

Investigation under the Airport Charges Regulations 2011 of Heathrow's 2022 charges consultation

Final Decision

CAP2489

Published by the Civil Aviation Authority, 2022

Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

You can copy and use this text but please ensure you always use the most up to date version and use it in context so as not to be misleading, and credit the CAA.

First published: November 2022

Enquiries regarding the content of this publication should be addressed to: economicregulation@caa.co.uk

The latest version of this document is available in electronic format at: www.caa.co.uk

Contents

Contents	3
Summary	5
About this document	5
Summary of this investigation	5
Chapter 1	7
Introduction and context	7
The ACR2011, the parties in this investigation and the role of the CAA	7
VAA's complaints	8
VAA's original complaint and opening of investigation	8
Relevant developments since VAA's original complaint	9
VAA's revised complaint	10
Scope of this investigation	11
Summary of the issues in VAA's revised complaint	11
CAA's request for information (RFI)	13
HAL's response to CAA's RFI	14
H7 review and its timetable	14
CAA's consultation on our Preliminary View	15
Chapter 2	16
Analysis and our Final Decision	16
Structure of this chapter	16
Whether HAL provided the information required by the ACR2011	16
Our views	18
Whether HAL consulted, and allowed sufficient time for consultation, as required by the ACR2011	21
Our views	25
Decision	27
Relevant legal provisions	28
Regulation 20: Requirement on the CAA to investigate	28
Regulation 8: Annual Consultations	28

Regulation 9: Proposals to change airport charges	29
Regulation 13: Setting of charges	30
Non-confidential version of VAA's updated complaint (14 March 2022)	
VAA's letter responding to CAA's questions for clarification (14 March 2022)	
Non-confidential version of HAL's response to the RFI (22 April 2022)	
HAL's response to the CAA's Preliminary View (25 October 2022)	

Summary

About this document

This document sets out our Final Decision on an investigation initiated following a complaint from Virgin Atlantic Airways (“VAA”) alleging that Heathrow Airport Limited (“HAL”) breached some of its obligations under the Airport Charges Regulations 2011 (“ACR2011”), including that it had failed to provide lawful consultation on its proposed 2022 airport charges, during its annual consultation process for airport charges.

This Final Decision follows a consultation on our Preliminary View¹, which was provided to HAL, VAA and other stakeholders to give them an opportunity to make representations to us before we reached our final decision. We only received one substantive response, which was from HAL and was in support of our Preliminary View. VAA noted its disappointment at our findings but did not make further representations.

In broad terms, this Final Decision confirms the findings set out in our Preliminary View.

Summary of this investigation

This investigation considered whether HAL’s consultation process for setting its 2022 airport charges breached its obligations under regulation 8, regulation 9(5), regulation 9(6), and regulation 13(1) of the ACR2011 and in particular, whether HAL has provided sufficient information and time to allow for proper consultation.

The complaint that led to this investigation was received during a time of extraordinary uncertainty in the aviation sector. Covid-19 had greatly impacted airlines and airports alike, and this had also affected the timetable for the CAA’s H7 price control review.

VAA alleged that HAL did not provide sufficient information or time to allow for proper consultation and said HAL consulted on the basis of a unilaterally defined maximum allowable yield for 2022 charges, rather than one that followed a price cap defined by the CAA. It also suggested that HAL’s consultation had not been undertaken at a formative stage and that HAL had already pre-determined the proposed charges that would be implemented.

HAL considered that its consultation process was fully compliant with the requirements of the ACR2011. HAL noted that it had to balance the challenging situation resulting from the delayed H7 process (which meant that a regulated price cap for 2022 was not available until late in 2021) with the requirements of the ACR2011 (such as the requirement to

¹ CAA, Investigation under the Airport Charges Regulations 2011 of Heathrow’s 2022 charges consultation – Preliminary View for consultation, CAP 2397, available at www.caa.co.uk/cap2397

initiate consultation four months before varying airport charges). It said that VAA's complaint was without merit and that this investigation should not be progressed further.

We investigated these issues, and have not found evidence to support VAA's view that HAL did not comply with its consultation obligations under the ACR2011. We therefore reached a Preliminary View that HAL's consultation on its proposed 2022 airport charges did not breach regulations 8, 9(5), 9(6), or 13(1) of the ACR2011 and consulted HAL, VAA and other stakeholders on that Preliminary View. Having taken into account the responses to that consultation, this Final Decision confirms our Preliminary View.

As noted in our Preliminary View, the circumstances surrounding the setting of 2022 airport charges were difficult for all stakeholders involved and this created uncertainty that was challenging to manage within the timeframes normally envisaged by the ACR2011. In future years we expect that there will be more timely regulatory information to underpin HAL's consultation processes.

We encourage HAL and the airline community to participate in close and constructive engagement on these matters in the future.

Chapter 1

Introduction and context

1.1 This chapter sets out a summary of:

- the ACR2011, the parties in this investigation and the role of the CAA;
- VAA's original complaint and the opening of an investigation under the ACR2011;
- relevant developments following VAA's original complaint;
- VAA's revised complaint;
- the scope of this investigation and the issues for investigation;
- the CAA's request for information issued to HAL and HAL's response;
- the H7 process that ran alongside HAL's 2022 charges consultation; and
- the CAA's consultation on our Preliminary View.

The ACR2011, the parties in this investigation and the role of the CAA

1.2 The ACR2011 established a common framework by which “regulated airports”² must consult their airline customers about airport charges, service level agreements and major infrastructure projects. In summary, the ACR2011:

- sets minimum standards for the provision of information
 - from airport users to airports (on their future requirements), and
 - from airports to airport users (on the basis on which they calculate and set their charges, the proposed amount of the charges and their actual charges);
- requires airports to consult airport users on their proposed level of charges, take the airport users' views into account, and respond to any objections from airport users; and
- requires airports to set non-discriminatory charges and to allocate scarce capacity fairly.

² Under Regulation 4(1) of the ACR2011, an airport is a “regulated airport” during a year if more than five million passenger movements took place at the airport in the year but one preceding that year.

- 1.3 The CAA is the independent supervisory authority responsible for enforcing the ACR2011 in the UK. In some circumstances, we are required to investigate alleged breaches of the ACR2011.
- 1.4 VAA is an airline with significant operations at Heathrow airport, and thus is subject to charges levied by HAL. Under regulation 20(3), a person on whom any airport charges have been levied by the airport operator at the airport may complain to the CAA about an alleged failure to comply with an obligation imposed by or under the ACR2011. Accordingly, in these circumstances, VAA had standing to make a complaint to the CAA under the ACR2011.
- 1.5 HAL is the operator of Heathrow airport and it has consistently served over 5 million passengers per year for decades. Therefore, it was a regulated airport, as defined in regulation 4(1) of the ACR2011, in 2021 and 2022. HAL is also subject to licence-based economic regulation by the CAA under the Civil Aviation Act 2012 (“CAA12”).³ The CAA has been developing the regulatory framework for HAL for the regulatory period starting in 2022 and that process is ongoing.⁴

VAA’s complaints

VAA’s original complaint and opening of investigation

- 1.6 We received a complaint from VAA under the ACR2011 on 5 October 2021. This complaint related to the alleged breach by HAL of its obligations under regulations 8(1), 8(2), 8(3), 8(4), 9(5), 9(6), 13(1) and 14(1) of the ACR2011 in failing to provide lawful consultation on its proposed 2022 airport charges and in proposing charges which were alleged to be discriminatory and which, if implemented, would amount to a breach of regulation 14 of the ACR2011.
- 1.7 Regulations 8, 9, 13 and 14 relate to the information operators must provide to airlines, provide that operators must consult airlines within certain timescales and consider their views before modifying their airport charges, and that airport operators must not discriminate between airlines.
- 1.8 VAA asked the CAA to investigate immediately under regulation 20(2) of the ACR2011 and to take action to prevent and/or rectify the impacts of any breach. VAA also requested that the CAA issue:
- a licence modification to prevent proposed charges being introduced and the continuation of the 2021 charges until completion of the H7 price control review, and

³ More information about HAL’s licence is available at www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Economic-licensing-of-Heathrow-Airport/.

⁴ More information about the H7 review process is available at www.caa.co.uk/commercial-industry/airports/economic-regulation/h7/h7-overview/.

- a compliance order addressed to HAL requiring it to reconsult.
- 1.9 Under regulation 20(2) of the ACR2011, if we receive a complaint that an airport operator in scope of the ACR2011 is failing to comply or has failed to comply with an obligation imposed on it by or under the ACR2011, from a person on whom airport charges are levied, we must investigate that complaint, unless we consider that complaint to be frivolous (regulation 20(4)).
- 1.10 We did not consider this complaint to be frivolous. We consider that consultation is an important part of the process for setting airport charges by regulated airports and that it is important that airport operators comply with the requirements of the ACR2011.
- 1.11 That said, regulation 28(3) also provides that we are obliged to perform our functions under regulations 20 and 21 with a view to ensure, to the extent possible, that charges are agreed between the operator and user. As such, we do not intend to specify in detail what information should be provided or processes to be followed in each consultation, beyond what is set out in the ACR2011. It would not be appropriate for us to attempt to specify such information, which will in any case vary over time and with the circumstances surrounding each airport's consultation process. As stated in paragraph 7.4 of our Guidance⁵, we would normally expect any concerns to be resolved by direct discussion between the airport operator and the airport user, but this has not proved possible in this particular case.
- 1.12 In accordance with the ACR2011 and our Guidance, we opened an investigation under the ACR2011 and, on 5 November 2021, published a notice on our website of the opening of the investigation.⁶

Relevant developments since VAA's original complaint

- 1.13 On 27 October 2021, HAL provided an update on how it was minded to change its 2022 charges following airline responses to its consultation.⁷ HAL also noted

⁵ CAA, Guidance on the application of the CAA's powers under the Airports Charges Regulations 2011, available at: www.caa.co.uk/CAP1343

⁶ Notice of the opening of an investigation under the Airport Charges Regulations 2011, available at: www.caa.co.uk/media/fr2jg2ev/notice-of-investigation-under-the-acrs-05112021.pdf

⁷ HAL, Update on 2022 Airport Charges, available at: www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/conditions-of-use-documents/2022_Airport_charges_publication_statement.pdf

that it was not yet able to make a final decision on its charges, pending the CAA's decision on a price cap for 2022.

- 1.14 On 16 December 2021, the CAA communicated its decision to introduce a holding cap for HAL's 2022 charges⁸ and the relevant licence modifications took effect on 2 February 2022.⁹ This decision by the CAA addressed the issues raised by VAA in its original complaint regarding the need to have a price cap in place for 2022.
- 1.15 Following the announcement of the CAA's decision on the holding cap, HAL announced its final decision for its 2022 charges on 17 December 2021.¹⁰ In response to airline feedback and the CAA's holding cap, HAL made changes to the level and structure of the airport charges it had proposed in its August 2021 consultation. For example, HAL reduced the overall level of charges in line with the CAA's holding cap, rebalanced passenger charges away from long-haul passengers compared with what it had set out in the consultation, and it did not introduce a cargo tonnage charge.

VAA's revised complaint

- 1.16 Subsequently, we asked VAA to clarify how the above developments affected its original complaint. VAA confirmed that only the consultation aspects of the original complaint (and thus not the discrimination aspects related to regulation 14(1) of the ACR2011) remained and in correspondence received on 14 March 2022 provided:
- a revised version of VAA's complaint, the non-confidential version of which is published as Appendix B to this document; and
 - a letter that responded to some clarification questions we had asked. This letter provides further clarification on the nature of the outstanding areas of concern for VAA and is published as Appendix C to this document.

⁸ Letter to HAL and airlines on the CAA decision on HAL's holding price cap for 2022, available at www.caa.co.uk/cap2307

⁹ Notice under section 22(6) of the Civil Aviation Act 2012 (CAA12) of the CAA's decision to modify Heathrow Airport Limited's (HAL) Licence granted under section 15 CAA12, available at www.caa.co.uk/cap2305

¹⁰ HAL, Decision - 2022 Airport Charges, available at: www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/conditions-of-use-documents/LHR_Conditions_of_Use_Airport_Charges_Decision_2022.pdf

- 1.17 In response to VAA's revised complaint we adopted the scope for this investigation as summarised below.

Scope of this investigation

- 1.18 The scope of this investigation was as follows:

Whether HAL's consultation process for setting its 2022 airport charges breached its obligations under Reg 8, Reg 9(5), Reg 9(6), and Reg 13(1) of the ACR2011. In particular, whether HAL has provided sufficient information and time to allow for proper consultation.

- 1.19 As set out above, other aspects included in VAA's original complaint have been superseded and VAA did not raise new issues in relation to HAL's compliance with the ACR2011 since its original complaint. All references to VAA's complaint from this point forward refer to VAA's revised complaint received on 14 March 2022.
- 1.20 A summary of the relevant legal provisions in the scope of this investigation is provided in Appendix A.

Summary of the issues in VAA's revised complaint

- 1.21 VAA's complaint relating to HAL's consultation process contained a range of allegations, including the following.
- VAA claimed that HAL had not provided sufficient information to allow for proper consultation. In its view, HAL did not provide the information required under regulation 8(1) and did not provide such information within the time limits in regulation 8(3) of the ACR2011.¹¹ VAA considered that HAL's consultation on its 2022 charges was not analogous to previous consultations and this required it to adopt a substantially different approach.¹² In particular, HAL consulted on the basis of an unilaterally defined maximum allowable yield for 2022 charges, instead of its normal process which involves following the price cap defined by the CAA.¹³

¹¹ Paragraph 2.2.43 of VAA's complaint

¹² VAA response to CAA's information request, letter to CAA on 14/03/2022

¹³ Paragraph 2.2.7 of VAA's complaint

- VAA considered that HAL’s H7 Revised Business Plan update 1 (RBPu1)¹⁴ and HAL’s consultation document issued in August 2021 on Airport Charges for 2022 (the “August 2021 consultation”)¹⁵ did not provide sufficient information to allow VAA and airlines to understand and engage with the proposals.¹⁶ VAA referred to the CAA’s publication (CAP2139) and said this “*highlighted the shortcomings of HAL’s RBP (which was the same document that formed the basis of HAL’s consultation) and criticised the absence of information to substantiate this plan*”.¹⁷ VAA also noted that some required information had only been made available to airlines in early 2022, with significant redactions, as part of HAL’s Revised Business Plan update 2 submission.¹⁸
- VAA said that HAL’s consultation was opaque and provided no evidence of how HAL had considered the effects of the proposed charges on different users¹⁹ and said that HAL did not provide the modelling to substantiate the economic basis of the charging proposals. In VAA’s view, without such modelling, VAA did not have adequate insight into the economic fundamentals underpinning HAL’s modelling and could not provide intelligent and engaged response to the consultation.²⁰
- VAA contended that HAL’s consultation had not been undertaken at a formative stage and that HAL had already pre-determined that the proposed charges would be implemented. In particular:
 - the period set by HAL for airlines to respond to its consultation (between 31 August 2021 and 1 October 2021) was insufficient and unreasonable;²¹

¹⁴ H7 Revised Business Plan – update 1, June 2021, available at

www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-update-1.pdf.

¹⁵ HAL, Airport Charges for 2022 – consultation document, August 2021, available at

www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/consultation-documents/Heathrow-Airport-Charges-Consultation-Document-2022.pdf.

¹⁶ Paragraph 2.2.33 of VAA’s complaint

¹⁷ VAA response to CAA’s information request, letter to CAA on 14/03/2022

¹⁸ VAA response to CAA’s information request, letter to CAA on 14/03/2022

¹⁹ Paragraph 2.2.34 of VAA’s complaint

²⁰ Paragraph 2.2.41 of VAA’s complaint

²¹ Paragraph 2.2.46 (b) of VAA’s complaint

- HAL’s commitment to publish a final decision by 31 October 2021 was insufficient for it to consider adequately the consultation responses;²² and
- HAL’s consultation was flawed, as HAL was consulting on charges which it was committed to via the RBP, and thus had no intention of departing from them.²³

1.22 As a result of the above, VAA considered that HAL’s consultation process was unlawful. VAA has requested that the CAA investigate these issues.²⁴ VAA also asked the CAA to implement arrangements to ensure HAL does not act in a similar way in the future.²⁵

CAA’s request for information (RFI)

1.23 On 25 March 2022, we shared with HAL the non-confidential version of VAA’s complaint (Appendix B) to obtain HAL’s views on the issues raised. We also shared with HAL the response VAA had given to our questions for clarification (Appendix C) for it to better understand and respond to the issues in VAA’s complaint.

