

*Strictly Private & Confidential*

6 March 2020

**Ms Cathy Mannion**  
**Commissioner**  
**Commission for Aviation Regulation**  
**3<sup>rd</sup> Floor Alexandra House**  
**Earlsfort Terrace**  
**Dublin 2**  
**Email: [info@aviationreg.ie](mailto:info@aviationreg.ie)**

*By e-mail only*

**Re: CAR consultation on Strategic Plan 2020**

Dear Ms Mannion,

I refer to CAR's consultation paper regarding the above topic.

It is unfortunate that CAR has allowed interested parties such a limited amount of time to respond to the consultation (even bearing in mind the short extension granted by CAR). A proper consultation where interested parties could participate fully would require a number of weeks for drafting of responses and a period of time for consideration by CAR of those responses. It is concerning that the process (which should have taken place ahead of 1 January 2020) appears to be shoehorned into a number of weeks in February/March 2020.

We note that the 2020 Strategic Plan does not intend to review the strategic goals and objectives of the 2017-2019 Strategic Plan, which is an unfortunate opportunity lost. A better approach would be to take more time to engage in a more substantial consultation on a new multi-year Strategic Plan, giving interested parties more time to draft responses and engage in proper consultation.

Please find our comments on the draft Strategic Plan below:

1) Economic regulation of Dublin airport

We note the contents of CAR's Final Determination CP8/2019 on the maximum level of charges that can be imposed by the DAA monopoly. We do not intend to repeat our concerns around CAR's failure to properly regulate the DAA and prevent abuses of its dominant position, as these issues are currently before the Aviation Appeals Panel.

We note that one of CAR's strategic goals is "[A] regulatory framework that represents best international practice" and one of its objectives is to "[S]et efficient charges at Dublin airport". CAR's Final Determination falls short of these goals, and we trust the Appeals Panel will agree with our assessment in this respect.

## 2) Role as National Supervisory Authority for IAA Air Navigation Service Provider

We note that the Department of Transport, Tourism and Sport has appointed CAR as the National Supervisory Authority for the Single European Sky (SES) regulation with responsibility for the economic regulation of the IAA Air Navigation Service Provider (ANSP). We also note that one of CAR's 2020 objectives is to "[A]ssess the cost efficiency targets of the Performance Plans under the Single European Sky scheme."

It is vital that CAR's economic regulation drives the necessary behaviour changes for the realisation of the SES. Many ANSPs across Europe continue to maintain their high cost while providing poor levels of service, with increasing ATC capacity and staffing delays disrupting European passengers on a daily basis. Regarding the Irish RP3 plan, we note that IAA's capacity targets are consistent with Eurocontrol's proposal. Nevertheless, ATC delay targets should also consider past performance and local circumstances. In RP2, the average en route ATC delay per flight amounted to 0.00 (zero) min per flight which is far from the target proposed by the IAA for RP3 (0.07 min/flt in 2020). This proposal, together with a permissive incentive scheme, will reward underperformance. Additionally, the IAA Cost efficiency target (+1.9%) is not consistent with the Union-wide target (-1.9%). An increase of over €35m in 2024 compared to 2019 is unjustifiable and unacceptable. We have requested the European Commission to reject all plans not consistent with EU-wide targets approved by the Member States. If the IAA RP3 performance plan is referred back to CAR by the European Commission, CAR should work closely with stakeholders in revising the plan for the 2020-2024 period.

## 3) CAR's licensing regime

One of CAR's objectives is to "[O]perate an efficient licensing system". We support the principle of needing financially robust and resilient airlines operating under CAR's licensing regime, however CAR's recent monitoring activity in this area has been excessive, disproportionate, and inflexible. CAR should focus its licensing resources in 2020 on where they are most required, e.g., preparedness for the end of the Brexit transition period at the end of 2020.

## 4) Regulation EC (No) 261/2004

We have been disappointed by CAR's inflexible approach to the cancellations and delays caused by strike action. Ryanair is committed to providing the highest level of service and protection to our customers and takes all available measures to minimise inconvenience to our customers where unavoidable flight disruptions occur. Where a flight is cancelled, we offer affected passengers a choice between a refund or rerouting. In addition, we provide our customers with care and accommodation as applicable during disruptions. We assess each disruption on a case by case basis, and it is our policy to pay all valid Regulation 261 compensation claims within 10 days of receipt from our customer.

While Ryanair pays the vast majority of Regulation 261 compensation claims it receives without dispute, on occasion Ryanair must reject claims where we believe an unavoidable disruption is due to extraordinary circumstances. While we do not wish to disappoint customers, who may have been expecting Regulation 261 compensation, we must defend such claims as we have a duty to all our customers (Ryanair will fly more than 150 million customers this year), our staff and the regions we serve to manage our costs responsibly. The unbalanced anti-airline approach demonstrated by CAR to Regulation 261 will ultimately serve to prejudice consumers by raising fares and reducing choice, in particular on regional routes which are disproportionately affected by Regulation 261 costs.

We support the current review of Regulation 261 to make the rules fairer, clearer, and easier to apply. There are positive elements in the European Commission's proposed revision of the Regulation, including the trigger points for compensation after long delays, a list of extraordinary circumstances, limits on airline liabilities for events outside their control, and the principle of a right of redress.

An unintended consequence of Regulation 261 has been the exponential growth of the 'claims industry', in which third parties seek to involve themselves in the Regulation 261 claims process. They damage the relationship between passengers and airlines by representing to passengers that airlines' claims procedures are onerous and stressful, and the charge for their intervention can reduce the amount of compensation the passenger receives by up to 50%.

We propose that it should be confirmed that the entitlement to claim Regulation 261 compensation is personal to the passenger (or group of passengers) affected and should go to them first. Passengers should be required to submit claims in first instance directly to airlines and allow airlines a reasonable timeframe of two months to respond directly to them before engaging third parties. This would not restrict passengers from consulting legal or other third-party advisers.

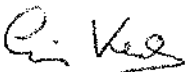
We also strongly support the dispute resolutions mechanisms established in the EU under the ADR Directive and are concerned that the practices of these third parties hinder the spirit of such mechanisms. A time-limit for bringing legal proceedings for compensation for flight cancellation should be determined by the revised Regulation 261 at two years to be consistent with the Montreal Convention.

5) Airport Charges Directive (2009/12/EC)

We note that there are a number of policy proposals for revision of the Airport Charges Directive currently being considered by the European Commission. The Airport Charges Directive has not delivered a reduction in excessive airport charges and the revised Directive needs to apply stronger measures to airports with market power. Independent Supervisory Authorities must be given the tools to apply market power assessments and adequate regulatory tools to stop airports applying excessive charges. Any revised Airport Charges Directive must be stronger than the current version, which falls short in applying adequate economic regulation to many airports around the EU that have market power but are not currently regulated according to economic dominance principles. CAR should support stronger economic regulation at a European level through its contributions to this debate.

Should you wish to discuss our above proposals, please do not hesitate to contact me.

Yours sincerely,



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Eoin Kealy  
*Head of Competition & Regulation*