authorities: jurisdiction to determine those matters depends on the particular statutory regime relating to the service in question. As such, these are not matters that the CAA can address through HAL’s price control”

Given the statutory duties outlined above and the fact that the CAA have concurrent powers with the Competition and Markets Authority (CMA) to enforce the prohibitions in the Competition Act as they relate to airport operation services, they are ideally placed to ensure that there is no abuse of a dominant market position. Indeed, that is the whole purpose of the regime.

In fact, even if other regulators are best placed to take action, the CAA are best placed to assess and identify the issues and would be able to do so far more cost effectively than any other regulator given the process currently underway and their intimate knowledge of HAL’s finances.

As previously submitted, the approach taken by CAA to the pricing of ORCs by HAL has failed to promote economy and efficiency in the provision of such services. This should be addressed by additional and more specific licence conditions, greater oversight and transparency in the calculation of prices and an approach in H7 that seeks to offset the unreasonable charges levied during previous price control periods.

Yours sincerely,



Richard Lee
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Padox UK OpCo Ltd,
Hilton Garden Inn London Heathrow Airport