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Sent via email: helen.stokes@heathrow.com

Dear Helen

Status of CAP2041 “Economic regulation of Heathrow Airport Limited: “Response to its request for a covid-19 related RAB adjustment” (the “Response”)

Thank you for your letter of 5 May 2020 seeking certain clarifications of the Response. Your letter set out your understanding that:

- the Response constitutes a “decision” by the CAA only on the package of measures that will apply pending the start of the H7 price control;
- the Response does not bind the CAA as to the approach that it will take in its determination of any aspect of the H7 price control or of any other regulatory intervention that will apply during the H7 price control; and
- the way forward indicated in the Response will be reflected in the modifications the CAA makes to HAL’s licence to implement the H7 price control in 2022.

In that light, your letter sought confirmation that:

- (a) HAL will be entitled to challenge all aspects of the CAA’s H7 licence modifications once they are made by way of an appeal to the CMA pursuant to section 25 of the Civil Aviation Act 2012 (“CAA12”); and
- (b) the CAA will not seek to argue that HAL is precluded from challenging any aspect of the CAA’s H7 licence modifications on the basis that it reflects a decision already taken in the Response and which ought instead to have challenged by way of judicial review of the Response.

Having considered your letter, we consider that your understanding of the approach the CAA has taken in the Response is accurate.

Indeed, as noted in the Response, it is the CAA’s view that the majority of the issues raised by HAL’s request for a RAB adjustment are best dealt with as part of the “in the round” consideration of the H7 price control. As such, we consider that the appropriate forum for oversight of the CAA’s decision set out in the Response would be as part of any appeal to the CMA.

In this light, in line with your requests for confirmation, it is the CAA's view that HAL (and airlines) will be able to challenge all aspects of the CAA's licence modifications to implement the H7 price control by appealing to the CMA on the grounds set out in CAA12. So, we consider that HAL and airlines would be able to raise issues in relation to the CAA's decision on the adjustment of HAL's RAB set out in the Response as part of any such appeal. It will, of course, be a matter for the CMA to determine the precise scope of any appeal and the approach it takes to the determination of such matters in accordance with CAA12 and its procedural rules.

That said, we confirm that, should HAL (or airlines) appeal against the CAA's licence modification decision to implement the H7 price control, the CAA will not seek to argue that HAL (or airlines) should be precluded from challenging any aspect of the CAA's H7 licence modifications on the basis that it reflects a decision already taken in the Response that ought to have been challenged by way of judicial review of the Response. For the avoidance of doubt, the CAA reserves the right to resist any such appeal (or aspect of it) on such other grounds as it may consider appropriate.

Yours sincerely



James Wynn-Evans
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