1.24 We then asked HAL for any comments it had on VAA’s updated complaint, and we requested a response to the questions below:²⁶

“a. Please explain how you have sought to comply with the information requirements of Reg 8, Reg 9(5), Reg 9(6), and Reg 13(1) of the ACR2011 during the 2022 charges consultation process and provide any supporting

²² Paragraph 2.2.46 (c) of VAA’s complaint

²³ Paragraph 2.2.46 (a) of VAA’s complaint

²⁴ Paragraph 2.3.1 of VAA’s complaint

²⁵ VAA letter to CAA on 14 March 2022 (Appendix C of this document).

²⁶ CAA letter to HAL on 25 March 2022, KDN001

evidence. Your explanation should include relevant evidence, such as internal documents of key decisions you took regarding:

- i. the 2022 charging proposals to be consulted upon;
 - ii. what information should be provided to stakeholders alongside that consultation; and
 - iii. the timeline and process for consultation
- b. What further information did airlines ask you to provide during the 2022 charges consultation process, and how and when did you respond to those requests? Please evidence your response.
- c. What opportunities and time did you provide for airlines to respond to the consultation and what processes did you adopt to consider airlines' responses to the 2022 charges consultation? Please evidence your response.
- d. Did you consider a more extended consultation timetable that would involve modifying charges later than 1 Jan 2022? Why did you decide to proceed as you did? Please evidence your response.
- e. How did you evaluate the impact of the proposed charges on particular types of airlines and consumer segments and overall demand at the airport? Please evidence your response.
- f. What were the main changes you made to the 2022 charges in response to airline feedback to the August 2021 consultation?"

HAL's response to CAA's RFI

- 1.25 On 22 April 2022, HAL responded to our RFI. Overall, HAL considered that its consultation process had been fully compliant with the requirements of the ACR2011. HAL considered that it had "*carefully managed the challenging situation resulting from the delayed H7 process, the fixed requirements of the ACR2011, and airlines' requests for early price certainty*". HAL considered that VAA's complaint was "*without merit, unevidenced, and should not be progressed further*".
- 1.26 A non-confidential version of HAL's response to our RFI is at Appendix D.

H7 review and its timetable

- 1.27 The complaint that led to this investigation was received during a time of significant uncertainty in the aviation sector. Covid-19 had greatly impacted airlines and airports alike, as well as affecting the timetable for the CAA's H7 price control. In particular, HAL's consultation process for the setting of its 2022 airport charges ran alongside the CAA's development of its Initial Proposals for the H7 regulatory period (covering 2022-2026) and the development of a holding

price cap for 2022. The CAA's Initial Proposals were published on 19 October 2021 and a decision on the 2022 price cap was communicated on 16 December 2021. This led to a lack of certainty for HAL and airlines regarding the price cap that would apply in 2022. When HAL consulted on 2022 charges in August 2021, a price cap for 2022 had not yet been set and there was no agreement between the airport and airlines on a holding cap on the maximum allowable yield that could have underpinned HAL's consultation.

- 1.28 In the absence of a price cap and such an agreement, HAL consulted on the basis of the maximum allowable yield set out in its RBPu1, which it had published in June 2021.

CAA's consultation on our Preliminary View

- 1.29 On 27 September 2022, we published our Preliminary View on this investigation. In summary, our Preliminary View was that, based on the evidence available to us, there was no evidence to conclude that HAL's consultation process for setting its 2022 airport charges was in breach of HAL's obligations under ACR2011. In particular, it appeared to us that HAL provided sufficient information and time for its consultation to meet the requirements laid out in regulations 8, 9(5), 9(6) and 13(1) of the ACR2011.
- 1.30 HAL responded to this consultation on 25 October 2022. It supported the CAA's Preliminary View, and urged the CAA to reach a final decision on the same terms set out in the Preliminary View and to bring this investigation to a close. Its full response is provided at Appendix E.
- 1.31 HAL stated that it has an established consultation process which is followed to ensure that it gives proper consideration to the impact of its proposals on affected parties. Through this process it will endeavour to explore whether agreement on targeted areas can be reached with its airlines. However, it noted that Heathrow serves a diverse set of airline customers with differing needs, operating models and commercial objectives and under the current regime it has to set a single scheme of prices. Therefore, it considered that pursuit of agreement cannot and should not supersede effective consultation with a final decision being made independently by HAL.
- 1.32 HAL also stated that consultation on airport charges is at the heart of setting prices and that it will continue to ensure appropriate information is shared with its airlines and allowing sufficient time in the consultation process.
- 1.33 VAA confirmed that that whilst it was disappointed with the finding in the CAA's Preliminary View, it did not have any further comment to make on it. We did not receive any responses from other stakeholders.

Chapter 2

Analysis and our Final Decision

Structure of this chapter

- 2.1 This chapter considers the issues set out in the complaint and provides our final views on them. The issues are:
- whether HAL provided sufficient information on the components serving as a basis for determining the system or level of airport charges; and
 - whether HAL consulted, and allowed sufficient time for consultation, as required by the ACR2011.
- 2.2 We then set our our decision in relation to this investigation.

Whether HAL provided the information required by the ACR2011

- 2.3 In its complaint, VAA considered that HAL did not provide sufficient information on the components serving as a basis for determining the system or level of the charges proposed, as required by Regulation 8 and Regulation 9(5) the ACR2011.²⁷
- 2.4 VAA said that the RBPu1 and the August 2021 Consultation did not provide sufficient information to allow VAA and airlines to understand and engage with the charges proposed. VAA considered that HAL's consultation was opaque and provided no evidence of how HAL had considered the effects of the changes on different users.²⁸
- 2.5 VAA also said that HAL should have published the modelling used to develop the proposals. Without such modelling, VAA considered it did not have "*adequate insight into the economic fundamentals which supposedly underpin HAL's modelling*" and it was not "*in a position to provide an intelligent and engaged response to the consultation*".²⁹
- 2.6 Furthermore, VAA noted that the CAA had "*highlighted the shortcomings of HAL's revised business plan (which was exactly the same document that formed the basis of HAL's consultation) and criticised the absence of information to*

²⁷ Table below paragraph 2.2.10 of VAA's complaint

²⁸ Paragraphs 2.2.33 and 2.2.34 of VAA's complaint

²⁹ Paragraph 2.2.41 of VAA's complaint

substantiate this plan” in “The Way Forward” published by the CAA in April 2021.³⁰

- 2.7 We asked VAA to clarify precisely what modelling and/or additional information would have enabled VAA to respond adequately to the consultation, and what steps it took to obtain such information, but VAA’s response on 14 February 2022 (Appendix C) did not contain specific details.
- 2.8 In its complaint, VAA said that HAL’s August 2021 consultation had purported to define, unilaterally, the maximum allowable yield for the 2022 charges, which would normally follow the CAA’s price cap.³¹ HAL also required airline responses by 1 October 2021 when a price control for 2022 was not set until December 2021. VAA considered there was therefore a fundamental disconnect between HAL’s proposals and the CAA’s H7 process.
- 2.9 In its response to our RFI, HAL set out how it had sought to comply with each of the information requirements in regulations 8, 9(5), 9(6) and 13(1) of the ACR2011 – see paragraphs 30-35 of Appendix D. This details a variety of sections in the August 2021 consultation, including cross-references it makes to the RBPu1 and governance forums where the information required by the ACR2011 is provided, which, in HAL’s view, address each of the information requirements in the ACR2011.
- 2.10 HAL contended that VAA has made only generic comments suggesting that the consultation documents “do not provide sufficient information” and have not properly set out what additional information should have been provided. HAL has also said that the case law referenced in VAA’s letter is not applicable to consultations carried out by non-public undertakings and is therefore not relevant to the 2022 airport charges consultation.³²
- 2.11 We have received some evidence, in HAL’s internal decision-making papers, that shows that HAL considered the impact of its charging proposals on its airline customers and on its competitive position against other airports, given prevailing economic and sector specific dynamics.³³ However, some of that analysis is strategic information containing sensitive data about airlines operating at Heathrow and other forward looking business information. The publication of

³⁰ VAA letter to CAA of 14 March 2022

³¹ Paragraph 2.27 of VAA’s complaint

³² Paragraph 32 of HAL’s response to CAA’s RFI

³³ For example, HAL, Executive Committee Paper for meeting on 24/08/2021, slides 11, 12, 13, 28, 29 and 30, KDN002.

such information by HAL may therefore not be appropriate given competition law and other legal restrictions, and is not a requirement of the ACR2011.

Our views

- 2.12 Regulations 8(1), 8(2) and 9(5) provide that an airport operator must supply certain information to its users. While these are mostly described in terms of “details of”, the level of detail is not specified and is likely to vary on a case-by-case basis. Whether or not the case-law referred to by VAA is relevant, the ACR2011 indicate the sort of information that should be provided as part of the consultation process and HAL must comply with these regulations.
- 2.13 Based on the evidence provided to us, we do not consider that HAL’s August 2021 consultation failed to comply with the obligations in regulation 8 and regulation 9(5). We note that the set of information provided is comparable to that provided for consultations in previous years. Furthermore, we consider that the August 2021 consultation and the publication of the RBPu1 in June 2021 provide a substantial set of information on the components serving as a basis for determining the system or level of airport charges and they explain HAL’s rationale for its proposed charges. In its response to the CAA Provisional View, HAL confirmed that it would provide “*comprehensive and appropriate information*” to its customers going forward.
- 2.14 Under the ACR2011, an airport operator only needs to show details of its intended future airport charges, details of the associated quality of service it intends to provide, and information on the components serving as a basis for determining the system or level of all charges proposed, including the matters set out in regulation 8(2). We also note that the CAA’s views in April 2021 on HAL’s RBP (referenced by VAA in its complaint) were not in relation to HAL’s RBPu1, which was published in June 2021 and underpinned the August 2021 consultation, but in relation to HAL’s Revised Business Plan published in December 2020.³⁴
- 2.15 The main difference between the August 2021 consultation for the 2022 airport charges and those in previous years was that the maximum allowable yield was assumed to be consistent with the RBPu1 rather than determined by a regulatory decision by the CAA. However, as no regulatory decision or consultation on the level of the price cap for 2022 had been published in the summer of 2021, it was not a breach of the ACR2011 for HAL to consult on a different basis. We also

³⁴ HAL, H7 Revised Business Plan, available at:

<https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-detailed-plan.pdf>

note that the ACR2011 applies to many other airports that are not subject to economic regulation under Part I of CAA12.

- 2.16 HAL provided a table in paragraphs 33-35 of its response (Appendix D) to explain how it considered that the information it had provided satisfied each of the types of information required in the ACR2011. The table provides a description of, and links to sections in, various documents (including the August 2021 consultation, the consultation slides³⁵, the RBPu1, the HAL licence and sections of HAL's website) where it considered each of the information types described in regulation 8(1)(a) to (c) and regulation 8(2)(a) to (h) was satisfied. Based on our review of these documents and/or relevant sections of the documents, we consider the information they contain falls within one or more of the information types listed in those regulations.
- 2.17 Despite requests to do so VAA has not provided evidence to support its argument that the modelling it was seeking was required under the ACR2011, or what steps VAA took to request it from HAL. We do not consider that the provision of such additional modelling would necessarily be required to satisfy the information requirements listed regulations 8 and 9, and so we do not consider that HAL failed to comply with the ACR2011 by failing to provide it. That said, we encourage continuing dialogue between all parties on the information that should be provided to best support future consultations on airport charges.
- 2.18 We have some sympathy with the point VAA is making that the consultation could not take into account a key aspect determining the level of charges for 2022 – the regulated price cap. While we note VAA's views regarding the level of charges HAL was proposing, we also note that the H7 timetable meant HAL was consulting on the level of charges in the absence of an update on the price cap by the CAA.
- 2.19 In August 2021, HAL had a choice about whether to proceed on the basis of its own RBPu1 or wait until October 2021 when the CAA price cap would be available. Both options had advantages and disadvantages. In hindsight, in our view, it might have been preferable for HAL to delay the consultation in order to take into account the CAA's price cap and allow airlines to understand better how charging levels were going to change in 2022. This may have meant that the consultation period would have been shorter than the four months normally required by the ACR2011³⁶ or that the implementation of the 2022 airport charges would have been delayed. However, the earlier consultation may still

³⁵ HAL, 2022 Airport Charges & Conditions of Use – Consultation slides, KDN003.

³⁶ It is worth noting that, under Regulation 9 (2), the obligation to give a notice no later than four months before making a change does not arise where there are exceptional circumstances making this not practicable.

have been useful to start the consideration of the more structural aspects of pricing that would apply in 2022, while the CAA price cap was not available.

- 2.20 Nonetheless, HAL complied with the requirements of the ACR2011 with the information available to it at the time of its August 2021 consultation, particularly given the fact that the airport operator and its airlines were not able to agree a holding maximum yield in the absence of a regulatory decision. In particular, we consider that it was appropriate for HAL to have used alternative sources of information (such as its RBPu1) to provide the information required by regulation 8 of the ACR2011 in support of its charging consultation given its decision on when to carry out the consultation. We also consider that HAL sought to explain the rationale for the proposed changes to the structure of charges for consultation and the methodology used to derive its schedule of charges.³⁷
- 2.21 We set out Initial Proposals consulting on the level of a holding cap for 2022 on 19 October 2021 and the CAA's holding cap decision was available to HAL in December 2021. HAL adjusted 2022 prices quickly in response to the CAA's decision on the holding cap, which we consider was a reasonable outcome for airlines and consumers in difficult circumstances.
- 2.22 As explained further in the next section, in its charges decision, we have also seen evidence that HAL reflected on and had regard to airline representations in accordance with regulation 13(1), changing some of its proposals in response to such feedback. Appendix 1 of the HAL's final decision contains a detailed discussion of airline feedback on charging proposals and HAL's response to points made, as required by regulation 13(3).³⁸
- 2.23 Overall, we consider that:
- in this instance, it was not in contravention of the requirements of ACR2011 for HAL to have proceeded with its consultation in the absence of a price cap from the CAA and on the basis of information set out in its RBPu1;

³⁷ See Executive Summary of the August 2021 Consultation for rationale and, for example chapters 4 and 5 of the August 2021 Consultation, available at:

<https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/consultation-documents/Heathrow-Airport-Charges-Consultation-Document-2022.pdf>

³⁸ HAL final decision on 2022 Airport Charges, 17 December 2021, available at:

https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/conditions-of-use-documents/LHR_Conditions_of_Use_Airport_Charges_Decision_2022.pdf

- in this instance, HAL appears to have provided a reasonable set of information that is comparable to that provided for consultations in previous years. We have not seen evidence to suggest that the provision of more information was necessary for HAL to have met the information requirements of the ACR2011;
- there is little benefit to airport users and consumers for the CAA to investigate these matters further, particularly since HAL changed its approach in response to the CAA's decisions on the holding price cap and given the circumstances pertaining in 2021 were particularly unusual and unlikely to be repeated in future years.

2.24 That said, our views that HAL did not fail, in this case, to comply with the obligations in regulations 8, 9(5), 9(6), or 13(1) given the range and amount of information available in the context of HAL's 2022 charges consultation, do not preclude HAL from providing additional or different information to underpin future consultations, or prevent the airline community from requesting that HAL provides additional information in the context of future consultations. Furthermore, as noted above, the level of detail required is not specified in the ACR2011 and so the appropriate level of detail required for future consultations is likely to vary on a case-by-case basis. We encourage HAL and airlines to enter into a good faith discussions on how the charges consultations (including the provision of information) could be improved.

