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UK Civil Aviation Authority

[By email:economicregulation@caa.co.uk]

Re: UK CAA consultation on a shortlist of regulatory models (CAP3251 – Heathrow capacity expansion)

Dear Economic Regulation Team:

1. Delta Air Lines, Inc. (**Delta**) welcomes the CAA's recognition in its CAP3251 consultation that there is a "*strong case*" for changes to the regulatory model at Heathrow.[1] This is important, given Heathrow's role as the UK's leading airport, notably for consumers travelling long-haul and to non-leisure destinations. To support the Government's growth agenda, it is vital Heathrow is regulated in a way that supports development of international connectivity and opportunities for UK businesses. Delta is proud to operate at Heathrow, alongside its joint venture partners Virgin Atlantic Airways, KLM and Air France, and Heathrow is the third largest long-haul international hub in Delta's global network (after Amsterdam and Paris-Charles de Gaulle).

2. The case for change is clear. Delta's experience is in line with the CAA's finding that Heathrow Airport Limited (**HAL**)'s charges are *already* high compared to other airports that are subject to greater competition.[2] Long-haul airlines and their customers face a particularly high burden at Heathrow, because long-haul charges far exceed short-haul charges, with no cost-related justification for the extent of the difference. As a result, long-haul carriers like Delta and its customers effectively subsidize airlines that have significant short-haul operations at Heathrow. The current charges will also rise sharply due to the planned additional £49 billion capital expenditure for expansion.[3] In addition, HAL's service quality remains below its pre-pandemic levels and lags behind that of comparator airports.[4] The CAA rightly identifies that there has likely been capex inefficiency at Heathrow to date, and that this needs to be addressed.[5]

3. The CAA must ensure that any changes to the model meaningfully impact the regulation of Heathrow – cosmetic tweaks will not be enough. Going forward, regulation must ensure that charges at Heathrow are set at a level which furthers the

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[1] CAP3251 Heathrow capacity expansion – consultation on a shortlist of regulatory models (link here) (**CAP3251**), paragraph 2.111.

[2] CAP3251, paragraphs 2.15, 2.56, 2.109.

[3] The CAA rightly affirms that the expected increase to HAL's charges in light of the planned expansion "*confirms the case for considering potential changes to the regulatory model*" CAP3251, paragraph 2.56.

[4] CAP3251, paragraph 2.109.

[5] CAP3251, paragraph 2.107.

interests of consumers, making travel through Heathrow competitive with respect to international comparator airports.

4. In terms of the Options the CAA puts forward for consideration, Delta supports the CAA in taking forward Option 1 to tackle the underlying issues with the current model. However, absent further development, Option 1 by itself is unlikely to comprehensively address issues arising from the current regulatory model. Delta is keen to support the CAA as it progresses its reform of the regulatory model. Our experience of airport models around the world gives us valuable insights in this respect.

5. The remainder of this letter sets out some key issues which the CAA should bear in mind as it undertakes further work on the shortlisted models, and Delta's preliminary views on the shortlisted options for regulatory reform.

The CAA should move quickly and robustly

6. As the CAA progresses its work on the shortlisted regulatory models, it must not lose sight of the pressing need for effective reform. We agree with the CAA that it should now "*focus[...] attention on the development of the future regulatory framework*", rather than carrying out further analysis on the case for change.

7. The CAA should not be deterred from progressing its review of the regulatory model by possibilities of Heathrow expansion, which remains uncertain as to both form and timing. All users at Heathrow require certainty as to how HAL will be regulated in future, and will benefit from a more robust regulatory framework. Reform of the regulatory model must move forward expeditiously. The CAA must take care to avoid becoming stuck in multiple rounds of consultation, leading to the needed reforms being delayed as the CAA wades through expert reports.

8. Delta would encourage the CAA to be bold and move quickly, and hopes that the planned consultation in September includes sufficient detail for real progress to be made. For example, in CAP3251, the CAA has proposed introducing a "cap and collar" mechanism in relation to HAL's permitted return on investment. This is a new proposal, but CAP3251 provides very little information on how this mechanism would work in practice. Without further detail, it is hard to comment on how effective a cap and collar mechanism is likely to be.

9. Given Heathrow's unique market position, and the pervasive concerns in respect of charges, service levels, and efficiency, the CAA should recognise the need to regulate Heathrow robustly. In this regard, we agree with the IATA submission that the CAA should have an active and stronger role in scrutinizing HAL's capex, including both governance and procurement.[6] Delta provides its views on Option 1 at paragraphs 15 to 19 below, including on the importance of strengthening the remit of the Independent

6 IATA response to CAP3195, page 14, link here.

Fund Surveyor (**IFS**) and ensuring the proposed new capital committee is empowered to effectively scrutinise HAL's capex.

The CAA must consider submissions in context

10. HAL will provide a huge amount of detail and evidence to the CAA during the course of this and subsequent consultations, as HAL, and its investors, have clear financial interests in the outcome of the review. The CAA must ensure that those submissions are treated with the appropriate level of caution.

11. During the H7 price control, the CAA had the opportunity to test HAL's assertions regarding the appropriate per passenger charge and weigh this against evidence from the airlines. A clear example of HAL's submissions being self-interested relates to its view of passenger recovery post Covid. HAL predicted that 76.8 million passengers would use Heathrow in 2024 – the actual number was 83.9 million.[7] The actual passenger numbers in 2023 – 2025 significantly exceeded HAL's "best case" predictions provided in December 2022, and were very close to the passenger forecasts relied on in the CAA's Final Decision.[8] These actual numbers came as no surprise to Delta, or other airlines, who had supplied the CAA with alternative forecasting which transpired to be very much more accurate, and which (if used) would have reduced passenger charges.

12. The CAA should ensure that HAL's arguments are properly contextualised by evidence from third parties, as well as tested against the CAA's own experience regulating HAL. We welcome HAL's recognition that the regulatory model does require change, and note HAL's support for regulatory models 1a, 2, 3, 4a and 5.[9]

13. Delta also notes that this review is about securing the best outcome for passengers and cargo owners.[10] Airlines will continue to provide a user perspective, as ultimately it is airline customers who pay the charges that HAL levies. The CAA should recall that there are over 80 airlines operating from Heathrow,[11] and that customers benefit from the competition between them. In that regard, IAG, as the holder of more than half of the slots at Heathrow, has strong incentives to retain market power at Heathrow. Put simply, the regulatory model that is likely to generate the "best" outcomes for International Airlines Group (**IAG**) may not align with the "best" regulatory model for consumers. IAG's transatlantic joint venture, the Atlantic Joint Business (**AJB**), has been the subject of multiple competition law investigations, the most recent concluding in August 2025 by the CMA.[12] In that review, the CMA resolved its competition concerns with commitments, but noted that as of summer 2024 "*AJB held*

7 In 2023, HAL's "high" prediction was 73.0 million passengers – actual passenger numbers were 79.2 million. In 2025, the same figures were 79.8 and 84.5 respectively.

8 See CAA Final Decision Summary (March 2023) (link here), Table 1.

9 HAL response to CAP3195, Executive Summary, page 5.

10 CAP3251, page 167, paragraph 3 ("*CAA12 defines users of air transport services as present and future passengers and those with a right in property carried by the service (i.e. cargo owners). We often refer to these users by using the shorthand of "consumers*").

11 See HAL's website (link here).

12 CMA Decision to Accept Commitments (August 2025) (link here).

*the **largest share of slots at LHR** (for all travel, not only transatlantic travel) of the three airline alliances, at **[55-65]%** (around five times greater than the capacity held by the Star Alliance JV ([10-20]%) and around seven times greater than that of the SkyTeam JV ([0-10]%))*".[13]

14. In particular, Delta shares the CAA's concerns in relation to Option 4 that, if an incumbent airline were to own and operate a terminal or acted as an "anchor" user exerting significant influence over a new terminal, the airline "*might face an incentive to offer discriminatory terms that favour its own operations over others'*".[14] Stakeholders who support Option 4 must provide robust economic evidence demonstrating that it is capable of delivering tangible benefits to consumers, including by reference to international comparator airports where "competing terminals" are present.