Whether HAL consulted, and allowed sufficient time for consultation, as required by the ACR2011

2.25 In its complaint, VAA alleged that:

- HAL's consultation was flawed and was not undertaken at a sufficiently formative stage. In particular, HAL had pre-determined the outcome of the charges consultation because it consulted on charges which it was committed to via the RBPu1 (a fixed plan it had put to the CAA), and thus had no intention of departing from it;³⁹
- the period set by HAL for airlines to respond to its consultation (between 31 August 2021 and 1 October 2021) was insufficient and unreasonable;⁴⁰ and
- HAL's commitment to publish a final decision by 31 October 2021 was insufficient for it to consider adequately the consultation responses.⁴¹

³⁹ Paragraph 2.2.46 (a) of VAA's complaint

⁴⁰ Paragraph 2.2.46 (b) of VAA's complaint

⁴¹ Paragraph 2.2.46 (c) of VAA's complaint

- 2.26 VAA also said that the charges proposals, if implemented, would have a significant financial impact on VAA, with the most concerning proposed change being the increase in departing passenger charges for Rest of World (i.e. non-European) flights.⁴²
- 2.27 HAL considered that its consultation process was comprehensive and compliant with the requirements of the ACR2011. In its response to our information request, HAL listed a number of key steps of the process which took place during 2021 that were relevant to setting the 2022 airport charges, and gave an account of its engagement with airlines (see table below paragraph 13 of HAL's response to our RFI). This timeline (supported by references to published documents and other internal documents provided to the CAA) shows, for example, that:
- the RBPu1 was published on 30 June 2021 and unredacted versions made available to airlines. This meant that airlines had two months to engage with the detail of the basis of HAL's charges prior to the formal start of the charges consultation on 31 August 2021;⁴³
 - there were eight pre-consultation bilateral meetings with airlines that requested them between June and August, including two with VAA (on 24 June and 5 August 2021);
 - there were discussions during August 2021 regarding the 2022 maximum yield, although these did not lead to agreement, as noted in a joint letter by the airport and airline representatives⁴⁴ to the CAA;
 - HAL published its consultation on 31 August 2021 and, via a meeting on 9 September 2021, followed up with supporting documentation; and
 - HAL had several further meetings (in September, October and November 2021) with VAA and with other airlines and it responded to a number of questions posed by airlines, before it made its final decision on charges.
- 2.28 HAL noted that airlines (including VAA) were offered the opportunity to engage directly with HAL in detail on the proposals set out in RBPu1 and via IATA (International Air Transport Association) but that the invitation was not accepted.⁴⁵
- 2.29 HAL said that it needed the new charges to be in effect from 1 January 2022 as, in its view, it would not have been financially sustainable to roll forwards the

⁴² Paragraphs 2.2.48 to 2.2.51 of VAA's complaint

⁴³ Paragraph 23 of HAL's response to CAA's RFI

⁴⁴ Letter from AOC, IATA and HAL to CAA on 18 August 2021, KDN004.

⁴⁵ Paragraph 15 of HAL's response to CAA's RFI

2021 pricing.⁴⁶ We received contemporary internal papers showing some evidence that HAL considered the financeability risks of not introducing an increased set of airport charges for 2022 as well as internal discussions of minimum revenue requirements for sustaining investment grade credit ratings.⁴⁷ Some of these points were also set out in the financeability chapter of RBPu1.⁴⁸ HAL further noted that it had received strong feedback from airlines that delaying its consultation would not be the preferred option.⁴⁹

- 2.30 HAL has explained the reasoning that supported its decision to publish its August 2021 consultation document four months in advance of 1 January 2022, following the statutory timetable in the ACR2011. Airlines then had one month to respond to the consultation (i.e., until 1 October 2021) and HAL reserved the month of October to prepare its final decision intended for 31 October 2021. This latter date is two months before HAL intended the 2022 charges to have effect (1 January 2022) and in-line with the timetable normally prescribed by regulation 13(2)(a) of the ACR2011.
- 2.31 On 19 October 2021, the CAA published details of a proposed holding price cap for 2022 alongside the CAA's Initial Proposals for H7. HAL then decided to take time to engage with the CAA's proposals and await the CAA's final decision on the holding cap.⁵⁰
- 2.32 On 27 October 2021, HAL confirmed that it would no longer publish its final decision by the end of October 2021.⁵¹ It nevertheless set out what changes it was minded to make to the proposed charges and that its final decision would take into account the CAA's proposals and airlines' views.
- 2.33 The CAA published its holding cap decision on 16 December 2021. HAL then made its final decision on 17 December 2021, which reflected the holding cap decision communicated by the CAA.⁵²
- 2.34 HAL submitted that it considered all airline feedback and responded to it in its final decision document. Appendix 1 of HAL's final decision contains a detailed

⁴⁶ Paragraph 21 of HAL's response to CAA's RFI

⁴⁷ For example, HAL, Executive Committee Paper for meeting on 24/08/2021, slide 6, KDN002.

⁴⁸ See chapter 5.7 of RBP Update 1, available at <https://www.heathrow.com/company/about-heathrow/economic-regulation/h7-update>.

⁴⁹ Paragraph 40 of HAL's response to CAA's RFI and HAL's consultation Meeting Minutes, section 3.5.

⁵⁰ Paragraph 25 of HAL's response to CAA's RFI.

⁵¹ Letter from Heathrow to airlines on 27 October 2021, available at www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/conditions-of-use-documents/2022_Airport_charges_publication_statement.pdf

⁵² See CAA, Letter to HAL and airlines on the CAA decision on HAL's holding price cap for 2022, 16/12/2021,

discussion of airline feedback on the charging proposals and HAL's response to points made.⁵³ In the decision document HAL also made a number of changes to the charging proposals in response to airline views including:

- *“reduction of SAF [Sustainable Aviation Fuels] ambition from 1% mix to 0.5% mix, reducing the overall incentive amount for 2022;*
- *amendment to SAF incentive allocation methodology to change from passenger numbers to available seat kilometres;*
- *did not progress sustainable build back incentive;*
- *did not progress weight-based cargo charge;*
- *amended noise chapter charge multipliers;*
- *amended the noise charge bandings;*
- *amended the long-haul / short-haul balance in departing passenger charges from 80/20 proposal to 75/25 (which was the ratio used in 2020 charges); and*
- *amended pricing to align with the CAA's decision on the holding cap.”⁵⁴*

2.35 We received evidence from HAL showing that its internal contemporary documents summarised and considered airline feedback on price increases and other proposed changes. Those internal documents also present HAL's proposed amendments directly in response to that airline feedback, including:

- removing the sustainable build back incentive;
- amending the EPNdB bandings;
- amending SAF incentives;
- potentially removing the cargo charge;
- softening or removing the rebalancing of charges; and,

available at www.caa.co.uk/CAP2307; and HAL, Decision - 2022 Airport Charges, 17/12/2021, available at www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/conditions-of-use-documents/LHR_Conditions_of_Use_Airport_Charges_Decision_2022.pdf; and paragraph 26 of HAL's response to CAA's RFI

⁵³ HAL final decision on 2022 Airport Charges, 17 December 2021, available at: www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/conditions-of-use-documents/LHR_Conditions_of_Use_Airport_Charges_Decision_2022.pdf

⁵⁴ See paragraph 57 of HAL's response to CAA's RFI

- softening the modulation of passenger charges.

2.36 These documents indicate that HAL reflected on airline feedback and revised its proposals to try and address some of that feedback.⁵⁵

Our views

2.37 Regulation 9(1) provides that an airport operator must give at least four months' notice if it intends to change the system or level or airport charges or the quality of service associated with an airport charge. Regulation 9(2) and 9(3) provides that this timescale does not apply if there are "exceptional circumstances making this not practicable", in which case the airport operator must (amongst other things), give a notice as soon as practicable and before the intended changes are made. While regulation 13(2) provides that an airport operator must publish details of any change, if practicable, at least two months before the change takes effect and, if not practicable, as soon as practicable after the two month period has begun, the ACR2011 do not contain any provisions, for example, setting the minimum period required for the consultation. Regulation 13(1) provides that an airport operator must have regard to any representations (including objections) made by airport users consulted, before making its final charging decision.

2.38 Based on the evidence provided to us, we consider that, in this instance, the consultation timetable did not fail to comply with HAL's obligations in regulation 9 of the ACR2011. In particular, HAL has followed the timetable for consultation prescribed by regulation 9(1) by giving notice of its intention to change the level of airport charges four months before the intended change was to have effect and consulting airlines on the proposed change.⁵⁶

2.39 The time formally allowed by HAL for responses by airlines is similar to those adopted in HAL's previous consultations conducted under the ACR2011. Under regulation 13(2) ACR2011, the airport operator is expected to publish details of any changes, if practicable, more than two months before they take effect and, if not practicable, as soon as practicable after the beginning of that two-month period. An equal split of the intervening time for airlines to respond and for the airport to consider those responses and prepare its final decision seems reasonable in these circumstances and consistent with the ACR2011.

2.40 We note that, in this case, opportunities for engagement between HAL, airlines, and the CAA continued beyond the formal consultation period and HAL did not

⁵⁵ For example, HAL, Executive Committee Paper for meeting on 12 October 2021, slide 4, 6, 7 12 and 13, KDN005; HAL, Board Paper for meeting on 20 October 2021, slides 16-18 KDN006; and HAL, Board paper for meeting on 29 September 2021, Table with summary of airline feedback to charging proposals, KDN007.

⁵⁶ Regulations 9(1) and 9(6) ACR 2011

make a final decision until the CAA decided on a holding cap for 2022 charges in December 2021.

- 2.41 Also, the evidence provided to us suggests that HAL took into account the airline responses to its consultation and made significant changes to its proposals as a result. In doing so, we consider that HAL has met the requirements of regulation 9(6) and regulation 13(1) of the ACR2011. HAL had regard to airline feedback⁵⁷ and changed its decision in multiple ways in response to such feedback, as well as in response to regulatory developments. Among other things, HAL's final decision:
- adopted the CAA's holding cap; and
 - significantly changed its structure of charges compared with the proposals in its August 2021 consultation, including by suspending the introduction of the cargo charge, and adjusting the modulation of long haul and short haul passenger charges from an 80/20 split to 75/25.
- 2.42 HAL produced an update to its proposed charges on 27 October 2021 and only made its final decision in December 2021. This final decision considered airline responses in detail.
- 2.43 We consider that it was legitimate for HAL to seek to modify its charges from 1 January 2022. Although it was not ideal that there was no price cap in place at the time HAL consulted airlines on 2022 charges, we consider that HAL's decision to start consultation before the CAA to published its H7 Initial Proposals was not a breach of HAL's obligations under the ACR2011.
- 2.44 Overall, we consider that:
- HAL complied with the timescale obligations in regulation 9 as it notified users of the intended charges four months before the changes were to have effect. We consider that, in the circumstances of this case, HAL provided a reasonable amount of time for airlines to respond to its consultation, and sufficient time for it to adequately consider and act on airline feedback ahead of its final decision, even though the ACR2011 do not provide specific timelines for this; and

⁵⁷ As noted above, Appendix 1 of the HAL's final decision on 2022 charges contains a detailed discussion of airline feedback on charging proposals and HAL's response to points made. For example, some of the changes made to the cargo charge and to the modulation of long haul and short haul passenger charges address some of issues raised by VAA in its response to HAL's August 2021 consultation and VAA's complaint to the CAA.

- HAL did not fail to comply with its obligation in regulation 13(1) to have regard to representations made by airport users during the consultation, as the evidence provided demonstrates that HAL considered representations received in its charges consultation in detail and made significant changes to its proposals, in response to those representations, as set out in its final decision on its 2022 airport charges.

Decision

- 2.45 On the basis of the evidence available to us and set out in this Final Decision, we have concluded that HAL provided sufficient information and time for its consultation to meet the requirements set out in regulations 8, 9(5), 9(6) and 13(1) of the ACR2011.
- 2.46 We have therefore decided to close this investigation as we consider that there is no case to take any remedial action under the ACR2011.

APPENDIX A

Relevant legal provisions

A1 This appendix sets out a summary of the key provisions in the ACR2011 that are relevant for this investigation.

Regulation 20: Requirement on the CAA to investigate

A2 Under Regulation 20(2), the CAA must investigate whether an airport operator is failing or has failed to comply with an obligation imposed on it by or under the ACR2011 if it receives a complaint about such a failure from an airline on which an airport charge has been levied by the airport operator at the airport. This obligation does not apply if the CAA considers that the complaint is frivolous.

A3 Under Regulation 21, if the CAA is satisfied that an airport operator is failing to comply with an obligation imposed on it by or under the ACR2011, or if an airport operator has failed to comply with such an obligation and is likely to do so again, the CAA may give the airport operator an order requiring it to take the appropriate steps specified in the order.

A4 Regulation 28(3) which provides that we are obliged to perform our functions under Regulations 20 and 21 with a view to ensure, to the extent possible, that charges are agreed between the operator and user.

Regulation 8: Annual Consultations

A5 Once a year and within three months of requesting information from the airport user under Regulation 8,⁵⁸ a regulated airport operator must supply to all airport users in relation to the regulated airport it manages:⁵⁹

- i) details of its intended future airport charges,
- ii) details of the associated quality of service it intends to provide, and information on the components serving as a basis for determining the system or level of all charges proposed, including the matters set out in Regulation 8(2):

(a) a list of the various services and infrastructure provided in return for the airport charges levied,

⁵⁸ Regulation 8(3) ACR 2011

⁵⁹ Regulation 8(1)-(2) ACR2011

- (b) the methodology used for setting airport charges,
- (c) the overall cost structure of the airport with regard to the facilities and services to which airport charges relate,
- (d) details of the revenue from the different components of airport charges and the total costs of the associated services or facilities,
- (e) any financing provided by a public authority in connection with the facilities and services to which airport charges relate,
- (f) forecasts for the charges, traffic growth and proposed investments at the airport,
- (g) the details of the actual use of the airport infrastructure and equipment over at least the previous 12 months, and
- (h) the predicted outcome of any major proposed investments in terms of their effect on airport capacity.

A6 After supplying such information, the regulated airport operator must, in so far as practicable, hold consultations with the airport users on its intended future airport charges and the associated quality of service.⁶⁰

Regulation 9: Proposals to change airport charges

- A7 If a regulated airport operator intends to change the system or level of airport charges or the quality of service associated with an airport charge at an airport that it manages, under Regulation 9, it must give notice to the airport users at least four months before the change has effect.⁶¹
- A8 The obligation to give a notice no later than four months before making a change does not arise where there are exceptional circumstances making this not practicable.⁶² In such circumstances, the regulated airport operator must explain the exceptional circumstances to the airport users and the CAA, and give a notice to the airport users as soon as practicable and before the intended changes are made.⁶³
- A9 Regulation 9(5) stipulates that the notice must:
- i) identify the time from which the change is intended to have effect, and
 - ii) provide information on the components serving as a basis for determining the system or level of airport charges for which a change (including a

⁶⁰ Regulation 8(4) ACR2011

⁶¹ Regulation 9(1) and 9(4) ACR2011

⁶² Regulation 9(2) ACR2011

⁶³ Regulation 9(3) and 9(4) ACR2011

change to the quality of the associated service) is proposed, including the matters set out in Regulation 8(2)(a) and (b) (see paragraph A4(ii)(a) and (b) above).

- A10 Regulation 9(6) requires that after giving such notice the regulated airport operator must, in so far as practicable, hold consultations with the airport users on its intended changes.
- A11 Regulation 9(7) provides that the obligations in Regulation 9 may be satisfied as part of or in conjunction with the satisfaction of obligations under Regulation 8.

Regulation 13: Setting of charges

- A12 Under regulation 13(1), before deciding to continue or change the system or level of airport charges, a regulated airport operator must have regard to any representations (including objections) made by airport users consulted under Regulations 7 to 9 ACR2011.

APPENDIX B

Non-confidential version of VAA's updated complaint
(14 March 2022)

COMPLAINT UNDER THE AIRPORT CHARGES REGULATIONS 2011

1. INFORMATION ON THE COMPLAINANT AND THE TARGET OF THE COMPLAINT

	Detail
Complainant	Virgin Atlantic Airways Limited (" Virgin Atlantic ")
Address	Company Secretariat - The Vhq, Fleming Way, Crawley, West Sussex, United Kingdom, RH10 9DF
Phone Number	01293 444860
Email Address	Corneel.koster@fly.virgin.com
Person authorised to discuss the detail of the complaint	Corneel Koster
Airport Operator / Target of Complaint	Heathrow Airport Limited (" HAL ")

2. DETAILS OF THE COMPLAINT

2.1 Summary

2.1.1 A breach by HAL of its obligations under Regulations 8(1), 8(2), 8(3), 8(4), 9(5), 9(6) and 13(1) of the Airport Charges Regulations 2011 ("**2011 Regulations**") in failing to provide lawful consultation on its proposed 2022 airport charging and in proposing charges which are discriminatory and which, if implemented, would amount to a breach of Regulation 14 of the 2011 Regulations.

2.1.2 The CAA is respectfully requested to immediately investigate as required under Regulation 20(2) of the 2011 Regulations, and to issue a Licence Modification and a Compliance Order in order to prevent implementation of the proposed charges and (if and insofar as HAL persists with a desire to amend the present charges) to require a fresh consultation under the 2011 Regulations to take place.

2.2 Reasons for the Complaint

Background

2.2.1 Virgin Atlantic is a premium British long-haul airline headquartered in Crawley, England. Virgin Atlantic is a long-standing airport user at London Heathrow Airport ("**LHR**").

2.2.2 HAL has a licence to operate LHR which includes (as a designated operator of an airport with significant market power) a price control on airport charges, set by the Civil Aviation Authority ("**CAA**").

2.2.3 HAL operates LHR as a regulated airport in accordance with a Relationship Framework Document agreed with the Secretary of State for Transport.