Review of CAA's shortlist of regulatory models

Option 1 – Integration of regulatory models 1a, 2 and 4a

15. We agree with the CAA's proposal to integrate regulatory models 1a, 2 and 4a into a new "Option 1".

Regulatory model 1a

16. Delta supports the CAA's proposal in CAP3195 that Regulatory Model 1a could include expanding the remit of the existing IFS to assess cost efficiency on a project-by-project basis.[15] We encourage the CAA to look to the StageGate capex review process at Dublin Airport, which provides a useful example of how third party expertise is brought into play to ensure efficiency of capital spend. At Dublin Airport, the IFS assesses projects and the value allowed to enter the RAB is based on that assessment. The Irish Aviation Authority also chairs this StageGate process and manages the processes around it.

17. While CAP3251 shortlists Regulatory Model 1a as part of the integrated "Option 1," the CAA's focus appears to have shifted away from expanding the role of the IFS towards introducing a new capital committee. As the CAA progresses its work in relation to Option 1, it should bear in mind the possibility of both expanding the remit of the IFS and introducing a new capital committee.[16]

18. Any new capital committee must meaningfully scrutinise HAL's capital governance and have real influence in the capex process. Delta considers that any such committee should:

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13 CMA Decision to Accept Commitments (August 2025) (link here), footnote 55. See also "*BA… holds a stronger position at LHR than any other transatlantic alliance or airline*" (paragraph 3.58(a)).

14 CAP3251, paragraph 6.235.

15 CAP3195, paragraph 4.28.

16 We note the CAA's statement in CAP3251 that it will instruct experts to consider the functions of any new capital committee and any overlap with the existing functions of the IFS, paragraph 4.135.

a. Receive comprehensive information from HAL, including regarding HAL's long-term capital plans. The CAA is right to "*share airline concerns*" that it is crucial for HAL to share information in a timely manner to ensure that there is sufficient time to scrutinise capex proposals. [17]

b. Have early input in the different options for capital investment, including in relation to the prioritization and sequencing of capital projects. As identified by Heathrow Reimagined, under the current model, the only meaningful point of control that airlines have in the capex process is the "go/no-go" decision at G3, where HAL has already taken decisions over which projects to bring forward.

c. Have meaningful veto powers, so as to ensure that its role is appropriately robust. We do not agree with the CAA's view that the committee should not have additional veto powers over the planning and delivery of HAL's capital programmes.[18] Without veto powers, the committee will be unable to effectively oversee HAL's capital programmes and ensure that they are only implemented if they are efficiently costed and scoped.

d. Include CAA representation and have a CAA-appointed chair. We understand that the CAA does not wish to chair the committee itself.[19] However, the CAA should give careful thought as to how it can most effectively contribute to the committee, given the importance of its role in regulating HAL.

e. Be able to retrospectively impose sanctions through RAB disallowance and other sanctions where HAL incurs inefficient capital costs.

19. The capital committee's powers, make up, and interaction with the IFS should be carefully calibrated to ensure that the airline community has a meaningful voice, while avoiding a situation where one or some airlines have disproportionate influence over projects at Heathrow.

<u>Regulatory model 2 – targeted adjustments to the existing incentive regime</u>

20. HAL's capital incentives should ensure that it is encouraged to promote cost efficiency, rather than encouraging growth of the RAB. Appropriately controlled use of the RAB is critical in ensuring that HAL is only compensated for the efficient costs of assets it has paid for, and that compensation is spread over the useful life of assets in a manner that is fair to consumers.

21. While Delta welcomes the CAA's recognition that a more "*targeted and flexible approach"* to capital incentives could have benefits for cost efficiency, the CAA must ensure that any adjustments to the existing incentive regime do not unduly insulate

[17] CAP3251, paragraph 4.44.
[18] CAP3251, paragraph 4.36
[19] CAP3251, paragraph 4.35

HAL from commercial risk.