- 2.2.4 HAL's proposed charges are subject to the regulatory framework of the 2011 Regulations.
- 2.2.5 The price control condition in HAL's licence expires on 31 December 2021 and requires renewing.
- 2.2.6 The CAA has consulted for HAL's next regulatory period, known as "H7", which is due to commence on 1 January 2022. HAL has submitted a number of proposed (and revised) business plans in respect of its Regulated Asset Base ("**RAB**") and associated Airport Charges for the five-year period.
- 2.2.7 In addition, HAL has launched its annual aeronautical charges consultation for 2022, in which HAL has purported to define, unilaterally, the maximum allowable yield for 2022 charges, which are normally formed as part of the CAA defined set price path (together the "**Proposed Charges**").
- 2.2.8 The Proposed Charges are currently being consulted on by HAL in a procedurally unfair and unlawful process of consultation which commenced at the end of August 2021 and upon which submissions were required to be provided by close of business on 1 October 2021. The consultation process is irretrievably unfair and flawed, as Virgin Atlantic has explained in a letter sent by its solicitors to HAL on 1 October 2021, and as further identified in this Complaint.
- 2.2.9 Further, Virgin Atlantic has raised substantive objections to the Proposed Charges themselves, which have been articulated in a consultation response submitted to HAL on 1 October 2021. Virgin Atlantic's consultation response was provided without prejudice to the procedural and legal challenges raised in the letter sent by Virgin Atlantic's lawyers on 1 October 2021, and Virgin Atlantic's rights were expressly reserved on that basis.

Part of the ACRs being infringed

- 2.2.10 We set out below the various regulations infringed by HAL by its current consultation process and Proposed Charges, and a summary of the infringement, which is more particularly described in the body of this Complaint below.

Reg.	Obligation	Infringement
8(1), (2) & (3)	<p><i>1) A regulated airport operator must supply to all airport users in relation to the regulated airport it manages—</i></p> <p><i>(a) details of its intended future airport charges,</i></p> <p><i>(b) details of the associated quality of service it intends to provide, and</i></p> <p><i>(c) information on the components serving as a basis for determining the system or level of all charges proposed, including the matters set out in paragraph (2).</i></p>	<p>HAL has not provided sufficient information on the components serving as a basis for determining the system or level of the charges proposed. See further at 2.2.32.</p>

	<p>(2) The matters are—</p> <p>(a) a list of the various services and infrastructure provided in return for the airport charges levied,</p> <p>(b) the methodology used for setting airport charges,</p> <p>(c) the overall cost structure of the airport with regard to the facilities and services to which airport charges relate,</p> <p>(d) details of the revenue from the different components of airport charges and the total costs of the associated services or facilities,</p> <p>(e) any financing provided by a public authority in connection with the facilities and services to which airport charges relate,</p> <p>(f) forecasts for the charges, traffic growth and proposed investments at the airport,</p> <p>(g) the details of the actual use of the airport infrastructure and equipment over at least the previous 12 months, and</p> <p>(h) the predicted outcome of any major proposed investments in terms of their effect on airport capacity.</p> <p>(3) A regulated airport operator must fulfil its obligation under paragraph (1) once a year within three months of giving notices to airport users in accordance with regulation 7.</p>	
8(4)	<p>(4) After supplying information in accordance with paragraph (1) the regulated airport operator must, in so far as practicable, hold consultations with the airport users on its intended future airport charges and the associated quality of service.</p>	<p>HAL has not provided sufficient information or time for proper consultations on these very substantial proposed pricing changes. See further at 2.2.44.</p>
9(1) & (6)	<p>9.—(1) If a regulated airport operator intends to change the system or level of airport charges or the quality of service associated with an airport charge at an airport that it manages it must give a notice in accordance with this regulation at least four months before the change has effect.</p> <p>(6) After giving notices under this regulation the regulated airport operator must, in so far as practicable, hold consultations with the airport users on its intended changes.</p>	<p>HAL has not provided sufficient information or time for proper consultations on these very substantial proposed pricing changes. See further at 2.2.44.</p>

9(5)	<p><i>(5) The notice must—</i></p> <p><i>(a) identify the time from which the change is intended to have effect, and</i></p> <p><i>(b) provide information on the components serving as a basis for determining the system or level of airport charges for which a change (including a change to the quality of the associated service) is proposed, including the matters set out in regulation 8(2)(a) and (b).</i></p>	<p>HAL has not provided sufficient information on the components serving as a basis for determining the system or level of the charges proposed. See further at 2.2.32.</p>
13(1)	<p><i>13.—(1) Before deciding to continue or change the system or level of airport charges or the associated quality of services at an airport that it manages, a regulated airport operator must have regard to any representations (including objections) made by airport users consulted under regulations 7 to 9 or in circumstances in which regulation 12(2) applies.</i></p>	<p>HAL's conduct and information underpinning the consultation demonstrates that it has already pre-determined that its proposed charges will be implemented such that no proper consideration of objections raised by LHR users will be undertaken. See further at 2.2.44.</p>

Summary of Events

- 2.2.11 HAL has a long history of conducting price reviews within the framework of the 2011 Regulations and within the regulatory supervision of the CAA.
- 2.2.12 In December 2019, HAL's Initial Business Plan ("**IBP**") was submitted to the CAA as part of the CAA's H7 regulated price control review process.
- 2.2.13 Subsequently, in July 2020, HAL's Building Block Update ("**BBU**") was published. This was following both the Covid-19 outbreak and the Supreme Court's judgment¹ concerning the development of HAL's third runway programme. The BBU provided the first opportunity for HAL to present a two runway and post-Covid economic proposal.
- 2.2.14 Between August and September 2020, a process of 'Constructive Engagement' took place between HAL and the airline community (including Virgin Atlantic) concerning the BBU with a view to discussing options ahead of publication of HAL's Revised Business Plan ("**RBP**").

¹ *R (on the application of Friends of the Earth Ltd and others) (Respondents) v Heathrow Airport Ltd (Appellant)* [2020] UKSC 52; [2021] 2 All ER 967.

- 2.2.15 In August 2020, HAL published a request for a RAB Adjustment, addressed to the CAA, in the sum of £1.7 billion.
- 2.2.16 In October 2020, the CAA commenced a consultation on the RAB Adjustment request.
- 2.2.17 In December 2020, HAL published its RBP. The RBP was based on a two-runway airport and reduced passenger numbers. HAL significantly increased its RAB Adjustment request, to c.£2.6 billion.
- 2.2.18 In February 2021, the CAA subsequently published its second consultation on a RAB Adjustment.
- 2.2.19 In April 2021, a consultation commenced on "H7 Way Forward". The consultation summarised the CAA's broad approach to the remaining aspects of HAL's ongoing regulated H7 price control review programme. Virgin Atlantic submitted its own response to the RAB Adjustment consultations and worked closely with the London Heathrow Airline Consultative Committee and Heathrow Airline Operators Committee on community responses.
- 2.2.20 The CAA also published its Working Paper on Q6 Capex and Early Expansion Costs. This working paper discussed the CAA's proposed treatment and assessment of two categories of historical capital expenditure (capex) incurred by HAL, namely i) capex incurred during the Q6 price control period; and ii) early expansion costs incurred before March 2020.
- 2.2.21 The CAA also simultaneously published its Decision on Covid-19 related RAB adjustment. In this respect, the CAA's press release stated (with our emphasis added in underline):

"Due to the effect of the pandemic, HAL requested an adjustment to its Regulatory Asset Base (RAB) of £800m now, and a total of £2.6bn at the end of 2021. This would be recovered through airport charges from 2022.

Following a review of evidence from all stakeholders and consistent with our previous statements, we have decided that an early adjustment of the size of HAL's request would be disproportionate and not in the interest of consumers. It would also be better to deal with many of the issues raised by HAL during the next H7 price control review.

We do, however, recognise that these are exceptional circumstances and there are potential risks to consumers in the short-term.

We are therefore allowing a much smaller RAB adjustment of £300m to incentivise HAL to plan effectively, reopen its terminals in a timely way for a summer recovery, and generally invest to benefit its consumers.

In coming to this decision, we have focused on quality of service and investment and also considered the financial position of the

notionally efficient company (which is consistent with the approach we use in setting price controls), with a lower assumed level of gearing than the actual company. We are clear that any risks to HAL's actual financing are a matter for its shareholders, not for consumers to resolve.

We will also consider whether any further RAB adjustment should be made as part of the next price control. But only if it brings long-term benefits to consumers."

2.2.22 In May 2021, the CAA held a series of workshops on key issues relating to the proposed RBP. Virgin Atlantic attended the CAA's workshops, which largely covered new capital governance process.

2.2.23 In June 2021, HAL's H7 Revised Business Plan Update was published. For the purpose of capturing what was said to be 'HAL's deteriorating position since the initial RBP', the June 2021 RBP outlined a full RAB Adjustment, low passenger forecast, huge capital budget, higher charges, increased profits and a low service and resilience scenario if RAB recovery was not granted.

2.2.24 The RBP Update reflects the following excessive and wholly disproportionate projected increase in key financial measures on HAL's future balance sheet:

- (a) Increased revenues by 71%
- (b) Increased operating profits by 48%
- (c) Increased Profit before Tax by 134%
- (d) Increased dividend payments by 143%
- (e) Increasing profitability per passenger by 312% on average through H7.

2.2.25 We note that on 25 August 2021 the CAA wrote to HAL to confirm that (with our emphasis added in underline):

"Under Regulation 20 of the ACR2011, the CAA is under an obligation to investigate complaints as to whether an airport operator is failing to comply or has failed to comply with an obligation imposed on it by the ACR2011. If we were to receive such a complaint from a Heathrow airport user, we would have to consider all the relevant facts to the case and cannot give you assurance in relation to the outcome of any particular investigation that might arise...

...

...if no clear agreement exists between HAL and airlines [as at September / early October] and we consider it necessary to the discharge our duties to protect consumers then in parallel with our Initial Proposals we intend to publish a notice consulting on a proposed licence modification to introduce a holding price cap for 2022 (that would be tried up against our final proposals in due

course), based on the analysis published in our Initial Proposals, with responses due after 4 weeks; and

issue a notice making that licence modification by the end of November 2021 (subject to any representations made on that proposed modification and not withdrawn)."

2.2.26 On 31 August 2021, HAL published its Airport Charges for 2022 Consultation Document.² There is a fundamental and deeply curious disconnect between HAL's proposals (as set out in the Consultation Document) and the CAA's ongoing H7 process.

2.2.27 HAL's Consultation Document sets out the charges that HAL proposes are to be paid by airport users (including Virgin Atlantic) for services at LHR, and reflects charges based on the changes made by HAL to its RAB. The Consultation Document states (with our emphasis added in underline):

"Given the lack of information from CAA regarding its decision on the H7 price control or its approach to 2022, Heathrow has engaged separately with the CAA and airline community on the approach to setting charges for the start of 2022. We provided information supporting the 2022 charge in our Revised Business Plan (RBP) that was published in June 2021. As at the time of publishing this consultation, no decision has been reached by the CAA or agreement between CAA, airline community and Heathrow on a specific charge level for the start of 2022. Therefore, Heathrow is consulting on the basis of the 2022 yield set out in the update to its RBP, published in June 2021."

2.2.28 Concerning the proposed consultation process, the document states (with our emphasis added in underline):

"Publication of this consultation document initiates the consultation process. We are keen to listen to customer feedback throughout this process and we thank those who have already expressed early views.

Heathrow will be holding a consultation meeting on 9 September 2021. To help inform the consultation, Heathrow requests written responses from the airline community by 1 October 2021. Heathrow will consider all comments received during the consultation period, ahead of issuing a decision by 31 October 2021 for implementation from 1 January 2022."

2.2.29 As foreshadowed in the Consultation Document, on 9 September 2021 HAL hosted its Airport Charges Consultation Meeting. This was claimed to be an opportunity for the airline community to comment on the proposed pricing of Airport Charges. This meeting was an opportunity for HAL to seek to explain and justify the increase in

² Heathrow Airport: Airport Charges for 2022 (Consultation Document) (Version 0.2 27 August 2021): <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/consultation-documents/Heathrow-Airport-Charges-Consultation-Document-2022.pdf>

charges that were itemised in the Consultation Documents. However, the only new information that was presented of interest was a cut of the 2022 passenger forecast that showed a 1% shift in the split of long-haul versus short-haul passengers back in favour of short-haul.

- 2.2.30 Virgin Atlantic did its best, on the basis of the short timescale and limited information available to it, to provide comment on i) the aberrant discrepancies between the proposed price increases on long-haul (Rest of World, "**RoW**" passengers) versus domestic and/or short-haul services, and ii) HAL's approach, or rather lack of, to price sensitivity analysis.
- 2.2.31 HAL's unreasonable demand for written responses from the airline community by 1 October 2021 provided an insufficient period of time for Virgin Atlantic to properly understand the basis of the proposals, obtain from HAL additional required information, properly consider the impact on Virgin Atlantic's business and operations and thus be in a position to make fully adequate representations to HAL as part of the consultation process.

Why HAL's behaviour infringes the ACRs

1. Breach of Regulations 8(1), 8(2), 8(3) and 9(5)- failure to provide information critical to understanding the proposals

- 2.2.32 Pursuant to the 2011 Regulations, HAL is obliged to provide "*information on the components serving as a basis for determining the system or level of all charges proposed*".
- 2.2.33 The RBP and the Consultation Document do not provide sufficient information to enable Virgin Atlantic (and other LHR users) to properly understand and engage with the underpinning economic rationale for the Proposed Charges.
- 2.2.34 The economic basis as set out in the RBP, and subsequently adopted as the basis of the Charging Proposals contained within the Consultation Document, is opaque to say the least. Further, there is no adequate, if any, evidence of how HAL has considered the effects of the Proposed Charges, and as between different categories of airport user, which is in itself a mandatory consideration.
- 2.2.35 Given this obvious lacuna, it is perhaps not surprising that the Charging Proposals would, if implemented, be unjustifiably discriminatory in effect.
- 2.2.36 The required elements of regulatory consultation have been clarified by caselaw.
- 2.2.37 A lawful consultation must additionally contain the following elements, as set out by the Court of Appeal in *R v North and East Devon Health Authority, ex p Coughlan* [2001] QB 213 at §108:

“To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

- 2.2.38 These required elements of a lawful consultation have been confirmed by the Court in a number of subsequent cases³.
- 2.2.39 Fairness accordingly requires that consultees are able fully to understand the basis on which the charging proposals are advanced, so that they can make properly informed representations as part of the consultation process. Fairness additionally requires that sufficient information is provided to enable consultees to challenge the accuracy of any facts and the validity of any arguments and so a decision maker engaged in consultation should include the reasons why the decision-maker is putting forward the proposal, the evidential base for it, and any assumptions made⁴.
- 2.2.40 In particular, fairness in a case such as this requires the disclosure of the modelling used in order to develop and arrive at the Charging Proposals which are the subject of the consultation. For example, in *R (Eisai Ltd) v NICE* [2008] EWCA Civ 438, Richards LJ held that it was unfair to withhold an operable computer model during a consultation process, as this caused significant disadvantage to the consultees, who were unable to make informed representations on the limitations of the model used.⁵ The principle was applied to disclosure during litigation in *HCA International Ltd v CMA* [2014] CAT 11 §35.
- 2.2.41 No modelling has been provided to Virgin Atlantic in order to substantiate the supposed economic basis of the Charging Proposals. Accordingly, without adequate insight into the economic fundamentals which supposedly underpin HAL's modelling, Virgin Atlantic is not in a position to provide an intelligent and engaged response to HAL's consultation.
- 2.2.42 That is a material omission which renders the consultation unlawful.
- 2.2.43 In the circumstances, HAL has also failed to discharge its obligations under Regulation 8(1) within the timeframes specified in Regulation 8(3) of the 2011 Regulations.

³ See e.g. *R (on the application of Greenpeace Ltd) v Secretary of State for Trade and Industry* [2007] EWHC 311 (Admin), §55-58, *R (on the Application of Easyjet Airline Company Limited) v Civil Aviation Authority* [2009] EWCA Civ 1361, Dyson LJ at §46], and *R (on the application of Baird) v The Environment Agency* [2011] EWHC 939 (Admin), Sullivan LJ at §40.

⁴ *Bushell v Secretary of State for the Environment* [1981] AC 75 at 96

⁵ See also e.g. *British Dental Association v General Dental Council* [2014] EWHC 4311 §40; *R (London Criminal Courts Solicitors Association) v Lord Chancellor* [2015] 1 Costs LR 7 §35.

2. Breach of Regulation 8(4) and 9(6) – failure to undertake correct consultations

2.2.44 The regulatory framework of the 2011 Regulations imposes express obligations on HAL with regards to the raising / amending of airport charges for its users.

2.2.45 The 2011 Regulations confirm that "*before deciding to continue or change the system or level of airport charges or the associated quality of services at an airport that it manages, a regulated airport operator must have regard to any representations (including objections) made by airport users consulted under regulations 7 to 9 or in circumstances in which regulation 12(2) applies*"

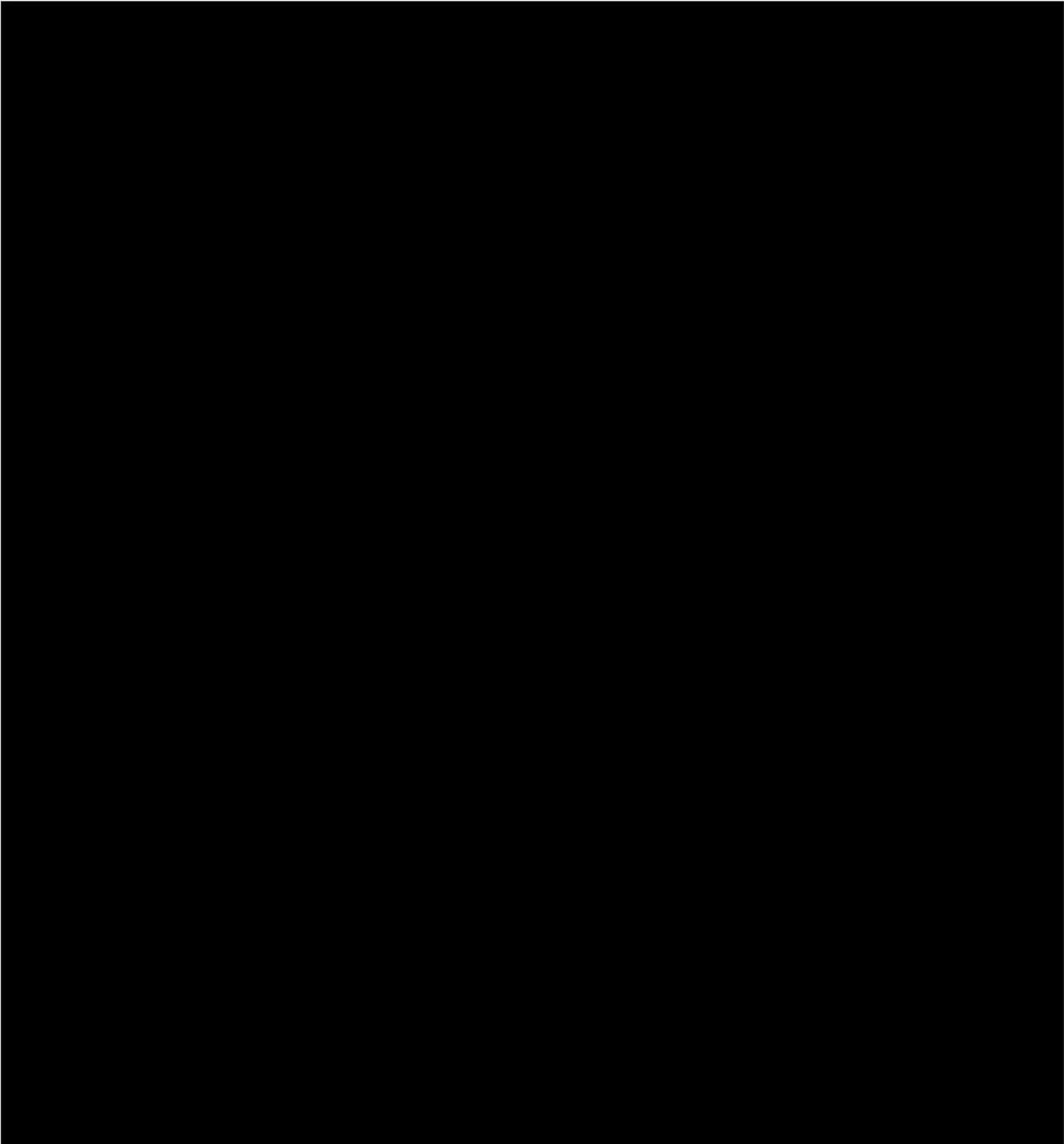
2.2.46 Consultation is accordingly a key part of the process set out in the 2011 Regulations. However, HAL's conduct in undertaking its consultation process has been severely flawed for the following reasons:

- (a) The outcome of the consultation has, in effect, been pre-determined by HAL because the Charging Proposals are based on its RBP, meaning that HAL is effectively consulting on Proposed Charges to which it has already committed itself to via its RBP. HAL clearly has no intention of departing from the Proposed Charges that it has 'locked in' via its RBP, and the consultation on those Proposed Charges is therefore transparently vacuous. The effect of this is that HAL has already pre-determined the outcome of its consultation: its intention appears to be to proceed with imposing its Proposed Charges in accordance with the fixed plan it has put to its regulator, the CAA; the consultation has not therefore been undertaken at a formative stage and is accordingly unlawful.
- (b) Additionally, the one-month period permitted for LHR users to respond to the Charging Proposals (which are unclear and inadequately explained), is plainly insufficient and compromises the integrity of the consultation as a whole.
- (c) Finally, HAL has committed itself to a timeline of considering all consultation responses before publishing its final decision on 31 October 2021. This allows insufficient time to consider fully adequate consultation responses, assuming consultees were in a position to provide them.

2.2.47 Accordingly, HAL's consultation process is irretrievably flawed, and therefore unlawful. The process needs to be halted and recommenced on a proper legal basis.

The effect of the behaviour on Virgin Atlantic and other LHR users

2.2.48 The Charging Proposals outlined by HAL in the Consultation Document would, if they were ever implemented, result in a truly massive financial impact on Virgin Atlantic relative to 2021.



- 2.2.50 Potentially the most concerning proposed change (among a large number that cause us deep concern) is in respect of the proposed increase to the departing passenger charge for RoW flights to £67.86, which will have a significant impact on the pricing of all long-haul services out of LHR (including Virgin Atlantic's services), and their ability to compete with rival operators at other airports.
- 2.2.51 These charges will be to the significant detriment of competition and contrary not only to the best interests of Virgin Atlantic but those of

its customers and indeed consumers of long-haul air travel services at LHR as a whole.

Fairness, reasonableness, and transparency

2.2.52 The obligations on HAL as a dominant company (indeed, a monopolist) are not merely substantive in terms of discriminatory and/or excessive prices. As a dominant company, HAL also has an obligation to put in place a system whereby the basis on which it has calculated its proposed charges is transparent and clear, as well as a procedural obligation to allow those affected by the proposed charges have a reasonable and sufficient time to respond. As matters stand, HAL has not respected these obligations. In particular, the proposed charges are not said to be justified by any improvement in service or change in costs but appear to be no more than an attempt to exploit customers which have no choice but to use HAL's services at LHR.

2.3 Action Sought

2.3.1 With a view to ensuring the continued interests of users of air transport services at LHR, Virgin Atlantic respectfully requests that the CAA, as the independent economic regulator of HAL, urgently investigates the issues raised in this Complaint.

2.3.2 The CAA has important statutory functions, and it is Virgin Atlantic's expectation that you will discharge those duties with diligence, robustness and urgency. Virgin Atlantic will assist you to do so in any way it can.

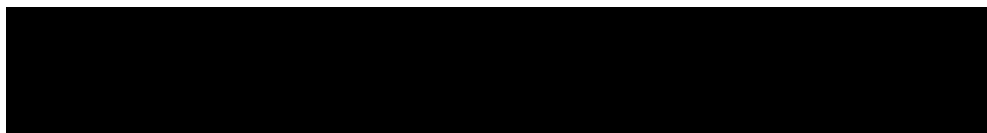
Need for urgency

2.3.3 The need for urgency in CAA's investigation is clear; it arises because HAL's proposal to issue its own Proposed Charges on 31 October 2021 means such charges would be imposed by HAL from 1 January 2022. This would be well before the CAA has consulted on and made decisions concerning its H7 price control. Notably, the CAA's final determination with regard to the H7 price control will not be formalised until June 2022 (or later). The Statutory Notice for 2022 charges is likely to conclude later this year, however the date is currently unknown.

2.3.4 This timeline means that consultees cannot have any sensible or reasonable opportunity to consider the application of the CAA's Initial Proposals and Statutory Notice before HAL proposes to implement the 2022 charges.

2.3.5 Additionally, under these timeframes, it is unclear whether and, if so on what basis, pricing is to be retrospectively applied or refunded for the period from 1 January 2022.

2.3.6



- 2.3.7 The implementation of the Charging Proposals would be devastating for Virgin Atlantic, and no doubt other airport users, and would very clearly be wholly contrary to the interests of consumers.
- 2.3.8 We accordingly request that this Complaint be considered on an urgent basis.
- 2.3.9 It is Virgin Atlantic's expectation that the CAA will conduct its investigation as expeditiously as possible and in accordance with the CAA's 'Code of Practice for the Investigations and Enforcement Team'. In the context of this complaint, expeditiousness requires the investigation to be undertaken and completed urgently, and in any event before HAL's stated proposed deadline for publishing its determination of its 2022 Charging Proposals scheduled on 31 October 2021.

Need for confidentiality

- 2.3.10 All information contained within this Complaint and within the enclosed materials, which are not already publicly available, is strictly confidential. Confidentiality extends not only to financial and other information that is commercially sensitive (such as the figures quoted in respect of likely commercial prejudice to Virgin Atlantic), but also to the fact of the complaint itself.
- 2.3.11 Virgin Atlantic therefore requests that confidentiality be maintained. Furthermore, Virgin Atlantic requests forewarning and consultation should the CAA consider there is any need to disclose any information contained within this Complaint and the appended materials, including for the purpose of disclosing that information to HAL or to any other third party as part of the CAA's process of investigation. As a minimum, Virgin Atlantic's expectation is that information (particularly sensitive information) will only be shared with Virgin Atlantic's express authorisation and consent, and subject to an express understanding with the recipient that it will maintain confidentiality on the same terms.

3. FACTUAL EVIDENCE SUPPORTING THE COMPLAINT

- 3.1 In support of this Complaint, Virgin Atlantic relies on the documents listed below, many of which the CAA is already familiar.

No	Date	Document	Copy / Link
1.	December 2019	HAL's Initial Business Plan	See document at: https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/Heathrow-initial-business-plan-detailed.pdf
2.	July 2020	HAL's Building Block Update	See copy of document enclosed
3.	July 2020	HAL's RAB Adjustment Request	See document at: https://www.caa.co.uk/uploadedFiles/CAA/Content/Accordion/Standard_Content/Commercial/Airports/H7/Heathrow%20Airport%20Limited%20-%20RAB%20Adjustment%20Submission.pdf
4.	December 2020	HAL's Revised Business Plan	See document at: https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-detailed-plan.pdf
5.	April 2021	CAP 2139: CAA's Economic Regulation of Heathrow Airport Limited: Consultation on the Way Forward	See document at: https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10400
6.	April 2021	CAP 1996: CAA's Economic Regulation of Heathrow Airport Limited; working Paper on Q6 Capex and Early Expansion Costs	See document at: https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10398
7.	June 2021	HAL's H7 Revised Business Plan Update	See document at: https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-

			regulation/RBP-update-1.pdf
8.	25 August 2021	Letter from CAA to HAL	See document enclosed
9.	31 August 2021	HAL's Airport Charges for 2022 (Consultation Document)	See document at: https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/doing-business-with-heathrow/flights-condition-of-use/consultation-documents/Heathrow-Airport-Charges-Consultation-Document-2022.pdf
10.	24 September 2021	Virgin Atlantic's letter to CAA	See document enclosed
11.	1 October 2021	Virgin Atlantic's formal response to HAL's consultation	See document enclosed
12.	1 October 2021	Letter DLA Piper to HAL	See document enclosed

3.2 Please contact us should the CAA require any further information.

SIGNED:

.....
Corneel Koster

DATE:

.....

APPENDIX C

VAA's letter responding to CAA's questions for clarification (14 March 2022)

Andrew Walker
Civil Aviation Authority
11 Westferry Circus
London
E14 4HD

14 March 2022

Dear Andrew,

Virgin Atlantic Airways Ltd (“VAA”) Complaint under the Airport Charges Regulations 2011 (“ACR2011”) regarding Heathrow Airport Limited’s (“HAL”) consultation on its proposed 2022 airport charges

I write in response to your letter dated 28 February 2022 and address the areas you have requested clarification on as follows:

Bearing in mind the CAA did not publish Initial Proposals until October 2021 and HAL has now taken into account our decisions on the holding price cap, can you please clarify whether your suggestion that HAL unilaterally defined the maximum yield for 2022 remains a concern?

Our complaint that HAL was unilaterally defining the maximum yield for 2022 has been superseded by events and no longer remains a concern.

We understand that during the charges consultation process HAL provided similar information to what it has historically presented to airlines as part of its consultations on airport charges.

The fact that HAL may have provided similar information to what it had historically presented to airlines as part of its consultations on airport charges is precisely why VAA issued a complaint about HAL’s consultation for 2022 charges.

HAL’s consultation on 2022 charges was not analogous to previous consultations and this required it to adopt a substantially different approach.

Unlike previous consultations, HAL was seeking to unilaterally increase the maximum yield outside the regulated process. In doing so, HAL was seeking to increase the yield by 106%; from £19.36 to £37.63. This would have resulted in an increase of the ROW departing passenger charge of 77%. Increases to the yield and departing passenger charge by these margins is entirely unprecedented.

Given the enormity of the increases HAL was proposing to charge, and the magnitude of the effect such charges would have had on VAA’s business, it was inappropriate for HAL to follow what it had done in previous consultations. Instead, it was entirely incumbent upon it to engage with airlines in a way which would have enabled them to respond to the consultation in a meaningful way; by giving them sufficient time to assess the profound impact of the charges on its business and to fully comprehend the basis for the proposed increases.

To state that HAL provided similar information in the 2022 consultation to what it has historically provided to airlines implies that the airlines should have been satisfied with this information and misses the point of VAA’s complaint.

Can you please clarify precisely what modelling and/or additional information would have enabled VAA to adequately respond to the consultation, and what steps you took to obtain such information from HAL?

A consultation meeting took place between airlines and HAL where additional information from HAL was requested to justify and support the unprecedented increases it was proposing.

VAA also requested further details in a letter, dated 1 October 2021, from our external solicitors DLA Piper to HAL. HAL failed to provide any further information to airlines, or address VAA's concerns on any level.

It is worth noting that in "The Way Forward" document published by the CAA in April 2021, the CAA itself highlighted the shortcomings of HAL's revised business plan (which was exactly the same document that formed the basis of HAL's consultation) and criticised the absence of information to substantiate this plan. It is therefore self-evident why the same lack of information from HAL in its consultation document would also not be acceptable to airlines. It is also worth noting that these items have only been made available to airlines in early 2022, with significant redactions, as part of HAL's Revised Business Plan Update 2 submission.

Since HAL's consultation process is now complete, can you please clarify whether your request that the CAA issues a compliance order requiring HAL to conduct a fresh consultation is still current?

Due to the lapse of time between VAA's complaint on 5 October 2021 and your letter dated 28 February 2022, events have moved on and we no longer request that the CAA requires HAL to conduct a fresh consultation.

However, we do still consider that HAL failed to conduct a proper consultation in accordance with its obligations under ACR2011 and that there is a risk that HAL could engage in similar opportunistic and abusive conduct in a future consultation. We therefore consider that this matter continues to warrant investigation and it is incumbent on the CAA to devise and implement an appropriate strategy, as HAL's regulator, to ensure it does not act in a similar way in the future.

More broadly, are there other aspects of the above summary that have been superseded by events and are no longer current and/or relevant?

Given the profound changes that HAL was proposing, VAA's residual complaint is that, in all the circumstances, HAL failed to provide sufficient time and sufficient information. This is fully set out in our complaint and I attach a redacted non-confidential version, which focuses on these residual concerns.

Yours sincerely

Abigail Cox

Abigail Cox
Associate General Counsel

APPENDIX D

Non-confidential version of HAL's response to the RFI
(22 April 2022)

Andrew Walker
Civil Aviation Authority
Consumer and Markets Group
11 Westferry Circus
London
E14 4HD

By email to: andrew.walker@caa.co.uk

22 April 2022

Dear Andrew,

We write further to your letter dated 25 March 2022, our letter of 12 April 2022 and your response of 22 April 2022.