22. In particular, Delta notes the CAA's suggestion that cost efficiency sharing rates could be tailored to the levels of cost certainty and risk of a given project. We agree this proposal makes sense in theory. However, in order to genuinely incentivise HAL and to prevent any abuse of a tailored sharing rate, it will be critical for the CAA to set objective criteria to determine the levels of cost certainty and whether projects are classified as low or high risk. CAP3251 is silent as to who would be responsible for determining whether a project is uncertain and subject to significant external cost risks (such that HAL would bear less of the risk of the project). HAL should not be left to determine costs certainty or whether a project is low or high risk for itself, as it will be in HAL's interests to emphasise cost uncertainty / high risk of a project so as to reduce its share of cost risk.

23. The CAA is also right to identify that backward looking ex post reviews of costs will be required before it is possible to apply ex ante incentives. Delta welcomes the CAA's recognition that "*[c]osts found to be demonstrably inefficient should be removed from the RAB*".[20]

Regulatory model 4a - enhanced scrutiny over HAL's capex procurement approach

24. As with model 1a above, Delta supports the CAA in having a stronger role in scrutinising capex, including HAL's procurement approach. We agree that enhanced scrutiny over HAL's procurement approach under model 4a would "*on its own… be insufficient to address the issues with the current model*".[21] Delta therefore welcomes the CAA's proposed approach of taking forward models 1a, 2 and 4a as an integrated package.

25. Overall, Delta supports integrated Option 1, including the CAA's identification of initial principles for the proposed capital committee to consider. The new committee should have oversight of the entire capex process – from which projects are prioritized and approved, to the establishment of budgets, determination of risk profiles and incentives, monitoring and procurement.[22] As the CAA progresses its work on introducing a new capital committee, it will also need to ensure that the new approval process does not itself, or in combination with HAL's incentives, become an impediment to progressing work swiftly and effectively.

Option 2 - long-term regulatory framework for expansion

26. Option 2 is made up of two "sub-options":

    a. A long-term cost of capital determination for expansion applied to a separate "expansion RAB", with redeterminations of the "business-as-usual cost of capital" every five years; and

[20] CAP3251, paragraph 4.146.
[21] CAP3251, paragraph 4.115.
[22] CAP3251, paragraphs 4.139 – 4.147.

b. a “cap and collar” mechanism, which would entail setting upper and lower bounds for the returns that investors can expect to earn during the period of the expansion scheme.

27. At this stage, Delta does not have enough information to determine whether Option 2 would be effective. As noted above, Delta would need additional information about how each sub-option would function in practice in order to be able to provide detailed comments on this proposal.

28. As a matter of principle, however, we agree with the CAA that it must “*guard against any disproportionate protections for investors and ensure the overall regulatory framework continued to provide incentives for efficiency and affordable charges*”.[23]

Options 3 and 4 – competition for and in the market

29. Option 3 is comprised of regulatory model 4b (which would involve requiring HAL to tender the contract for designing and building assets at Heathrow to third parties) and model 5b (which builds on model 4b by including the operation of the relevant assets as part of the tender process). In principle, Delta supports regulatory model 4b and agrees that third parties may be able to design and build assets more efficiently than HAL.

30. For models where multiple entities could potentially operate assets at Heathrow (Model 5b in Option 3 and Option 4),[24] Delta's experience at international comparators such as JFK suggests that these options may not be effective in generating competition. Delta would be happy to provide the CAA with further evidence on this if this would be of assistance.

Conclusion

31. In summary, Delta encourages the CAA to move forward decisively in developing the four Options for changes to the regulatory model. The regulatory framework needs to be strengthened, to avoid charges at Heathrow continuing to grow without commensurate benefits for consumers. Delta remains keen to assist the CAA as its work progresses.

Sincerely,

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Delta Air Lines, Inc.

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[23] CAP3251, paragraph 5.49.

[24] We note that Option 4 is contingent on a third party successfully obtaining a Development Consent Order (CAP3251, paragraph 6.223).