As we have set out previously, Virgin's complaint is without merit, unevidenced and should not be progressed further. Heathrow has carried out a very comprehensive and fully compliant consultation process. We provided airlines with over 500 pages of information and several supporting models and spreadsheets to explain and evidence our proposals. We have engaged airlines on both the H7 business plan and the 2022 airport charges proposals. For the 2022 charges consultation alone, this has included attending over 21 meetings, of which 6 were with Virgin directly. During the consultation we responded to airlines' requests for further information as quickly as practicable. When making the final decision, we carefully considered all feedback received and made a number of changes to our proposals to reflect that, as shown in our detailed and comprehensive decision document. Throughout the process, Heathrow worked hard to navigate the exceptional challenges presented by the unique situation which arose in respect of 2022 charges and it is deeply disappointing that Virgin has chosen to proceed with a complaint to the CAA rather than engage collaboratively throughout the process.

We enclose Heathrow's response to the CAA's information request in which we provide a complete response to the CAA's questions. The Executive Committee and Board papers and minutes are all strictly confidential and should not be disclosed outside the CAA as doing so would seriously harm Heathrow's commercial interests. We have redacted privileged material where necessary and the disclosure of non-privileged content in the same document is in no way a waiver of that privilege.

Should you require any further information, please contact Mark Oliver, Interim General Counsel at mark-lhr.oliver@heathrow.com.

Yours sincerely,



Ross Baker
Chief Commercial Officer
Heathrow Airport Limited

CAA's Information Request dated 25 March 2022 – Heathrow Airport Limited Response

Introduction

1. It is important at the outset of this response to make clear that the primary driver of the increase in maximum yield and therefore the proposed airport charges is the unprecedented reduction in forecast passenger volumes for 2022. As the CAA is aware, the forecast has reduced by 47% as compared to the pre-covid expectations. Heathrow has consulted carefully and comprehensively with all airlines and acted in accordance with all applicable regulatory requirements and has acted in good faith throughout the process. We disagree strongly with Virgin Atlantic Airways Limited's ("**Virgin**") attempted characterisation of the process Heathrow undertook in setting the 2022 airport charge and the manner in which the overall level of that charge was defined.
2. The substantive complaint made by Virgin regarded the yield number Heathrow initially consulted on and we note that complaint has not been maintained as Heathrow's 2022 airport charge aligns with the CAA's holding cap decision¹. Nonetheless, Heathrow rejects all assertions made by Virgin regarding allegations of discrimination.
3. The 2022 airport charges process was a unique and unprecedented situation caused by the lack of certainty as to the H7 price control condition². The CAA has confirmed that it will provide a decision on the H7 settlement during 2022 which will put a price control condition in place from 2023 and will provide all parties with certainty going forward. The situation which arose in 2022, due to lack of certainty over the maximum yield, will therefore not be repeated. Virgin's claim that Heathrow acted in an "opportunistic and abusive" manner is clearly sensationalist and incorrect.
4. Heathrow carried out a compliant airport charges consultation. Virgin has mischaracterised events and failed to provide any substantive support to its claims. Heathrow is well-aware of the legal requirements of the Airport Charges Regulations 2011 ("**ACR**") and the consultation process was fully compliant. As such, no additional compliance could be secured by proceeding with this investigation. Further and importantly, Virgin is no longer asking the CAA for any remedy, further reinforcing that this complaint is frivolous, without merit, and a poor use of time and resources for all involved. We therefore maintain the position set out in our letter dated 12 April 2022, although note the content of the CAA's response of today's date.³
5. We set out below details of the 2022 airport charges process, the H7 process and their interdependencies. We then go on to provide responses to the CAA's specific questions as set out in the letter dated 25 March 2022.⁴

Interaction of H7 process and airport charges process under Airport Charges Regulations 2011

6. As the CAA is aware, there are two separate regimes governing the setting of airport charges at Heathrow. The first of these regimes is the rules under the ACR and the second is the economic

¹ This was confirmed in Virgin's letter dated 14 March 2022 – Annex 30

² This was acknowledged by the CAA in their letter to Heathrow dated 25 August 2021 – Annex 5

³ Letter from CAA to Heathrow dated 22 April 2022 – Annex 33

⁴ Request for Information Letter from CAA to Heathrow dated 25 March 2022 – Annex 31

licencing regime and price control set by the CAA. All parties were aware at all relevant times that the timeline for setting the price control condition is not within Heathrow's control and that it would affect setting 2022 airport charges.⁵ The delays to the H7 programme resulted in an unusual conflict with the ACR statutory timetable. Despite our best efforts at the time of needing to set the 2022 airport charge Heathrow did not have a price control condition in force from 1 January 2022; airlines were pushing for pricing certainty as a priority and we were not able to obtain sufficient comfort to delay the ACR process. We therefore took the decision to proceed using the extensive body of H7 submissions shared with airlines as the basis for a yield number and consulting on modulation in the usual manner through the consultation process. Virgin, as a sophisticated Heathrow-based carrier, is well aware of both regimes and have been engaged in detail with both.

7. The "iH7" regulatory period ended on 31 December 2021. At the end of iH7, the price control condition in the Q6/iH7 licence ("**Q6 Licence**")⁶ also ended. It had been hoped that a new price control condition, which is set by reference to Heathrow's cost base and the regulatory building blocks, would be in place to take effect from 1 January 2022 so as to provide forward certainty for 2022 and H7. Due to delays, it became apparent that the required decision would not be forthcoming before the end of 2021. It was also expected that the CAA would issue initial proposals containing a proposed maximum yield number during Summer 2021⁷ and prior to the commencement of the 2022 airport charges consultation, however, this did not take place. The Initial Proposals⁸ and holding cap proposal were ultimately published in October 2021.
8. Heathrow wrote to the CAA on 10 August 2021⁹ to ask for clarity as to its approach to enforcing the ACR and for the necessary assurances regarding the "*exceptional circumstances*" exception in Regulation 9(2) ACR along with other matters, so as to allow Heathrow to delay commencing consultation under the ACR whilst it attempted to agree a holding cap with airlines.¹⁰ As set out in that letter, airlines had made clear that they did not support any delay to the airport charges consultation timetable notwithstanding the fact that airlines knew there was no price control condition in place for 2022. The CAA responded on 25 August 2021 and did not provide the assurance requested.¹¹
9. We note the CAA's comments in that letter,¹² whereby it confirmed that the CAA would have regard to the unprecedented circumstances that the aviation sector was facing if there was a resulting investigation under the ACR in relation to the 2022 airport charges process. Whilst this did not provide the assurance needed to allow Heathrow to delay the consultation, we ask the

⁵ The potential issue with the processes not aligning for 2022 was well known by all involved and had been expressly noted in a letter from the CAA to Heathrow dated 12 February 2021 which was copied to the airline community and published on the CAA website and it has been subsequently noted in a range of H7 consultation documents and responses. Letter:

<https://www.caa.co.uk/media/lkzewzfp/letter-to-hal-on-timing-of-the-h7-price-control-final-february-2021.pdf>

⁶ Q6/iH7 Licence: https://www.caa.co.uk/media/n4dbpdwr/heathrow-licence_20191217.pdf

⁷ Timetable, set out on Page 13, in CAP 2139A:

[https://publicapps.caa.co.uk/docs/33/HAL%20Consultation%20on%20the%20Way%20Forward%20Appendices%20\(CAP2139A\).pdf](https://publicapps.caa.co.uk/docs/33/HAL%20Consultation%20on%20the%20Way%20Forward%20Appendices%20(CAP2139A).pdf)

⁸ CAP 2265: [https://publicapps.caa.co.uk/docs/33/CAP2265A%20H7%20Summary%20\(p\).pdf](https://publicapps.caa.co.uk/docs/33/CAP2265A%20H7%20Summary%20(p).pdf)

⁹ Letter from Heathrow to CAA dated 10 August 2021 – Annex 3

¹⁰ These collaborative discussions did not result in agreement, as set out in the Letter from AOC, IATA and Heathrow to CAA dated 18 August 2021 – Annex 4

¹¹ Letter from CAA to Heathrow dated 25 August 2021 – Annex 5

¹² Page 2 of letter from CAA to Heathrow dated 25 August 2021 – Annex 5

CAA to keep the wider context and circumstances in mind. It is our view that this further supports Heathrow's position that this investigation should be brought to a close.

10. Given the request from airlines to provide future price certainty and the statutory timetable required by the ACR, Heathrow commenced consultation on 31 August 2021. This was a rational, appropriate and fully ACR compliant decision. At no stage prior to this did Virgin raise any formal objection with Heathrow as to the process and timeline being followed.
11. Virgin asserts that Heathrow was not entitled to make a 'unilateral' decision on airport charges, that is incorrect. The ACR provide for consultation on charges and are designed so that an airport operator can make a proposal, consult on it and, taking into account feedback, come to a decision. This is an appropriate way for an organisation to engage with a large range of customers and representative bodies and is what Heathrow has done in relation to the 2022 airport charges.
12. Heathrow has had to balance meeting the requirements of the ACR in the context of a delayed H7 process. In doing so, Heathrow followed the required process, provided all necessary information to airlines, took all feedback into account and came to a lawful decision. This was a robust, reasoned and compliant process.

Timeline

13. In 2021, the following key steps occurred relevant to setting 2022 airport charges. As the CAA will note, Heathrow has engaged thoroughly with airlines throughout.

Date	Event
12 February 2021	Letter from CAA to Heathrow re H7 price control timetable ¹³ .
27 April 2021	CAA published Consultation on the Way Forward (CAP 2139 ¹⁴).
4 May 2021	CAA published response to Heathrow's request for a covid-19 RAB adjustment (CAP 2140 ¹⁵).
19 May 2021	Meeting with an airline regarding SAF and carbon.
18 June 2021	Deadline for responses to Way Forward consultation.
30 June 2021	Heathrow issued RBP update 1 ("RBPu1") to the CAA and airlines. Whilst the version of RBPu1 on Heathrow's public website is redacted, Heathrow provided the airlines with full access to the unredacted version via a SharePoint site on the same day.
June – August 2021	Pre-consultation bilateral meetings with airlines who requested them regarding 2022 airport charges – 8 meetings were held during this period.

¹³ Letter from CAA to Heathrow dated 12 February 2021: <https://www.caa.co.uk/media/lkzewzfp/letter-to-hal-on-timing-of-the-h7-price-control-final-february-2021.pdf>

¹⁴ CAP 2139: <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10400>

¹⁵ CAP 2140: <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10399>

Date	Event
	<p>Meetings with Virgin took place on 24 June 2021 and 5 August 2021. The June meeting covered matters relating to 2022 pricing and potential incentive schemes. The August meeting addressed matters regarding potential SAF and carbon pricing and incentives.</p> <p>Meetings took place with the CAA regarding 2022 charges and the maximum yield on 6 July and 23 July 2021.</p>
Summer 2021	Scheduled publication of Initial Proposals. ¹⁶
4 August 2021	Meeting with airlines and AOC regarding 2022 maximum yield.
9 August 2021	Meeting with airlines and AOC regarding 2022 maximum yield.
16 August 2021	Meeting with airlines and AOC regarding 2022 maximum yield.
18 August 2021	Heathrow, airlines and AOC send letter to CAA regarding outcome of discussions regarding 2022 maximum yield ¹⁷ .
31 August 2021	Airport Charges Consultation document issued to airlines. ¹⁸
1 September 2021	Meeting with Virgin regarding proposed 2022 charges structure.
9 September 2021	Airport charges consultation meeting with all airlines, representative bodies and CAA invited.
13 September 2021	Meeting with Virgin regarding proposed 2022 charges.
15 September 2021	Issued consultation meeting attendees with slide deck ¹⁹ , minutes ²⁰ and a corrections note. ²¹ In the covering email, Heathrow made an open offer to all attendees to reach out with any queries with which we would assist via email or by meetings. ²²
21 September 2021	<p>Issued revenue bridge analysis to airlines, following a request for further information showing the impact of yield and volume interventions.²³</p> <p>Meeting with airline representative group on proposed 2022 charges.</p>
1 October 2021	Deadline for user feedback to Heathrow on airport charges consultation proposals.
14 October 2021	Meeting with an airline regarding proposed 2022 charges.
15 October 2021	Meeting with an airline regarding proposed 2022 charges.

¹⁶ Page 5, CAP2139 - <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10400>

¹⁷ Letter from AOC, IATA and Heathrow dated 18 August 2021 – Annex 4

¹⁸ Consultation Document – Annex 8

¹⁹ Consultation Slides – Annex 10

²⁰ Consultation Meeting Minutes – Annex 9, ,

²¹ Consultation Corrections Note – Annex 11

²² Consultation Meeting follow-up email – Annex 12

²³ Revenue Bridge analysis – Annex 13

Date	Event
19 October 2021	Meeting with an airline regarding proposed 2022 charges.
27 October 2021	Heathrow issued update statement to airlines regarding publication of final airport charges decision. ²⁴
28 October 2021	Meeting with an airline regarding proposed 2022 charges.
29 October 2021	Meeting with an airline regarding proposed 2022 charges.
3 November 2021	Meeting with Virgin regarding 2022 charging structure.
11 November 2021	Meeting with Virgin regarding 2022 charging structure.
14 November 2021	Meeting with an airline regarding proposed 2022 charges.
19 October 2021	CAA published Initial Proposals document regarding the H7 price control as well as proposals for a holding cap on 2022 airport charges (CAP 2265). ²⁵
17 November 2021	Deadline for response to CAP 2265 on the matter of 2022 airport charges and 2022 holding cap.
19 November 2021	CAA published working paper on proposed approach to outcome-based regulation and initial proposals on targets, rebates, bonuses and summarises key proposed changes to the Licence (CAP 2274). ²⁶
23 November 2021	CAA published the draft licence modifications related to the Initial Proposals (CAP 2275). ²⁷
10 December 2021	CAA issued a letter extending the consultation period for the H7 Initial Proposals to amend the deadline for responses from 17 December 2021 to 18 January 2022 for CAP 2274 and 21 January 2022 for CAP2275. ²⁸
16 December 2021	CAA letter to Heathrow, BA, Virgin and AOC regarding holding cap decision. ²⁹ CAA published holding cap decision. ³⁰ Heathrow took this into account and released its 2022 airport charges decision, in line with the holding cap, the following day.
17 December 2021	Final 2022 airport charges decision issued. ³¹

²⁴Letter from Heathrow to airlines dated 27 October 2021 – Annex 24

²⁵ CAP 2265A: <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10913>

²⁶ CAP 2274: <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10986>

²⁷ CAP 2275: <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=10987>

²⁸ CAP 2274 and CAP 2275: <https://www.caa.co.uk/media/tadhff2n/h7-consultation-timetable-extension-letter-10122021.pdf>

²⁹ Letter from CAA to Heathrow, BA, Virgin and AOC dated 16 December 2021 (CAP 2307):

<https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=11037>

³⁰ Letter to Heathrow and airlines dated 16 December 2021 (CAP 2307):

<https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=11037>

³¹ Airport Charges Decision Document – Annex 28

Date	Event
17 December 2021	Deadline for response to CAP 2265 for matters not responded to in the 17 November 2021 responses.
21 December 2021	CAA published notice under Section 22 of the Civil Aviation Act 2012 of the CAA's decision to modify Heathrow's Licence, replacing the price control condition with a holding price cap for 2022 along with various other changes (CAP 2305). ³²

H7 Price Control

14. The H7 price control setting process has been ongoing since 2016 with all airlines operating at Heathrow fully and comprehensively engaged. The information provided throughout this process has helped airlines to understand the basis of charges at Heathrow and is complementary to the information provided during the timetabled ACR process. In December 2019, Heathrow submitted its Initial Business Plan for H7 ("**IBP**")³³ to the CAA. Heathrow engaged on the IBP with airlines and wider stakeholders throughout 2020 and then published its Revised Business Plan ("**RBP**")³⁴ in December 2020. Heathrow's RBP update 1 ("**RBPu1**")³⁵ was provided to airlines and the CAA in June 2021.
15. In August and September 2020, Heathrow carried out Constructive Engagement³⁶ with the airline community whereby 80 hours of engagement on Heathrow's H7 plans took place over a two-month period. Further engagement sessions also took place with the airline community in early 2021 regarding the proposals set out in Heathrow's RBP; these sessions covered the key building blocks which make up the H7 airport charge, including detailed discussion on the passenger forecast, operating costs, commercial revenues and capital plan, as well as the overall regulatory framework. Airlines (including Virgin) were offered the opportunity to directly engage with Heathrow in detail on the proposals set out in RBPu1 and via IATA declined that invitation.
16. In July 2021, the CAA asked Heathrow and the airlines to hold discussions to attempt to agree an interim price for 2022. Collaborative discussions were held on 4, 9 and 16 August 2021 but were unable to come to agreement, as was confirmed to the CAA in the letter dated 18 August 2021.³⁷ After publication of the Initial Proposals, a second attempt took place to agree a price with airlines so that the 2022 charges could be determined and to give certainty to all concerned. Those discussions did not result in an agreement.
17. The documentation and evidence provided in the IBP, RBP and RBPu1 provided airlines with great detail on Heathrow's business case for H7 and are supported by extensive evidence and analysis.

³² CAP 2305: <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=11051>

³³ IBP: <https://www.heathrow.com/company/about-heathrow/economic-regulation/h7-update>

³⁴ RBP: <https://www.heathrow.com/company/about-heathrow/economic-regulation/h7-update>

³⁵ RBPu1: <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-update-1.pdf>

³⁶ Pages 90 – 103, RBP: <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-detailed-plan.pdf>

³⁷ Letter from AOC, IATA and Heathrow dated 18 August 2021 – Annex 4

Heathrow has engaged with airlines throughout the H7 process to obtain, consider and respond to feedback.

18. The airlines operating at Heathrow Airport, including Virgin as a major carrier, are very sophisticated entities who have been engaged in detail on the business plan being put forward by Heathrow throughout the H7 process, which are the basis for Heathrow's charges, as well as the 2022 airport charges consultation. Virgin has responded in detail to various of the H7 consultations, been part of extensive airline engagement and is well-aware of the economic case and underlying basis of Heathrow's proposed charges. As discussed further in paragraph 32 below, information provided to airlines throughout the H7 process, particularly via the RBPu1 documentation, fully satisfied the relevant Regulation 8 ACR requirements.

2022 Airport Charges Consultation

19. As the CAA will note from the timetable above (see paragraph 13), Heathrow's consultation process was comprehensive. In addition to the community wide engagement, a number of bilateral meetings were held with Virgin both before and during the statutory consultation process. These are in addition to wider engagement sessions carried out in relation to the holding cap and other matters relating to the H7 price control. Virgin has been both provided with detailed information and listened to throughout.
20. Regulation 9(1) ACR requires a regulated airport operator to give notice to airlines of any intention to change the system or level of airport charges no later than 4 months before the charge has effect, unless exceptional circumstances apply (Regulation 9(2)). Regulation 9(6) requires the airport, as far as is practicable, to hold a consultation with airlines regarding the proposed charges. Regulation 13 ACR requires the airport to publish details of the final decision "*(a) if practicable, before the period beginning two months ending with the day on which the change takes effect; and (b) if not, as soon as practicable after the beginning of that period*".
21. Heathrow needed to bring new charges in to be effective from 1 January 2022. It was not possible to roll forwards 2021 pricing because it would not be financially sustainable for Heathrow to do so. Heathrow discussed this with the CAA on multiple occasions and it was widely understood.
22. To bring in a charge to be effective from 1 January 2022, Heathrow followed the statutory timetable set out in the ACR and published the consultation notice on 31 August 2021 (compliant with the Regulation 9(1) ACR time period). It would not have been practicable to publish any earlier, as Heathrow was both seeking to agree a maximum yield number with the airlines and waiting for a holding cap decision from the CAA. In the absence of either, Heathrow chose to rely on the well-reasoned and robustly evidenced number set out in RBPu1.
23. Airlines were provided RBPu1 on 30 June 2021, and they had therefore already had two months to engage with the detail of the basis of Heathrow's charges prior to issue of the consultation notice on 31 August 2021. After issuing the consultation notice, airlines had just over a week to review the documentation before attending the consultation meeting where Heathrow presented the proposals and answered any questions. As we intended to publish our decision by 31 October 2021 (in line with the normal timeframe set out in Regulation 13 ACR), giving airlines one month

to respond was a reasonable timeframe for airlines to engage with the structure and incentives proposed. This then allowed one month for Heathrow to fully consider feedback, attend any bilateral meetings and answer written queries from airlines as well as prepare a decision document by 31 October 2021.

24. During October 2021, Heathrow reviewed and considered feedback from airlines, engaged in various bilateral meetings and prepared the consultation Decision Document.³⁸
25. On 17 October 2021, the CAA published the Initial Proposals including details of a proposed holding cap for 2022 charges. After careful consideration, on 27 October 2021, Heathrow confirmed to airlines that it was no longer practicable to publish a charges decision by the end of October³⁹. This was because Heathrow needed to take time to engage with the CAA's proposals and await the final decision. So as to give airlines forward certainty of Heathrow's intentions, we informed airlines in that letter that we were *"committed to ensuring that our final decision reflects upon both the CAA's proposals and airline views"* and having considered airline feedback in detail, we set out what changes we were minded to make to the proposed charges. These are further addressed at paragraph 57 below. Heathrow further wrote to the CAA on 29 November 2021 and explained the continuing impact the delay to the CAA's decision making was having on the 2022 airport charges process.⁴⁰ The CAA responded on 6 December 2021 stating that it intended to publish a decision on the holding price cap after the CAA board meeting on 15 December 2021 and that the CAA would *"take account of the steps that HAL has taken to ensure its compliance with ACR2011"*.⁴¹
26. The CAA published its holding cap decision on 16 December 2021 and we issued our airport charges decision the following day, having made the necessary amendments to reflect the holding cap. The final decision to implement the CAA holding cap price with the previously communicated modulation was taken swiftly to ensure that airlines were able to updated pricing as soon as practicable.
27. Throughout the process Heathrow's consultation was robust, procedurally fair and compliant with the requirements of the ACR. It must also be considered within the wider context of the years of procedure and engagement on H7 as well as the uncertainty created by the delays to H7 decision-making.

Other general comments on VAA letters

28. In addition to the significant engagement detailed above specific to H7 and 2022 airport charges, there is continual engagement with airlines throughout the year, which includes discussion on the structure of charges, airport plans and carrier needs. The Virgin specific regularly scheduled meetings we hold are as follows:

- 28.1. monthly Joint Steering Board meetings (except in August);

³⁸ Airport Charges Decision Document – Annex 28

³⁹ Letter from Heathrow to airlines dated 27 October 2021 – Annex 24

⁴⁰ Letter from Heathrow to CAA dated 29 November 2021 – Annex 26

⁴¹ Letter from CAA to Heathrow dated 6 December 2021 – Annex 27

- 28.2. quarterly Joint Executive meetings between Heathrow’s Chief Executive Officer, Chief Commercial Officer, Chief Operating Officer and Virgin’s Chief Executive Officer, Chief Customer and Operating Officer, Chief Commercial Officer, Vice President Airports and Clubhouses, Vice President Network, Alliances and Commercial Planning and Senior Manager, Strategic Airport Development;
 - 28.3. monthly 1:1 meetings between our Chief Commercial Officer and Virgin’s Chief Customer and Operating Officer as well as between our Aviation Director and Virgin’s Vice President Airports and Clubhouses;
 - 28.4. Quarterly Business Review meetings which include Heathrow’s Aviation Director, Head of Aviation, Growth Partnership Manager and Virgin’s Vice President Airports and Clubhouses, Head of Heathrow and Senior Manager Airport Development; and
 - 28.5. regular account meetings covering both operational and commercial matters between the relevant individuals from Heathrow and Virgin.
29. We note that, for accuracy and completeness, paragraph 2.2.3 of Virgin’s complaint says that we operate Heathrow Airport in line with a ‘relationship framework document’ with DfT. That document relates to the expansion programme. As it is not relevant to Virgin’s complaint, we do not comment on this further.

Information request – responses

30. We set out below detailed responses to each of the specific questions asked by the CAA.

“13(a) Please explain how you have sought to comply with the information requirements of Reg 8, Reg 9(5), Reg 9(6), and Reg 13(1) of the ACR2011 during the 2022 charges consultation process and provide any supporting evidence.”

31. Heathrow has provided airlines with all the information required by the ACR as well as more extensive engagement across the building blocks. The ACR specific engagement is set out in the table below. Airlines operating at Heathrow are sophisticated and experienced in engaging with both the 5-yearly price control process and the annual airport charges consultations, and as such, the most efficient and proportionate way to provide the necessary information was both within the consultation document and by cross-reference to RBPu1 and other governance forums.

32. We note that Virgin has made only a generic comment that they believe the documents “do not provide sufficient information” and have not properly responded to the CAA’s question as to what information it believes was required. The case law referenced in their letter is not applicable to consultations carried out by non-public undertakings and is therefore not relevant to the 2022 airport charges consultation.

ACR Regulation	Information supplied
8(1)(a): details of its intended future airport charges.	Set out in chapter 4 of the Consultation Document and the Consultation Slides. Further information was also

ACR Regulation	Information supplied
	provided in the post meeting notes contained in the Consultation Minutes. ⁴²
8(1)(b): details of the associated quality of service it intends to provide.	Service quality at Heathrow is covered by the provisions of the Service Quality Regime (“ SQR ”) in Heathrow’s Licence and is reported on to airlines on a monthly basis. See Part D of the Licence. ⁴³ SQR Reports are also shared directly with the AOC and others by email, relevant elements are discussed at the Above and Below-Wing meetings, and the final reports are published on our website. ⁴⁴ The SQR scheme details are cross-referenced in our Consultation Document at paragraphs 1.5 and 1.6. ⁴⁵
8(1)(c): information on the components serving as a basis for determining the system or level of all charges proposed, including the matters set out in paragraph 2.	The charges tariff proposal is fully detailed in chapter 4 of the Consultation Document ⁴⁶ and also in the Consultation Slides ⁴⁷ . The underlying data relating to the proposed maximum yield is set out in Chapters 1-2 of RBPu1. ⁴⁸ The matters set out in paragraph 8(2) of the ACR are covered below.
8(2)(a): a list of the various services and infrastructure provided in return for the airport charges levied.	This is covered within Heathrow’s Licence, ⁴⁹ the SQR scheme and also in the Conditions of Use ⁵⁰ , which are referenced at various places in the Consultation Document, for example at paragraph 1.7. ⁵¹
8(2)(b): the methodology used for setting airport charges.	The methodology is set out in chapters 2-5 of the Consultation Document. ⁵² Heathrow has also set the prices in line with the CAA’s holding cap decision. ⁵³
8(2)(c): the overall cost structure of the airport with regard to the	This information is set out in RBPu1 and includes the supporting models which the airlines have been provided

⁴² Consultation Meeting Minutes – Annex 9

⁴³ Q6/IH7 Licence: https://www.caa.co.uk/media/n4dbpdwr/heathrow-licence_20191217.pdf

⁴⁴ SQR information is published here: <https://www.heathrow.com/company/about-heathrow/performance/airport-operations/quality-rebate-and-bonus-scheme>

⁴⁵ Consultation Document – Annex 8

⁴⁶ Consultation Slides – Annex 10

⁴⁷ Consultation Document – Annex 8

⁴⁸ Chapters 1-2, RBPu1: <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-update-1.pdf>

⁴⁹ Q6/IH7 Licence: https://www.caa.co.uk/media/n4dbpdwr/heathrow-licence_20191217.pdf

⁵⁰ Heathrow Conditions of Use 2022 – Annex 29

⁵¹ Consultation Document – Annex 8

⁵² Consultation Document – Annex 8

⁵³ Letter from the CAA to Heathrow and airlines dated 16 December 2021 (CAP 2307): <https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=11037>

ACR Regulation	Information supplied
facilities and services to which airport charges relate.	access to via SharePoint. ⁵⁴ It is also covered in chapter 2 of the Consultation Document ⁵⁵ and on slides 9 and 10 of the Consultation Slides ⁵⁶ .
8(2)(d): details of the revenue from the different components of airport charges and the total costs of the associated services or facilities.	This information is set out in chapters 2-6 of the Consultation Document ⁵⁷ . Revenue and costs information are also provided to airlines in chapters 5.4 and 5.5 of RBPu1 ⁵⁸ as well as in the Regulatory Accounts required by the Licence and published on Heathrow's website. ⁵⁹ These are cross-referenced in chapter 8 of the Consultation Document. ⁶⁰ Furthermore, a revenue bridge analysis document was provided to airlines on 21 September 2021 following request. ⁶¹
8(2)(e): any financing provided by a public authority in connection with the facilities and services to which airport charges relate.	Not relevant at Heathrow so information not required on this point.
8(2)(f): forecasts for the charges, traffic growth and proposed investments at the airport.	<p>This information is set out in chapter 8 of the Consultation Document⁶² and on slides 5 and 6 of the Consultation Slides.⁶³ The traffic forecast for H7 has been the subject of detailed review by the CAA as part of the H7 process and ongoing engagement between the CAA, Heathrow and the airlines.</p> <p>Capital investment proposals are covered in chapter 5.3 of RBPu1⁶⁴ as well as addressed directly with airlines via Heathrow's capital investment governance framework.⁶⁵</p>

⁵⁴ RBPu1: <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-update-1.pdf>

⁵⁵ Consultation Document – Annex 8

⁵⁶ Consultation Slides – Annex 10

⁵⁷ Consultation Document – Annex 8

⁵⁸ RBPu1: <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-update-1.pdf>

⁵⁹ Heathrow's regulatory accounts are published here: <https://www.heathrow.com/company/about-heathrow/economic-regulation/regulatory-accounts>

⁶⁰ Consultation Document – Annex 8

⁶¹ Revenue bridge analysis – Annex 13

⁶² Consultation Document – Annex 8

⁶³ Consultation Slides – Annex 10

⁶⁴ RBPu1: <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-update-1.pdf>

⁶⁵ Heathrow's capital investment governance framework is governed by a Protocol and documents and information are shared with Airlines and the CAA via the various meetings and through a SharePoint site.

ACR Regulation	Information supplied
	This is cross-referenced in paragraph 1.7 of the Consultation Document. ⁶⁶
8(2)(g): the details of the actual use of the airport infrastructure and equipment over at least the previous 12 months	This information is set out in Heathrow's Regulatory Accounts as required by the Licence and published on Heathrow's website. ⁶⁷ These are cross-referenced in chapter 8 of the Consultation Document. ⁶⁸
8(2)(h): the predicted outcome of any major proposed investments in terms of their effect on airport capacity	Capital investment proposals are covered in chapter 5.3 of RBPu1. ⁶⁹ The progress and outcome of major investments are addressed directly with airlines via Heathrow's capital investment governance framework. ⁷⁰ This is cross-referenced in paragraph 1.7 of the Consultation Document. ⁷¹

33. Heathrow has fully complied with Regulation 9(5). The Consultation Document sets out the proposed date of implementation of the new charges in the final paragraph of the Executive Summary⁷² as well as in Table 1 at Paragraph 1.17 of the Consultation Document,⁷³ and all of the necessary information has been provided to airlines.
34. Compliant with Regulation 9(6), the Consultation Notice was issued on 31 August 2021, and a consultation meeting held on 9 September 2021. Further bilateral meetings were held upon airline request, and Virgin took up this opportunity for direct discussions on multiple occasions, as set out in paragraph 13, above.
35. As to Regulation 13(1), Heathrow made clear throughout the consultation process that it was open to all feedback and to alternative proposals as to how to achieve the objectives stated. Heathrow has had regard to the representations and objections made by airlines, as is set out clearly in the Decision Document⁷⁴ as well as in our interim letter of 27 October 2021.⁷⁵ Various changes were made to our proposals as a result of airline feedback, as set out in paragraph 57, below.

⁶⁶ Consultation Document – Annex 8

⁶⁷ Heathrow's regulatory accounts are published here: <https://www.heathrow.com/company/about-heathrow/economic-regulation/regulatory-accounts>

⁶⁸ Consultation Document – Annex 8

⁶⁹ RBPu1: <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/about/economic-regulation/RBP-update-1.pdf>

⁷⁰ Heathrow's capital investment governance framework is governed by a Protocol and documents and information are shared with Airlines and the CAA via the various meetings and through a SharePoint site.

⁷¹ Consultation Document – Annex 8

⁷² Page 4, Consultation Document – Annex 8

⁷³ Paragraph 1.17, table 1, page 7, Consultation Document – Annex 8

⁷⁴ Airport Charges Decision Document – Annex 28

⁷⁵ Letter from Heathrow to airlines dated 27 October 2021 – Annex 24

“13(a) Your explanation should include relevant evidence, such as internal documents of key decisions you took regarding:

i. the 2022 charging proposals to be consulted upon;”

36. The proposals for Heathrow’s 2022 Charges Consultation were led by the internal Aviation team. The Aviation team coordinates a number of cross-departmental review groups which met regularly to consider any new proposals for 2022. Once a set of proposals were agreed by those review groups, they were set out in a paper for Heathrow’s Executive Committee to consider and provide feedback dated 27 July 2021.⁷⁶ As is set out therein, the options explored for 2022 were to make the following changes:

- 36.1. update the yield number (as is usual);
- 36.2. amend proportion of charges recovered within movement charges and make a commensurate reduction in departing passenger charges, with various percentage shifts under consideration;
- 36.3. add a £20m sustainable build back incentive;
- 36.4. add a £250m multi-year sustainable aviation fuel incentive;
- 36.5. add a new super-low noise chapter;
- 36.6. add a weight-based cargo charge.

37. A further paper was presented to Heathrow’s Executive Committee on 24 August 2021⁷⁷ to obtain any further input on the proposals prior to publishing the Consultation Document. As set out in this paper, the options set out in paragraph 36 above were proposed for consultation with some adjustments, for example:

- 37.1. the percentage change for movement charges had been agreed to be consulted on at a 5% shift; and
- 37.2. addition of a proposal for consultation to rebalance of passenger charges between domestic, EEA and ROW, including an increase to the domestic and CTA discount.

38. Legal advice was obtained on the proposals by the Aviation team as to ensure compliance with the regulations, however, as such advice is subject to Legal Professional Privilege, it cannot be disclosed with this response.

“13(a).ii. what information should be provided to stakeholders alongside that consultation; and”

39. The team preparing Heathrow’s airport charges consultations always seek to ensure airlines understand the basis and reason for any changes to charges. For example, where charges are aimed at incentivising the use of cleaner, quieter aircraft this is shared with airlines to ensure that is the practical effect. In addition, Heathrow takes full account of the requirements of the ACR

⁷⁶ Executive Committee Paper 304/21 – Annex 1

⁷⁷ Executive Committee Paper 377/21 – Annex 6

and ensures the information provided is compliant. Legal advice was obtained by the Aviation team as to ensure compliance with the regulations, however, as such advice is subject to Legal Professional Privilege, it cannot be disclosed with this response.

“13(a).iii. the timeline and process for consultation.”

40. We have covered details of the timeline and process above in paragraphs 13 and 19-27. As is set out in the Consultation Minutes at section 3.5⁷⁸, *“there was a point where we considered delaying the consultation but the strong feedback from airline community was that delaying consultation would not be preferable and will not give certainty to airlines with regards to planning for 2022”*. The consultation timeline and process for 2022 was designed so as to be compliant with the requirements of the ACR, meet the airlines’ clear request for early pricing certainty and to balance with the complex picture created by the delayed H7 process.

“13(b). What further information did airlines ask you to provide during the 2022 charges consultation process, and how and when did you respond to those requests? Please evidence your response.”

41. At the consultation meeting held on 9 September 2021, airlines asked questions which were responded to as shown in the Consultation Minutes. They also requested the following:

- 41.1. IATA requested further information on noise category baselines and details of what the figures would look like if super-low was not included – addressed via post-meeting note and bilateral meeting held on 21 September 2021;
- 41.2. Revenue bridge analysis (see section 3.6 of the Consultation Minutes) - provided on 21 September 2021 by email;⁷⁹
- 41.3. Lufthansa requested an analysis of overall charging at Heathrow for 2022 compared to pre-pandemic – provided within the revenue bridge analysis.

42. We note that according to the Consultation Minutes, Virgin did not specifically request any information in the consultation meeting.⁸⁰

43. On 17 September 2021, an airline requested a list of 2019 destinations – provided by email on 23 September 2021;⁸¹

44. On 9 September 2021, an airline requested more information on the proposed cargo charges – responded by email on 24 September 2021.⁸²

45. On 29 September 2021, an airline requested more information on the proposed noise charges and associated chapters – responded by email on the same day.⁸³

⁷⁸ Consultation Meeting Minutes – Annex 9

⁷⁹ Revenue bridge analysis – Annex 13

⁸⁰ Consultation Meeting Minutes – Annex 9

⁸¹ Email exchange between Heathrow Airport and British Airways – Annex 14

⁸² Email exchange between Heathrow and British Airways – Annex 15

⁸³ Email exchange between Heathrow and Air Canada – Annex 18

46. On 10 November 2021, Virgin requested more information on the proposed noise and cargo charges – responded by email on 10 and 11 November 2021.⁸⁴
47. In total, 19 bilateral meetings were held with airlines, as detailed in the timeline at paragraph 13 above.
48. Airlines made a range of requests in the written feedback⁸⁵ to the consultation proposals, and these were fully responded to within the Decision Document.⁸⁶
49. As set out in Virgin’s response, they sent a letter from DLA Piper on 1 October 2021, which has been largely replicated in their complaint to the CAA that this response concerns. Heathrow acknowledged the letter on 7 October 2021 and responded on 27 October 2021. In addition, as we have noted in paragraph 19 above, a number of bilateral meetings were held with Virgin, where their comments on the consultation proposals were discussed.

“13(c) What opportunities and time did you provide for airlines to respond to the consultation and what processes did you adopt to consider airlines’ responses to the 2022 charges consultation? Please evidence your response.”

50. We have covered details of the timeline and response process above in paragraphs 13, 19-27 and 40.
51. As feedback was received from airlines, it was reviewed and considered by the relevant Heathrow team members. The feedback was carefully considered and a summary set into a response matrix as shown, for example, in the Board Paper dated 29 September 2021 (see paragraph 3.3)⁸⁷, and in the Executive Committee paper dated 12 October 2021 (see slides 2, 4 and 6)⁸⁸ and in the Board Paper dated 20 October 2021 (see slides 5 and 16-18)⁸⁹. Consideration of airline views, and alternative positions suggested, formed part of the assessment process as to whether the proposals should be taken forward, and if yes so, whether they should be amended in any way. We responded to all airline feedback within the Decision Document.⁹⁰

“13(d) Did you consider a more extended consultation timetable that would involve modifying charges later than 1 Jan 2022? Why did you decide to proceed as you did? Please evidence your response.”

52. As set out above, and in the letter to the CAA dated 10 August 2021,⁹¹ Heathrow was in a difficult situation whereby the uncertainty caused by not having an H7 price control condition was negatively impacting being able to carry out the 2022 charges consultation process and have productive discussions with airlines about the charges structure and proposals. Further, airlines were asking Heathrow to start consultation to provide certainty. We have explained in paragraph

⁸⁴ Email exchange between Heathrow and Virgin – Annex 25

⁸⁵ Virgin Consultation Response – Annex 19

⁸⁶ Airport Charges Decision Document – Annex 28

⁸⁷ Board Paper 132/21 – Annex 16

⁸⁸ Executive Committee Paper 420/21 – Annex 20

⁸⁹ Board Paper 151/21 – Annex 22

⁹⁰ Airport Charges Decision Document – Annex 28

⁹¹ Letter from Heathrow to CAA dated 10 August 2021 – Annex 3

21 above why it was not possible to roll forwards 2021 pricing into 2022 and so Heathrow had to commence consultation to update prices as at 1 January 2022.

“13(e) How did you evaluate the impact of the proposed charges on particular types of airlines and consumer segments and overall demand at the airport? Please evidence your response.”

53. Heathrow evaluated various options prior to issue of the Consultation Document and analysed the potential impact of options under consideration. Examples of those assessments are shown in the Executive Committee Paper dated 27 July 2021 (see slide 27).⁹² This analysis is supported by spreadsheet models, where different proposals can be input to see the output in an example tariff or a table of airline impacts, the output of which is set out in the various Executive Committee and Board papers enclosed.⁹³ This analysis (and the underlying spreadsheets) cannot be shared with airlines as it contains commercially sensitive and confidential information about airline costs and operations that cannot be shared.

54. Within the H7 context, Heathrow has carried out analysis of passenger attitudes towards the charges at Heathrow and has found that passengers are willing to pay for a certain level of airport service. This willingness to pay evidence has been carefully considered when setting the service standards, and therefore the associated costs, which will be delivered at the airport.

55. Between issue of the Consultation Document and Decision Document, Heathrow carried out further analysis to support the review of airline feedback and to come to a final decision on the charges to be implemented from 1 January 2022. An impact analysis was completed and set out in Executive Committee Paper dated 21 September 2021 (see slides 11-13).⁹⁴ As above, this analysis cannot be shared with airlines as it contains commercially sensitive and confidential information about airline costs and operations.

56. On 12 October 2021, a further update was presented to the Executive Committee summarising the consultation feedback and demonstrating that it had been taken into account in reaching Heathrow’s final decision and recommending various changes to be made to the charges for final decision.⁹⁵ A further update was provided to the Board on 20 October 2021, again showing how airline feedback had been taken into account, impacts analysis and amended recommendations for final decision⁹⁶

“13(f) What were the main changes you made to the 2022 charges in response to airline feedback to the August 2021 consultation?”

57. Heathrow carefully considered all airline feedback received and responded to it in the comprehensive Decision Document. As set out therein, Heathrow made a number of changes to the proposals in response to airline views:

⁹² Executive Committee Paper 304/21 – Annex 1

⁹³ Executive Committee Paper 304/21 – Annex 1, Executive Committee Paper 337/21 – Annex 6, Executive Committee Paper 420/21 – Annex 21, Board Paper 151/21 – Annex 23

⁹⁴ Executive Committee Paper 420/21 – Annex 20

⁹⁵ Executive Committee Paper 420/21 – Annex 20

⁹⁶ Board Paper 151/21 – Annex 22

- 57.1. reduction of SAF ambition from 1% mix to 0.5% mix, reducing the overall incentive amount for 2022;
- 57.2. amendment to SAF incentive allocation methodology to change from passenger numbers to available seat kilometres;
- 57.3. did not progress sustainable build back incentive;
- 57.4. did not progress weight-based cargo charge;
- 57.5. amended noise chapter charge multipliers;
- 57.6. amended the noise charge bandings;
- 57.7. amended the long-haul / short-haul balance in departing passenger charges from 80/20 proposal to 75/25 (which was the ratio used in 2020 charges); and
- 57.8. amended pricing to align with the CAA's decision on the holding cap.

Confidentiality

58. We consider the following documents enclosed with this response to be strictly confidential and they must not be shared beyond the CAA team reviewing this response:

- 58.1. Executive Committee papers;
- 58.2. Executive Committee minutes;
- 58.3. Board Papers; and
- 58.4. Board minutes

59. Disclosure of these documents would significantly harm Heathrow's interests. These documents contain highly confidential, forward looking and strategic business information which should not be made public. Additionally, they contain sensitive and confidential information about airlines operating at Heathrow, the public sharing of which could breach information exchange rules under competition law.

60. In addition:

- 60.1. some of the enclosed documents are correspondence with airlines (and attachments) which may contain confidential airline information; and
- 60.2. a number of the enclosed documents contain personal data. Some personal data has been redacted where it is irrelevant however that which remains should not be further disclosed by the CAA due to Data Protection laws.

Conclusion

61. Heathrow's consultation process has been fully compliant with the ACR. Heathrow has carefully managed the challenging situation resulting from the delayed H7 process, the fixed requirements of the ACR and airlines' requests for early price certainty.

62. There is no justification for any form of further intervention from the CAA in this matter. It is Heathrow's view that proceeding with this complaint is not aligned to the CAA's prioritisation principles and we therefore invite the CAA to close this investigation with no further action.

Index of enclosed documents

Annex Number	Document	Date
1.	Executive Committee paper – 304/2021 – CONFIDENTIAL	27 July 2021
2.	Executive Committee minutes extract – 304/21 – CONFIDENTIAL	27 July 2021
3.	Letter from Heathrow to CAA	10 August 2021
4.	Letter from AOC, IATA and Heathrow to CAA	18 August 2021
5.	Letter from CAA to Heathrow	25 August 2021
6.	Executive Committee paper – 337/21 - CONFIDENTIAL	24 August 2021
7.	Executive Committee minutes extract – 337/21 – CONFIDENTIAL	24 August 2021
8.	Consultation Document	31 August 2021
9.	Consultation Meeting Minutes	9 September 2021
10.	Consultation Slides	15 September 2021
11.	Consultation Corrections Note	15 September 2021
12.	Consultation meeting follow-up email	15 September 2021
13.	Revenue bridge analysis	21 September 2021
14.	Email exchange with Heathrow to British Airways <i>14A. Attachment: Scheduled destinations served 2019</i>	17 September 2021 - 23 September 2021
15.	Email exchange with Heathrow to British Airways	09 September 2021 - 24 September 2021
16.	Board Paper – 132/21 – CONFIDENTIAL	29 September 2021
17.	Board Minutes – 132/21 – CONFIDENTIAL	29 September 2021
18.	Email exchange between Heathrow to Air Canada <i>18A. Attachment: Air Canada Noise Table</i>	29 September 2021
19.	Virgin and Delta Airlines Consultation Response	1 October 2021

20.	Executive Committee Paper – 420/21 - CONFIDENTIAL	12 October 2021
21.	Executive Committee Minutes – 420/21- CONFIDENTIAL	12 October 2021
22.	Board Paper – 151/21 - CONFIDENTIAL	20 October 2021
23.	Board Minutes – 151/21 – CONFIDENTIAL	20 October 2021
24.	Letter from Heathrow to airlines	27 October 2021
25.	Email exchange between Heathrow to Virgin	10 November 2021 – 11 November 2021
26.	Letter from Heathrow to CAA	29 November 2021
27.	Letter from CAA to Heathrow	6 December 2021
28.	Airport Charges Decision Document	17 December 2021
29.	Heathrow Conditions of Use 2022	1 January 2022
30.	Virgin complaint letter to CAA	14 March 2022
31.	CAA Request for Information	25 March 2022
32.	Letter from Heathrow to CAA	12 April 2022
33.	Letter from CAA to Heathrow	22 April 2022

APPENDIX E

HAL's response to the CAA's Preliminary View
(25 October 2022)

25 October 2022

Mr P Pinto
Economic Regulation and Competition Policy
Civil Aviation Authority
11 Westferry Circus
London
E14 4HD

Dear Pedro,

Heathrow's response to the CAA's Investigation under the Airport Charges Regulations 2011 of Heathrow's 2022 charges consultation, Preliminary View

We welcome the opportunity to submit a response to the CAA's Preliminary view on its Investigation under the Airport Charges Regulations 2011 (ACR2011) of Heathrow's 2022 charges consultation.

We support the CAA's preliminary view that there is no evidence to conclude that Heathrow's consultation process used for setting the 2022 airport charges was in breach of its obligations under ACR2011.

We support the CAA's view that we provided sufficient information and allowed sufficient time for the 2022 consultation process and met the requirements set out in Regulation 8, Regulation 9(5), Regulation 9(6), and Regulation 13(1) of the ACR2011. We urge the CAA to reach a final decision on the same terms set out in its preliminary view and bring this investigation to a close.

Moreover, we would like to comment on the following CAA preliminary views expressed in CAP2397:

- In relation to paragraph 2.13, we appreciate the CAA's confirmation that the information provided was "substantial" and explained Heathrow's rationale behind the proposed 2022 charges. We work hard to provide comprehensive and appropriate information and will continue to do so in a similar manner going forward.
- In relation to paragraphs 2.13 and 2.23, we agree with the CAA that we had published a substantial set of information in the RBPu1 on the components serving as a basis for determining airport charges. The information contained therein supported our rationale for the airport charges consultation proposals, and we agree with the confirmation that it was not a breach of ACR2011 for us to proceed with our consultation for 2022 charges on the basis of information set out in our RBPu1.
- In relation to paragraph 2.41, we agree with the CAA that we met the requirements of Regulation 9(6) and 13(1) of ACR2011. Heathrow takes all feedback received very seriously and that is clearly evidenced in Heathrow's response to airlines. As noted by the CAA our

final decision for 2022 charges responded to both airline feedback and regulatory developments.

- In relation to the CAA's paragraph 2.43, we agree with the CAA that we complied with the timescale obligations and with the requirement of Regulation 13(1) ACR2011 to have regard to representations made by airport users during the consultation.
- In relation to paragraphs 2.23 and 2.45, we agree with the CAA's assessment that there is little benefit for the CAA to investigate these matters further and support the CAA's views that this investigation should be brought to a close.

Heathrow has an established consultation process which is followed to ensure that we give proper consideration to the impact of our proposals on affected parties. Through this process we will endeavour to explore whether agreement on targeted areas can be reached with our airlines. Ultimately, however, Heathrow serves a diverse set of airline customers with differing needs, operating models and commercial objectives and under the current regime we have to set a single scheme of prices. Therefore, pursuit of agreement cannot and should not supersede effective consultation with a final decision being made independently by Heathrow.

Consultation on airport charges is at the heart of setting prices and we will continue to ensure appropriate information is shared with our airlines and allowing sufficient time in the consultation process.

Yours sincerely,



Helen Stokes

Head of Legal, Regulation and Operations